

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 803 of 2012

The New India Assurance Company Limited
Vs.
Tukuli Dafadar & Ors.

Mr. Rajesh Singh
... For the Appellant/Insurance Co.

Mr. Amit Ranjan Roy
... For the respondents/claimants

This appeal is directed against the judgment passed in MAC Case No.509 of 2008 by the learned District Judge, Motor Accident Claims Tribunal, Nadia, under Section 163A of the Motor Vehicles Act whereby the learned Judge directed the appellant/Insurance Company to pay the compensation amount assessed at Rs.3,69,500/- to be paid to the respondents/claimants in the manner prescribed therein.

The brief facts of this case is that on 9th February, 2008 at about 6.30 a.m. the victim along with others were travelling by one tractor, bearing No.WB-29/5416, as labourers for unloading earth. All on a sudden the said tractor turned upside down and as a result whereof the victim Kashem Dafadar died instantaneously and others were injured. With regard to the incident, one case being Hanskhali P.S. Case No.54 of 2008 dated 9th February, 2008 was started and on completion of investigation,

charge sheet was submitted under Section 279/338/304A of the Indian Penal Code and read with Section 184 of the Motor Vehicles Act against the driver of the tractor.

The learned Tribunal after considering all materials on records came to his finding that the victim was not gratuitous passenger. The contention of the First Information Report regarding the manner of accident, in the opinion of the learned Judge, was not clear to the effect that how and where the accident took place. That apart, the learned Tribunal also returned a finding on the issue of gratuitous passenger as driver of the alleged vehicle did not come forward to deny the allegation. That is why the learned Tribunal came to his final opinion and assessed the amount of compensation to Rs.3,69,500/- to be paid to all the claimants in the manner prescribed in the order impugned itself.

Mr. Rajesh Single, learned advocate appearing on behalf of the appellant/Insurance Company, submits that the entire story in this case was changed after the filing of the claim petition before the learned Tribunal. It is submitted on behalf of the appellant that the facts delineating in the charge sheet clearly show that it was an accident after the tractor turned upside down and as a result the victim sustained injury and succumbed to his injuries ultimately. According to Mr. Singh, during the trial witnesses adduced before the Court and told a different story as stated in the claim petition. However, Mr. Singh

has prayed for giving a liberty to the appellant/Insurance Company to recover the amount from the owner of the tractor.

On behalf of the appellant/Insurance Company, Mr. Singh submits that the incident stated by the elder brother of the victim in the First Information Report that the victim along with other labourers were travelling through the alleged tractor and the tractor turned upside down and victim died. Mr. Singh has submitted that the victim was gratuitous passenger, according to the First Information Report lodged in this case. Mr. Singh has prayed for a liberty to recover the compensation from the owner of the tractor.

Learned advocate appearing on behalf of the respondents/claimants submitted that the learned Tribunal has rightly passed the order of compensation in favour of the claimants after perusal of the evidence on record.

From the impugned order of the learned Tribunal, I find that the learned Judge did not allow the issue of gratuitous passenger contended before him on the reasoning that the driver never came to the Tribunal to deny the facts elucidated in the evidence. I am unable to disagree with the learned Tribunal on the decision that the Insurance Company did not take any effort to examine the driver of the said tractor, at least to deny the case of the claimants.

However, the appellant/Insurance Company is at liberty to take appropriate steps for realising the compensation on proof of the fact of gratuitous passenger before any competent Court.

None of the advocates to this appeal raises any objection regarding the assessment of compensation to the tune of Rs.3,69,500/- in all.

In these circumstances, the judgment passed by the learned Tribunal in MAC Case No.509 of 2008 stands affirmed.

It is reported that the entire awarded amount of Rs.3,69,500/- along with the accrued interest is lying with the learned Registrar General of this Court.

So this Court directs the learned Registrar General to release the amount by issuing four A/c payee cheques of equal amount in the name of the four claimants, including the minors after verifying the identity. The cheques in the name of the minors shall be handed over to the mother if the minors do not attain majority.

With the above observation, the instant appeal, being FMA 803 of 2012, stands disposed of.

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

(Bibhas Ranjan De, J.)