

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Bibhas Ranjan De

F.M.A 469 of 2009

Rosenara Bewa &Anr.

Vs

B.M.Oriental Insurance Co. Ltd. & Anr.

For the Appellants : Mr. Krishanu Banik, Advocate

For the Respondent : Rajesh Singh, Advocate

Hearing concluded on : September 07, 2022

Judgment on : September 08, 2022

Bibhas Ranjan De, J.

1. This appeal is directed against the judgment and order dated 05.07.2008 passed by the Ld. Judge Motor Accident claimed Tribunal 3rd Court Malda, whereby Ld. Judge awarded compensation to the tune of Rs. 1,79,500/- in disposing an application 166 of Motor Vehicles Act (for short MV Act).

- 2.** The claim petition under Section 166 of the MV Act was filed before the jurisdictional tribunal with a prayer for compensation owing to death of husband of the appellant no. 1 in an accident on 01.06.1996 at about 04.00 hours on National Highway 34 near Dariapur Petrol Pump under PS Kaliachak by the involvement of a vehicle no. WB 65/1592 after it dashed against a rickshaw and a road side tree. The vehicle turned upside down and husband of the appellant no. 1, travelling in that vehicle succumbed to his injuries. At the relevant point of time victim was 25 years of age.
- 3.** Both the owner and the Insurance Company of the vehicle contested the application by filing their respective written statement.
- 4.** During trial of the claim petition Insurance Company took a plea that the deceased was not the labourer of the vehicle in question rather he was a gratuitous passengers and that is why OP insurance has no liability.
- 5.** Ld. Judge after appreciation of evidence including the Police reports returned his findings that both the owner of the vehicle as well as Insurance Company was responsible for the accident.

6. After considering the entire evidence particularly the fact of travelling by the involved vehicle (Lorry) Ld. Judge returned his findings that deceased was gratuitous passengers and claimants are not entitled to compensation from the Insurance Company. Accordingly, Ld. Judge calculated the total compensation of Rs. 1,79,500/- compensation after applying multiplier 18 and after adding general damage of Rs. 9500/-. Thus, Ld. Judge directed the owner of the vehicle/ respondent no. 2 to pay the awarded amount to the claimants/ appellants.
7. Ld. Advocate appearing on behalf of the claimant relied on a case reported in **2004 ACJ 721 (Oriental Insurance Company Limited Vs. Nanjappan and other)** and submitted that in this case claimants are entitled to claim payment from the Insurance Company who, thereafter can realize them same from the owner.
8. In the aforesaid reported decision Hon'ble Apex Court dealt with an incident where a passenger travelling in a goods vehicle sustained injuries when the vehicle met with the accident. In that case Hon'ble Apex Court ordered Insurance Company to pay and recover the same from the owner through execution proceeding directly without filling any separate case.

9. Ld. Advocate appearing on behalf of the appellants has submitted that Ld. Tribunal did not add future prospect and less amount added towards general damages.
10. Ld. Advocate appearing on behalf of the respondent Insurance Company strenuously argued that though incident took place in the year 1996 but surprisingly the claim application was filed in the year 2003, so, claimants are not is entitled to any compensation at the enhanced rate.
11. Considering all facts and circumstances, as well as observation in Hon'ble Apex Court in ***Nanjappan*** (supra) I find no other option but to direct the respondent Oriental Insurance company to a pay the entire awarded sum but insurance Company entitle to realize the amount from the owner of the vehicle.
12. Considering the entire facts of this case as well as the ratio of ***National Insurance Co. Ltd. vs. Praney Sethi (2017) 16 SCC 680*** the award is being computed as follows:-

Annual Income (Rs. 3000 x 12)	: 36,000.00
Future Prospect be assessed 40% i.e Rs.	:14,400.00

	:50.400.00
After 1/4 th Deduction	: 37,8000.00
Multiplier x 18	: 6,80,400.00
Add:- General Damages	: 70,000.00
Total	<u>: 7,50,400.00</u>
Less award amount	: 1,79,500
Enhanced award	: 5,70,900.00

13. After hearing both sides as well as from the record it appears that appellants did not receive the awarded amount of Rs.1.79.500/-. Considering the aforesaid facts and circumstances respondent/ Oriental Company is directed to deposit the aforesaid awarded sum to the Ld. Registrar General along with interest at the rate of interest 6 % per annum within 6 weeks.

14. However, respondent/Oriental Insurance Company is at liberty to realize the awarded amount from the owner of the vehicle no. WB 65/1592.

15. Let the records of the tribunal be sent back immediately.

- 16.** Ld. Registrar General will release the amount in favour of the claimants on proper identification and also after verification of Court fees paid on the amount enhanced.
- 17.** F.M.A 469 of 2009 is being disposed of without any order as to cost.
- 18.** All pending applications, if any, stand disposed of accordingly.
- 19.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]