

05.07.2023  
Ct.No.-3  
Sl. No.64  
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**CALCUTTA HIGH COURT**  
**In the Circuit Bench at Jalpaiguri**  
**Appellate Side**

**FMAT 22 of 2021**

**Smt. Flora Minj and Another**  
**Vs**  
**The Oriental Insurance Company Ltd. and Anr.**

Mr. Gobinda Saha  
Mr. Tamal Kumar Sen  
Ms. Priyanka Dey  
Mr. Milan Ch. Laskar  
Ms. Sanghai Chowdhury  
... For the applicants/claimants.

Mr. Rishin Chakaraborty  
... For the respondent no.1./Insurance Co.

This is an appeal assailing the Judgement of dismissal passed by the Learned Motor Accident Claims Tribunal, Additional District Judge, 1<sup>st</sup> Court, Jalpaiguri, in connection with Motor Accident Claim Case No.115 of 2017.

The claim petition was filed by the legal heirs of the deceased Hilarious Minj, who died in motor accident on 31.12.2016 at about 1.45 P.M. while the victim was going towards Siliguri from Matigara Side travelling by scooty bearing No. WB-74/AG-4189 as a pillion rider. At the relevant point of time one bus bearing registration No. WB-59/6647 coming from the opposite direction with high speed in negligent manner dashed the said scooty. In effect the victim

sustained severe injuries on his person. He was taken to Matigara Hospital thereafter to Dr. Chang's Hospital where the victim succumbed to his injuries.

The claim petition was filed claiming compensation to the tune of Rs.6,00,000/- (Rupees Six Lacs) only from the Insurance Company, i.e. Oriental Insurance Company of the bus on account of death of Hilarious Minj, a man of 26 years having monthly income of Rs.5,000/-.

Respondent/Insurance Company contested the claim petition by filing a written objection controverting the allegations made in the claim petition contending, *inter alia*, that no accident took place due to rash and negligent driving of the bus bearing registration No. WB-59/6647 and consequently Insurance Company was not liable to pay any compensation as prayed for.

Owner of the bus did not contest the case.

To substantiate the claim, three witnesses, namely, Flora Minj, mother of the deceased, as P.W.-1, one Rabindra Nath Neogi, attached to Dr. Chang's Hospital as P.W.-2 and one Pawan Newar claiming to be an eye witness, as P.W.-3. In course of their evidence, certified copy of the formal F.I.R., seizure list, charge sheet, post mortem report, insurance policy of the offending vehicle, Aadhar Card of the

deceased etc. were admitted in evidence as Exhibit 1 to 12.

Learned Tribunal had returned its findings on three points.

Learned Tribunal did not rely on the evidence of P.W.-3, eye witness in the accident on the ground that his presence on the place of occurrence was not substantiated by any other witness and also by not presenting any document showing his profession as an employee of Dr. Chang's Hospital.

Learned Tribunal also emphasized on the issue of delay of 3/4 days in lodging F.I.R. and lastly on the point of non-impleading the owner and insurer of the scooty.

To eschew the prolixity, I refrain myself to go into the discussion regarding accidental death of Hilarious Minj on 31<sup>st</sup> December, 2016.

Evidence of P.W.-1, mother of the deceased, in my opinion, has been duly ratified by the evidence of P.W.-3 who claimed himself as an eye witness to the accident.

Examination in chief of P.W.-3 had clearly transpired that he had seen the accident through his own eyes and he further testified that the accident took place due to rash and negligent driving of bus bearing No. WB-59/6647.

During his cross-examination the factum of his presence at the time of occurrence has not been challenged save and except his profession, i.e. employment in Chang's Hospital.

That apart from the charge sheet (Exhibit-3) filed in this case in connection with Matigara Police Station Case No. 11 of 2017 dated 03.01.2017 as well as written complaint (Exhibit1/1), Formal F.I.R.(Exhibit-1) it comes to my notice that death of Hilarius Minj in an accident at the instance of the bus bearing No. WB-59/6647 has been proved in terms standard of proof under this beneficial legislation.

Learned Tribunal at the time of evaluation of evidence of P.W.-3 has observed that P.W.-3 could not satisfy his actual position at the scene of accident.

But I am not agreeable with the observation of the Learned Tribunal as to evaluation of the evidence of P.W.-3 who did not disclose his position at the time of accident.

P.W.-3 was firstly examined in chief and he was also cross examined by the Insurance Company. During cross-examination his presence at the scene of occurrence has not been challenged in any manner even by putting any suggestion. Therefore, the actual

position of P.W.-3 at the scene of occurrence cannot be disputed.

Learned Tribunal also took an adverse view regarding delay in lodging the F.I.R. From the written complaint it is found that it was lodged before the Officer-in-Charge, Matigara Police Station by Assistant Sub Inspector of Police, Subodh Chandra Basu attached to Matigara Police Station. Therefore, on receipt of that written complaint formal F.I.R. was drawn up and after investigation charge sheet was submitted in this case. The written complaint as well as charge sheet submitted in connection with Matigara Police Station Case No.11/17 under Sections 279/338/427/304A of the Indian Penal Code against the driver of the bus bearing registration No. WB-59/6647 further buttressed the accidental death of Hilarious Minj.

Therefore, delay in lodging F.I.R. cannot be the issue of rejecting the prayer for claim in spite of accidental death of Hilarious Minj duly substantiated by the evidence on record including the evidence of P.W.-3. Charge sheet (Exhibit-3) as well as the Post Mortem Report (Exhibit-4).

Learned Tribunal also observed that the owner and insurer of the scooty whereby the deceased was travelling at the time of accident were not made party

in the claim petition. But it is trite law that in a claim petition, claimants can opt for compensation from any of the vehicle even in a case of head on collision.

In the aforesaid view of the matter, I am of the opinion that claimants are entitled to compensation on account of death of their son, i.e. the victim of the accident.

Accordingly, I propose to calculate the compensation hereinbelow.

Monthly Income : Rs.4,818/-

Annual Income – Rs.4,818 X 12 = Rs.57,816/-

+ 40% future prospect (Age 26 years) = Rs.23,126/-

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Total Income = Rs.80,942/-

Less, Rs.80,942/-X1/2(Bachelor)  
personal expenses=Rs.40,471/-

(Rs.80,942/-) – (Rs.40,471/-) = Rs.40,471/-

Rs.40,471/-X17(age 26 years)= Rs.6,88,010/- And

+ General damage = Rs. 30,000/-

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– Total =Rs. 7,18,010/-

Therefore, claimants are entitled to the compensation of Rs.7,18,010/- along with interest @6% per annum from the date of filing of the application and till the date of deposit of the sum before the Tribunal.

Oriental Insurance Company is directed to deposit the sum along with interest as stated hereinbefore by issuing Account Payee Cheque before the Tribunal within six weeks from date.

Learned Tribunal is requested to disburse the amount amongst the parents in equal shares on proper verification and identification.

Accordingly, the Judgement and Order passed in the Motor Accident Claim Case No. 115 of 2017 by the Learned Judge, 1<sup>st</sup> Motor Accident Claims Tribunal, Jalpaiguri stands set aside.

The appeal being **FMAT 22 of 2021** stands disposed of.

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

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

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

**(Bibhas Ranjan De, J.)**