

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

FMA No. 1212 of 2007

(FMAT 1306 of 2006)

Mabia Bibi & Ors.

Vs

The New India Assurance Co. Ltd. & Anr.

**For the Appellants/
Claimants**

: Mr. Niranjana Maity.

**For the Respondent No.1/
Insurance Company**

: Ms. Gopa Das Mukherjee.

**For the Respondent No.2/
Owner**

: None.

Hearing concluded on

: 22.08.2024

Judgment on

: 18.09.2024

Shampa Dutt (Paul), J.:

1. The present appeal has been preferred by the claimants against the Judgment and Order dated 2nd July, 2005 passed by Judge, Motor Accident Claims Tribunal, (5th Additional District Judge), South 24 Parganas at Alipore in M.A.C. Case No. 2 of 2005, **under Section 166 of the Motor Vehicles Act, 1988.**

2. THE FACTS :-

“.....Abdul Razzak Gayen, the husband of the petitioner no. 1 died in a motor vehicle accident which occurred on 20.11.2003 at about 11.15 hrs. over Diamond Harbour, Kakdwip Road near Tulsirchak within P.S. Kulpi in which the vehicle bearing no. WB-03A/4017 (Truck) was involved.

*From the attested copy of FIR (Ext-1) it appears that one Md. Hossain on 29.11.03 lodged the FIR to the O.C., Kulpi P.S. to the effect that on 29.11.03 at about 9.00 am he along with Rouf Ali Pyke, Sahjan Ali Pyke, Abdul Razzak Gayen, Saifulla Pyke, Hossain Ali Pyke and Kholrul Ali Pyle boarded a **TATA 407** model vehicle bearing No. WB-03A/4017 at Hospital More and were proceeding towards their respective houses and on the way near Tulshichak More the said vehicle running in a high speed, rash and negligent manner while giving side the lorry turned turtle and fell on the road-side ditch, and as a result, the 11 to 15 persons became seriously injured and Abdul Razzak and Rahaman Ali Sk. and 6 other were removed to Diamond Harbour S.D. Hospital and the remaining injured persons were removed to Kulpi Hospital. It also appears that on the basis of that FIR Kulpi P.S. Case No. 161 dt. 20.11.03 u/s 279/333 IPC was started.....”*

3. The **O.P. No. 2/ The New Indian Assurance Co. Ltd.** who has been allowed to take larger defence u/s 170 of M.V. Act, has challenged the

claim of the petitioners by filing a written statement while the O.P. no. 1, the owner of the vehicle did not contest the case.

4. The **claimants** examined **two witnesses** and proved relevant documents.
5. The opposite party did not adduce any evidence.
6. **The tribunal finally held as follows:-**

“.....M.A.C. Case No. 2 of 2005

Dated: 2nd July, 2005

.....As it has not been proved that the victim, Abdul Razzak was a cloth businessman. So I have no reason to believe that he used to earn Rs, 4,000/- p.m. as business man of cloths. In fact, there is no cogent and reliable evidence to prove the income of the victim at the relevant time. In that circumstance, this Tribunal is inclined to proceed with the notional income of Rs. 15,000/- p.a. for the victim. Abdul Razzak 1/3rd of it having been deducted towards the personal expenses of the victim, so his annual dependency comes to Rs. 10,000/-. By applying multiplier 18 we get a figure of Rs. 1,80,000/-. To it we may add Rs. 9500/- towards funeral expenses, loss of estate and loss of consortium. Thus, the total amount comes to Rs. 1,89,500/- to which the petitioners are entitled to get compensation from the O.P. no.1 owner of the offending vehicle.

**Sd/-
Judge, M.A.C. Tribunal,
5th A.D.J. Alipore.....”**

7. The tribunal directed the Opposite Party/Owner to pay the said compensation to the claimant as it is on record that the victim was a **‘gratuitous passenger’**.

8. Being aggrieved the claimant has preferred this appeal on the ground :-

That the tribunal erroneously directed the O.P. no.1/owner to pay the compensation on the finding that the victim was travelling as a gratuitous passenger, which is not in accordance with law.

9. From the materials including the evidence on record, it is evident:-

- i) That the victim was travelling in a goods vehicle as a **gratuitous passenger** and as such there being a violation of policy rules, the Insurance Company was to pay the compensation and then entitled to recover the same from the owner by due process of law. ***(Balu Krishna Chavan vs. The Reliance General Insurance Company Ltd. & Ors., in SLP (C) No. 33638 of 2017)***
- ii) The accident having occurred in the year 2003, and there being no documents to support the income of the victim, his income is taken as **Rs. 3000/- per month.**
- iii) Age of the deceased being **22 years** in the P.M. report **(Ext - 4)** and **26 years** as per voter card **(Ext-5)**, the average is taken as **24 years** and thus **multiplier 18** is applicable. ***(Sarla Verma & Ors. Vs. Delhi Transport Corporation and Anr. (2009) 6 SCC 121)***

- iv) **Future prospect** shall be **40%** of Income (victim being self employed). (*National Insurance Co. Ltd. Vs. Pranay Sethi & Ors., (2017) 16 SCC 680*)
- v) Number of claimants (at the time of filling) being **4, 1/4th** of the victim's income is to be deducted towards his personal expenses. (*Sarla Verma & Ors. Vs. Delhi Transport Corporation and Anr. (Supra)*).
- vi) General damages of **Rs. 70,000/-** under the conventional heads of Loss of estate: **Rs.15,000**, Loss of consortium: **Rs.40,000**, Funeral expenses: **Rs.15,000**. (*National Insurance Company Ltd. Vs Pranay Sethi & Ors.,(Supra)*).
- General damages to be enhanced at the rate of 10% every three years. So 10% every three year since 2017 on 70,000/- will be Rs. 84,000/-. (Being 20%).

10. Thus the **“Just Compensation”** in this case would be as follows :-

<i>Monthly Income</i>	<i>Rs. 3,000/-</i>
<i>Annual Income (3,000 x 12)</i>	<i>Rs. 36,000/-</i>
<i>Less : 1/4th towards personal and living expenses</i>	<i>Rs. 9,000/-</i>
	<i>Rs. 27,000/-</i>
<i>Add : Future prospects @ 40% of the annual income of the deceased</i>	<i>Rs. 10,800/-</i>
	<i>Rs. 37,800/-</i>
<i>Multiplier x 18 (37,800 x 18)</i>	<i>Rs. 6,80,400/-</i>
<i>Add: General damages Loss of estate: Rs.15,000/- Loss of consortium: Rs.40,000/- Funeral expenses: Rs.15,000/-. (Rs. 70,000 + 20% = Rs. 84,000)</i>	<i>Rs. 84,000/-</i>
<i>Total amount:-</i>	<i>Rs. 7,64,400/-</i>

11. Admittedly, the Claimants have not received the amount of compensation in terms of order of the learned Tribunal. Thus, the Claimants are now entitled to the **total amount of compensation of Rs. 7,64,400/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.**
12. The **Respondent No.1/Insurance Company** shall deposit the total amount, along with the interest, with the learned Registrar General, High Court, Calcutta, within a period of six weeks, who shall release the amount in favour of the claimants in equal proportion, **after payment** of the amount for loss of consortium to the claimant/wife, upon satisfaction of their identity and payment of *ad-valorem* Court fees, if not already paid.
13. **The Respondent No. 1/Insurance Company/The New India Assurance Co. Ltd. has now prayed for leave to recover** the compensation from the Owner/Respondent no. 2 of the offending vehicle (being a **Truck**) bearing no. **WB 03A/4017** (insured with the Respondent No. 1) on the ground that the deceased was a '**gratuitous passenger**' in the said vehicle.
14. **It is proved** that the deceased was travelling as a **gratuitous passenger** in the offending vehicles being a **truck**, bearing No. **WB 03A/4017**, insured with the **Respondent No. 1/Insurance Company/ The New India Assurance Co. Ltd.** and thus there being a violation of the condition of the rules in the policy, the **Respondent No. 1** is entitled to

recover their share of compensation paid, **by due process of law** from the owner of vehicle no. **WB 03A/4017**, the respondent no. 2 herein. (*Balu Krishna Chavan vs. The Reliance General Insurance Company Ltd. & Ors., in SLP (C) No. 33638 of 2017, on 3rd November, 2022*)

- 15. The appeal being FMA 1212 of 2007/FMAT 1306 of 2006 stands disposed of. The impugned judgment and award of the learned Tribunal under appeal is modified to the above extent.**
- 16.** All connected applications, if any, stand disposed of.
- 17.** There will be no order as to costs.
- 18.** Interim order, if any, stands vacated.
- 19.** Copy of this Judgment be sent to the Learned Tribunal, along with the trial court records, if received.
- 20.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)