

18.01.2023
SL No.3
Court No. 654
Ali

**IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction**

**F.M.A. 3998 of 2014
IA No: CAN/1/2014 (Old No: CAN/7428/2014)**

**National Insurance Co. Ltd.
Vs.
Bani Das & Ors.**

Mr. Afroze Alam
...for the appellant-Insurance Co.

Mr. Jayanta Kumar Mandal
...for the respondents-claimants.

This appeal is directed against the judgment and award dated 12th of December 2013 passed by learned Judge, Motor Accident Claims Tribunal, Durgapur, Burdwan in M.A.C Case no. 186 of 2010 granting compensation of Rs. 3,28,500/- in favour of the respondent no.1 & 2 (claimants) under Section 163A of the Motor Vehicles Act, 1988.

As per the report of Additional Stamp reporter dated 11.6.2014 the appeal is filed within the statutory period of limitation. Accordingly, the appeal is formally admitted and registered.

With the consent of the parties preparation of informal paper books is dispensed with.

The brief fact of the case is that on 6 November 2010 at about 1:30 PM while the victim was proceeding towards DVC More through B.C Roy Avenue riding his van rickshaw and when he reached near DPL 7 no. Gate the offending vehicle

bearing registration no. WB-41D/1592 (truck) moving in the same direction in the negligent manner dashed the van rickshaw of the victim as a result of which the victim sustained serious injuries and was taken to S.D Hospital, Durgapur for treatment however he succumbed to his injuries and died. The claimants being the parents and brother of the deceased-victim filed application under Section 163A of the Motor Vehicles Act, 1988 for compensation of Rs.3,60,000/-.

Upon consideration of the materials on record and the evidence adduced on behalf of the claimants the learned tribunal granted compensation of Rs. 3,28,500/- alongwith interest in favour of the respondent no.1 & 2. However it refused to grant any compensation in favour of the respondent no.3, Gopal Das.

Being aggrieved by and dissatisfied with the impugned judgment and award the insurance company has preferred the present appeal.

Mr. Afroze Alam, learned advocate for appellant insurance company submits that the insurance company in the appeal has taken the ground that the age of the parents ought to have been taken for adopting multiplier instead of age of the deceased. However, he in his usual fairness submits in view of subsequent decisions of the Hon'ble Supreme Court such aspect is no longer *res*

integra and he the submits for passing appropriate order.

Mr. Jayanta Kumar Mandal, learned advocate for respondents-claimants submits that the learned tribunal has rightly considered the age of the deceased for adopting the multiplier which does not call for interference.

None appears on behalf of respondent no.4-owner of the offending vehicle inspite of due service of notice.

Having heard the learned advocates of respective parties, it appears that the sole question which needs to be answered is whether the age of the parents or the age of the deceased is to be taken into consideration for determining the multiplier.

It is found from the impugned judgment that the learned tribunal taking into account the age of the deceased to be 26 years applied multiplier of 18 in assessing the quantum of compensation. The question is whether such recourse taken by the learned tribunal is correct or not. The Hon'ble Supreme Court in ***National Insurance Company Limited versus Panay Sethi and others*** reported in ***2017 ACJ 2700*** as well as in a subsequent decision passed in ***Royal Sundaram Allaince Insurance Company Limited versus Mandala Yadagari Goud and others*** reported in ***(2019) 5 SCC 554*** held that the age of the deceased is to be

taken into account and not the age of the parents. In view of the above the finding of the learned tribunal adopting multiplier 18 considering the age of the deceased does not call for interference.

The learned tribunal granted compensation of Rs.3,28,500/-together with interest @ 8% per annum from the date of filing of the claim application till deposit. It is informed that the claimants have not received any compensation granted by the learned tribunal. It is found that the insurance company has deposited the statutory amount of Rs.25,000/- vide OD challan no.352 dated 14.5.2014 and an amount of Rs.3,05,500/- vide OD challan no.582 dated 11.6.2015. Both the aforesaid deposits along with accrued interest be adjusted against the compensation amount and interest thereon granted by the learned tribunal.

Appellant-insurance company is directed to deposit the balance amount, if any by way of cheque with the learned Registrar General, High Court, Calcutta within a period of six weeks from date.

Respondents-claimants are directed to deposit *ad valorem* court fees on the compensation amount, if not already paid.

Upon deposit of the aforesaid balance amount, if any, the learned Registrar General, High Court, Calcutta shall release the said amount in favour of respondent no.1 & 2 in equal proportions

upon satisfaction of their identity and payment of *ad valorem* court fees, if not already paid.

With the aforesaid observation the appeal stands dismissed. The impugned judgment and award of learned tribunal is affirmed. No order as to cost.

All connected applications, if any, stands disposed of.

Interim order if any stands vacated.

Let a copy of this order along with the lower court records be forwarded to learned tribunal for information.

Urgent Photostat certified copy of the order if applied for be given to the parties upon compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)