

IN THE HIGH COURT AT CALCUTTA  
CIVIL APPELLATE JURISDICTION  
APPELLATE SIDE

**FMA 823 of 2005**

United India Insurance Co. Ltd.  
Vs.  
Hari Prasad Mahato & Ors.

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

Today the appeal is fixed for hearing. In spite of notice, none appears on behalf of the respondents/claimants. In such circumstances, the appeal is taken up for hearing.

Heard the learned advocate appearing on behalf of the appellant/Insurance Company.

This appeal arose out of a judgment and award dated 30<sup>th</sup> July, 2004 passed by the learned Judge, Motor Accident Claims Tribunal, Fast Track 2<sup>nd</sup> Court, Uttar Dinajpur at Islampur, in MAC Case No.47 of 2003 under Section 163A of the Motor Vehicles Act, 1988.

The claim petition was filed by the legal heirs of the deceased Musharu Mahato, aged about 60 years, a labour having monthly income of Rs.3,000/-, in a motor vehicle accident on 9<sup>th</sup> December, 2002 at about 4.30 p.m. near Hararampur Chowk upon NH-31 while proceeding towards Lahutara from Noongara Sonali travelling in a Tata Spacio bearing registration no.WB-60/9356 and collided with a

Truck bearing registration no. UP-53-J/3707 from opposite side. This claim petition was filed with a prayer for compensation to the tune of Rs.2,00,000/- under Section 163 A of the Motor Vehicles Act, 1988.

The appellant/Insurance Company contested the claim petition before the learned Tribunal by filing written statement, alleging, inter alia, that the accident was due to fault on the part of the Truck driver who was not impleaded in this case and the policy of Tata Spacio has not covered the risk and liability of the vehicle which was used on hire in spite of having private vehicle insurance coverage.

Learned Tribunal after considering the evidence on record, including the report in final form by Baisi Police Station regarding accident, post mortem report of the deceased and other documents regarding the vehicle Tata Spacio, returned its findings by way of pronouncing award of Rs.87,000/- with a direction to pay to the claimants.

Being aggrieved and dissatisfied with the said judgment, the instant appeal has been preferred by the Insurance Company on two-fold grounds. One is that though the incident took place with the involvement of two vehicles but only the Insurance Company of the Tata Spacio was impleaded in the claim petition and secondly, Tata Spacio did not cover the risk and liability of the vehicle which was used on hire in spite of having private vehicle insurance coverage.

Learned advocate appearing on behalf of the appellant/Insurance Company has submitted on the same point before this Court.

On careful perusal of the entire judgment passed by the learned Tribunal, I find that the learned Judge duly considered the evidence on record and assessed compensation to the tune of Rs.87,000/- in favour of the claimants but no liberty was given to the Insurance Company to recover the award from the owner of the vehicle Tata Spacio in spite of holding that the deceased was a gratuitous passenger of Tata Spacio at the relevant date.

In the aforesaid view of the matter, I direct the appellant/United India Insurance Company Limited to deposit the awarded amount of Rs.87,000/-, deducting the statutory amount if already paid, along with interest @ 6% per annum from the date of filing of the claim petition till the date of deposit before the office of the learned Registrar General of this Court within six weeks from date.

The respondents/claimants are entitled to the awarded compensation along with interest @ 6% per annum from the date of filing of the claim petition till the date of deposit of amount.

The appellant/Insurance Company is at liberty to recover the entire awarded sum with interest from the owner of the vehicle Tata Spacio bearing registration

no.WB-60/9356 through execution proceeding in terms of the observations of the Hon'ble Apex Court in **Shamanna & Ors. v. The Divisional Manager, The Oriental Insurance Co. Ltd. & Ors.** reported in **AIR 2018 SC 3726** and **Oriental Insurance Co. Ltd. v. Nanjappan & Ors.** AIR 2004 SC 1630 : (2004) 13 SCC 244.

The respondents/claimants will be entitled to withdraw the entire amount with interest.

The learned Registrar General will disburse the entire amount with accrued interest to the respondents/claimants on equal share on proper identification.

With the observation, the appeal, being FMA 823 of 2005, stands disposed of.

All pending applications, if there be any, also stand 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.)**