

04.08.2023
Ct. 3
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**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
CIVIL APPELLATE JURISDICTION**

FMA 19 of 2023

Monowara Begam & Ors.

-VS-

The New India Assurance Company Ltd. & Anr.

Mr. Gobinda Saha,
Mr. Tamal Kumar Sen,
Mr. Milan Ch. Laskar,
Ms. Priyanka Dey

... for the appellants-claimants

Mr. Dipayan Roy

... for the respondent no.1- insurance company

Affidavit of service filed on behalf of the
appellants-claimants is taken on record.

This appeal is preferred against the
judgment and award dated 28th February, 2023
passed by the learned Additional District Judge-
cum-Judge, Motor Accident Claims Tribunal, Fast
Track, 1st Court, Jalpaiguri in MAC Case No. 222 of
2019 granting compensation of Rs. 76,73,054/- in
favour of the claimants under Section 166 of the
Motor Vehicles Act, 1988.

The brief fact of the case is that on 21st
June, 2019 at about 10.15 a.m. while the victim,
who was an Assistant Head Master, was going to his
school at Maynaguri from Cooch Behar on his

motorcycle bearing registration no. WB-64T/4597 at that time the offending vehicle being Maruti Alto Car (without any registration number) dashed the motorcycle of the victim in a rash and negligent manner as a result of which the victim sustained serious injuries and died on the spot. On account of sudden demise of the victim, the claimants being the widow, minor son and minor daughter filed application for compensation of Rs. 95,96,880/- under Section 166 of the Motor Vehicles Act, 1988.

The claimants in order to establish their case examined three witnesses and produced documents, which have been marked as **Exhibits 1** to **16** respectively.

The respondent no. 1-insurance company also adduced the evidence of one witness.

By order dated 5th July, 2023, service of notice of appeal upon the respondent no. 2, owner of the offending vehicle has been dispensed with since he did not contest the claim application before the learned Tribunal.

Upon considering the materials on record and the evidence adduced on behalf of the respective parties, the learned Tribunal granted compensation of Rs. 76,73,054/- in favour of the claimants under Section 166 of the Motor Vehicles Act, 1988.

Being aggrieved by and dissatisfied with the impugned judgment and award, the claimants have preferred the present appeal.

Mr. Gobinda Saha, learned advocate for the appellants-claimants submits that the learned Tribunal failed to grant interest on the compensation amount in terms of Section 171 of the Motor Vehicles Act. In the light of his aforesaid submissions, he prays for passing necessary order for grant of interest on the compensation amount.

In reply to the contentions raised on behalf of the appellants-claimants, Mr. Dipayan Roy, learned advocate for the respondent no. 1-insurance company submits that the learned Tribunal has rightly not granted interest on the compensation amount since delay in disposal of the claim application was not due to fault on the part of the insurance company. To buttress his contention, he relies on the decision of this Court passed in ***Kohinur Begum & Ors. versus New India Assurance Co. Ltd. & Anr.***, reported in ***AIR 2008 Calcutta 84***.

Having heard the learned advocates for the respective parties, the only issue, which has fallen for consideration whether the claimants are entitled to interest on the compensation amount or not.

Upon going through the impugned judgment of the learned Tribunal, it is found that the learned Tribunal did not grant interest on the compensation amount and the interest was made payable on default. From the impugned judgment, there is no such reason given by the learned Tribunal on not granting interest on the compensation amount. In *Kohinur Begum (supra)*, this Court has observed that ordinarily, if a claim application succeeds and the Tribunal comes to the conclusion that any amount of compensation is payable, it should also grant interest on that amount from the date of making of claim application before the Tribunal unless the Tribunal finds that the delay in disposal of the claim application was due to the claimants. Since there is no such indication of delay in disposal of the claim application on the fault of the claimants, as such, the claimants are entitled to interest on the compensation amount from the date of filing of the claim application.

For the reasons as above, the compensation granted by the learned Tribunal of Rs. 76,73,054/- shall carry interest @ 6% per annum from the date of filing of the claim application till the deposit was made before the learned Tribunal.

The respondent no.1 -insurance company is directed to deposit aforesaid interest amount before the learned Registrar, Circuit Bench of Calcutta High Court at Jalpaiguri by way cheque within a period of six weeks from date.

Upon deposit of the aforesaid interest amount, the learned Registrar, Circuit Bench of Calcutta High Court at Jalpaiguri shall release the abovementioned amount in equal share in favour of the appellants-claimants, upon satisfaction of their identity and payment of ad valorem court fees, if not already paid.

The appellant no. 1, being the mother and natural guardian of minor appellant no. 3 shall receive the share of the minor on her behalf and shall keep the same in a Fixed Deposit Scheme of any Nationalized Bank or Post Office till attainment of majority by the said minor.

With the aforesaid observations, the appeal stands disposed of. The impugned judgement and award is modified to the above extent. No order as to costs.

All the connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

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

(**Bivas Pattanayak, J.**)