

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 253 of 2011

The New India Assurance Co. Ltd.
Vs.
Nandadulal Ghosh & Ors.

Mr. Parimal Kumar Pahari
... For the appellant/Insurance Company

Mr. Saidur Rahaman
... For the respondents/claimants

This appeal is directed against the judgment passed on 11th August, 2010 by the learned Judge, Motor Accident Claims Tribunal, 2nd Court, Berhampore, Murshidabad in Motor Vehicles Case No.375 of 2008 under Section 163A of the Motor Vehicles Act, 1988 whereby the learned Judge awarded compensation to the tune of Rs.1,82,000/- and also directed to disburse the amount among the claimants by issuing account payee cheques in the name of the claimants proportionately as mentioned in the order itself.

Learned advocates appearing on behalf of the parties to this appeal did not raise any dispute regarding any other points except the liability of the Insurance Company on account of violation of the conditions of the policy.

It is not disputed that the accident took place on 14th February, 2008 by the involvement of one vehicle

(trailer) bearing no.WB-57/9566 fitted with a tractor bearing no.WB-57/9565 while the victim along with others were returning after cremation of a dead body. The accident took place at Bilbasia due to upstart of trailer and tractor.

Neither the accident nor other issues of this case were disputed and the learned Judge awarded compensation to the tune of Rs.1,82,000/-.

The only disputed issue is the liability of the Insurance Company. It is no doubt that the victim was travelling with a trailer tractor which is not permitted according to conditions of the policy of the Insurance Company. From that point of view, the victim was a gratuitous passenger at the relevant point of time. In this regard, relying on the ratio of Nanzappa "Pay and Recover", I find no difficulty to direct the Insurance Company to pay the compensation to the claimants and recover from the registered owner of the vehicle.

It appears from the record that the Insurance Company has already deposited the entire awarded amount before the learned Registrar General.

Therefore, claimants are entitled to disbursement of the amount in their favour according to the manner prescribed in the order of the learned Tribunal.

The appellant/Insurance Company is at liberty to realise the awarded amount from the registered owner of

the vehicle through execution proceeding instead of filing separate suit.

In the aforesaid view of the matter, the instant appeal stands disposed of.

The learned Registrar General will disburse the amount in the manner prescribed in the ordering portion of the impugned judgment to the claimants.

All pending applications, if any, also stand disposed of.

Records of the learned Tribunal be transmitted back immediately.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Bibhas Ranjan De, J.)