

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

FMA 650 of 2007

With

CAN 1 of 2008 (Old No. CAN 780 of 2008)

Sk. Kader Ali and Others

Versus

The Oriental Insurance Company Limited and Others

For the Appellants : Mr. Krishanu Banik, Adv.

For the Respondent No. 1/Insurance Company

: Mr. Parimal Kumar Pahari, Adv.

Heard on : 29.01.2024

Judgment on : 27.02.2024

Ajay Kumar Gupta, J:

1. This instant First Miscellaneous Appeal has been filed by the appellants/claimants challenging the judgment and award dated 13th December, 2006 passed by Learned Judge, Motor Accident Claims Tribunal, Paschim Medinipur whereby the learned Tribunal dismissed the MACC Case No. 739 of 2000 filed under Section 166 of the Motor Vehicles Act, 1988 on account of death of victim on contest against the Oriental Insurance Company Ltd. and ex parte against the owner of the offending vehicle.

2. The brief facts of this case are as under:

On 27.04.1999 at about 20.15 hours petitioners' sister Rajia Bibi and others were returning their home along the left side of N.H. - 6 after witnessing Muharram festival. At the same time, a truck bearing registration no. WB-29/2769, coming from Panskura side at high speed in rash and negligent manner and endangering human life and safety suddenly dashed her from the back side with great force. She sustained serious injuries and died enroute during removal to the hospital. A written complaint was lodged on the same day resulting in registration of Panskura P.S. Case No. 54/99 dated 27.04.1999 under Sections 279/337/338/427 IPC and same was started against the driver of the offending truck. Due to sudden death of the deceased, the legal heirs and

legal representatives of the deceased filed a claim application under Section 166 of the Motor Vehicles Act claiming compensation to the tune of Rs. 1, 50,000/- with interest from the presentation of the application till realization.

The Oriental Insurance Company Limited contested the case by filing written statement thereby denied and disputed the allegations made by the claimants and finally prayed for rejection of the same.

To prove the case of the claimants, the claimants have examined two witnesses as P.W. 1 and P.W. 2. P.W. 1, Sk. Kader Ali is one of the claimants and P.W. 2 is Joydeb Khan as eye witness. Both of them corroborated the date, time and manner of accident by oral and documentary evidence. FIR, Charge Sheet etc. marked as Exhibits 1 to 3 respectively. However, the learned Tribunal Judge, after scanning and considering the evidence of the parties, finally held that the accident was occurred due to the rash and negligent manner on the part of the driver of the offending truck. However, the learned Tribunal discarded that the claimants being brothers of the deceased were not dependent upon their sister. As such they are not entitled to get compensation. The claimants are.

3. Under the above facts and circumstances, the appeal came up before this Bench for disposal.

Submissions on behalf of the Appellants/Claimants:

4. Learned advocate appearing on behalf of the appellants/claimants submitted there are no disputes regarding manner of the accident and expiry of the victim due to motor vehicle accident occurred on 27.04.1999 at about 20.15 hours. Claimants have specifically proved that the offending vehicle was involved and due to rash and negligent driving of the driver of the offending vehicle, the said pathetic accident was occurred and the victim sustained serious injuries and finally succumbed to such injuries. It is also not disputed by the Insurance Company about the accident and involvement of the offending vehicle no. WB-29/2769.

5. It is further submitted that the deceased died leaving behind her three brothers who are the present appellants/claimants. They are the legal representatives of the deceased. Accordingly, they are entitled to get compensation from the Insurance Company. Being the legal heirs/legal representatives, they are entitled to file and get compensation from the insurance company because the compensation amount is ultimately the estate of the deceased. To bolster his submissions, the learned counsel placed reliance of four judgments as under:

***i. Gujarat State Road Transport Corporation,
Ahmedabad Vs. Ramanbhai Prabhatbhai & Anr.¹***

ii. Mrs. Hafizun Begum Vs. Md. Ikram Heque and Ors.²

***iii. N. Jayasree and Others Vs. Chola mandalam MS
General Ins. Co. Ltd.³***

***iv. National Insurance Company Ltd. Vs. Birender and
Ors.⁴***

Finally, the learned advocate appearing on behalf of the appellants/claimants submitted that the claimants are entitled to get a total sum of Rs. 2, 88,000/- as adequate compensation after adding future prospect and general damages and applying multiplier as per the age of the victim i.e. 15. Out of that, Rs. 50,000/- has already been received by the claimants in an application filed under Section 140 of the Motor Vehicles Act, 1988 under no fault liability.

Submissions on behalf of the Respondent No. 1/Insurance Company:

6. Per contra, learned Advocate appearing on behalf of the Insurance Company argued and vociferously submitted that all the three brothers are major and they were not dependent upon the married sister who

¹ 1987 AIR 1690, 1987 (3) SCC 234;

² AIR 2007 SC 2680, 2007 (10) SCC 715;

³ 2021 ACJ 2685;

⁴ AIR 2020 SC 434, AIR ONLINE 2020 SC 21.

expired due to the motor vehicle accident. They are not entitled to get compensation. To support his contention, he referred one judgment reported in ***New India Assurance Company Ltd. Vs. Anand Pal and Others***⁵.

Discussions and Analysis by this Court:

7. Having heard the rival submissions of the parties and on perusal of the record, it appears there is no dispute about the date, time and manner of accident and involvement of the offending vehicle bearing no. WB-29/2769. It is also not disputed that the victim succumbed due to the injuries sustained in a motor vehicle accident took place on 27.04.1999 at about 20.15 hours. However, the sole issue remains here to be determined as under:

- (i) Whether the major brothers are entitled to get compensation on account of death of their sister from the Insurance Company or not?

So far as the aforesaid issue is concerned, this Court has to look into the judgments referred by the parties.

⁵ 2024 (1) T.A.C. 3 (S.C.)

8. The judgment referred by the appellants/claimants in the first case, the Hon'ble Supreme Court held that the legal representatives of the deceased are not to be confined to spouse, parent and children of the deceased as they are the legal representatives/legal heirs under Section 2 (ii) of the CPC, 1908. In the referred case, the learned Tribunal awarded compensation to the claimants who were the brothers of the deceased. However, the Gujarat State Road Transport Corporation feeling aggrieved with the judgment and award passed by the learned Tribunal Judge filed an appeal under Section 110D of the Act was dismissed by the High Court. In the special leave petition, the Hon'ble Supreme Court held that the brothers of the person, who died in a motor vehicle accident, are also entitled to maintain a petition under Section 110A of the Act if they are the legal representatives of the deceased. Every legal representative who suffers on account of the death of a person due to motor vehicle accident should have a remedy for realization of compensation and that is provided by Sections 110A to 110F of the Act and these provisions are in consonance with the principles of law of torts that every injury must have remedy. It is for the Motor Vehicles Accidents Tribunal to determine the compensation which appears to it to be just as provided in Section 110B of the Act and to specify the person or persons to whom compensation shall be paid. The determination of the compensation payable and its apportionment as required by Section 110B of the Act amongst the legal

representatives for whose benefit an application may be filed under Section 110A of the Act have to be done in accordance with well-known principles of law. [421F-H, 422A]

5.1 Clause (b) of sub-section (1) of Section 110A of the Act provided that the application for compensation arising out of an accident may be made where death has resulted from the accident by all or any of the legal representatives of the deceased. The proviso to sub-section (1) of Section 110A provides that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined shall be impleaded as respondents to the application. [419A-B]
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5.2 The expression 'legal representative' has not been defined in the Act. Section 2(11) of the Code of Civil Procedure, 1908 defines 'legal representative' as a person who in law represents the estate of a deceased person and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character, the person on whom the estate devolves on the death of the party so suing or sued. [419C-D]

5.3 A legal representative ordinarily means a person who in law represents the estate of a deceased person or a person on whom the estate devolves on the death of an individual. [419D]

5.4 A legal representative in a given case need not necessarily be a wife, husband, parent and child. [420B]

In an Indian family brothers, sisters and brothers' children and sometimes foster children live together and they are dependent upon the bread-winner of the family and if the bread-winner is killed on account of a motor vehicle accident, there is no

justification to deny them compensation relying upon the provisions of the Fatal Accidents Act, 1855, which has been substantially modified by the provisions contained in the Act in relation to cases arising out of motor vehicle accidents. [422A-B]

5.6 The fact that the Parliament declined to take any action on the recommendation of the Law Commission to 'define the expression 'legal representative' suggests that Parliament intended that the expression 'legal representatives' in Section 110A of the Act should be given a wider meaning and it should not be confined to the spouse, parent and children of the deceased. [422G]

6.1 Although Chapter VIII of the Act provides for an alternative forum for realisation of compensation payable on account of motor vehicles accidents, these provisions are not merely procedural. They substantially affect the rights of the parties. As the right of action created by the Fatal Accidents Act, 1855 was "new in its species, new in its quality, new in its principles, in every way new", the right given to the legal representatives under the Act to file an application for compensation for death due to motor vehicle accident is equally new and an enlarged one. This new right cannot be hedged in by all the limitations of an action under the Fatal Accidents Act, 1855. New situations and new dangers require new strategies and new remedies. [415G, 420E-F]
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6.2 While the Fatal Accidents Act, 1855 provides that a suit shall be for the benefit of the wife, husband, parent and child of the deceased, Section 110A (1) of the Motor Vehicles Act, 1939 says that the application shall be made on behalf of or for the benefit of the legal representatives of the deceased. Section 110A (1) in a way is a substitute for the provisions of Section 1-A of the Fatal Accidents Act, 1855. Similarly, Section 110B which authorises the Claims Tribunal to make an order determining the amount of compensation which appears to it to be just, and specifying the person or persons to whom the compensation shall be paid takes

the place of the third paragraph of Section I-A of the Fatal Accidents Act, 1855 which provides that in every such action, the court may give such damages as it may think proportionate to the loss resulting from such death to the parties respectively, for whom and for whose benefit such application shall be brought. [420A-C]

6.3 Persons for whose benefit such application can be made and the manner in which the compensation awarded may be distributed amongst persons for whose benefit the application is made are dealt with by Sections 110A and 110B and to that extent the provisions of the Act do supersede the provisions of the Fatal Accidents Act, 1855, insofar as motor vehicle accidents are concerned. [420D]

9. In the second referred judgment, the Hon'ble Supreme Court held in Paragraphs 11 and 12 as under: -

“11. According to Section 2(11) of Code of Civil Procedure, 1908 (in short, the ‘CPC’), “legal representative” means a person who, in law, represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character, the person on whom the estate devolves on the death of the party so suing or sued. Almost in similar terms is the definition of legal representative under the Arbitration and Conciliation Act, 1996, i.e. under Section 2(1) (g).

12. As observed by this Court in Custodian of Branches of BANCO National Ultramarino v. Nalini Bai Naique (AIR 1989 SC 1589) the definition contained in

Section 2(11), CPC is inclusive in character and its scope is wide, it is not confined to legal heirs only. Instead, it stipulates that a person who may or may not be legal heir, competent to inherit the property of the deceased, can represent the estate of the deceased person. It includes heirs as well as persons who represent the estate even without title either as executors or administrators in possession of the estate of the deceased. All such persons would be covered by the expression 'legal representative'. As observed in *Gujarat State Road Transport Corporation v. Ramanbhai Prabhatbhai and Anr.* (AIR 1987 SC 1690) a legal representative is one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent and child."

10. In the third referred judgment the Hon'ble Supreme Court held in paragraph 21 as under:

"21. Coming to the facts of the present case, the appellant No. 4 was the mother-in-law of the deceased. Materials on record clearly establish that she was residing with the deceased and his family members. She was dependent on him for her shelter and maintenance. It is not uncommon in Indian society for the mother-in-law to live with her daughter and son-in-law during her old age and be dependent upon her son-in-law for her maintenance. Appellant No. 4 herein

may not be a legal heir of the deceased, but she certainly suffered on account of his death. Therefore, we have no hesitation to hold that she is a 'legal representative' under section 166 of the MV Act and is entitled to maintain a claim petition."

Furthermore, in this judgment the Hon'ble Supreme Court further discussed the view taken in 1st and 2nd above referred judgment as hereunder:

13. Section 166 of the MV Act provides for filing of an application for compensation. The relevant portion of the said Section is as under:

"166. Application for compensation. —

(1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made—

- (a) by the person who has sustained the injury; or
- (b) by the owner of the property; or
- (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or
- (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so

joined, shall be impleaded as respondents to the application.”

14. The MV Act does not define the term ‘legal representative’. Generally, ‘legal representative’ means a person who in law represents the estate of the deceased person and includes any person or persons in whom legal right to receive compensatory benefit vests. A ‘legal representative’ may also include any person who intermeddles with the estate of the deceased. Such person does not necessarily have to be a legal heir. Legal heirs are the persons who are entitled to inherit the surviving estate of the deceased. A legal heir may also be a legal representative.

15. Indicatively for the present inquiry, the Kerala Motor Vehicle Rules, 1989, defines the term ‘legal representative’ as under:

“Legal Representative” means a person who in law is entitled to inherit the estate of the deceased if he had left any estate at the time of his death and also includes any legal heir of the deceased and the executor or administrator of the estate of the deceased.”

16. In our view, the term ‘legal representative’ should be given a wider interpretation for the purpose of Chapter XII of MV Act and it should not be confined only to mean the spouse, parents and children of the deceased. As

noticed above, MV Act is a benevolent legislation enacted for the object of providing monetary relief to the victims or their families. Therefore, the MV Act calls for a liberal and wider interpretation to serve the real purpose underlying the enactment and fulfil its legislative intent. We are also of the view that in order to maintain a claim petition, it is sufficient for the claimant to establish his loss of dependency. Section 166 of the MV Act makes it clear that every legal representative who suffers on account of the death of a person in a motor vehicle accident should have a remedy for realization of compensation.

17. It is settled that percentage of deduction for personal expenses cannot be governed by a rigid rule or formula of universal application. It also does not depend upon the basis of relationship of the claimant with the deceased. In some cases, the father may have his own income and thus will not be considered as dependent. Sometimes, brothers and sisters will not be considered as dependents because they may either be independent or earning or married or be dependent on the father. The percentage of deduction for personal expenditure, thus, depends upon the facts and circumstances of each case.

18. In the instant case, the question for consideration is whether the fourth appellant would fall under the expression 'legal representative' for the purpose of

claiming compensation. In ***Gujarat State Road Transport Corporation, Ahmedabad vs. Ramanbhai Prabhatbhai and Anr. 1987 ACJ 561 (SC)***, this Court, while considering the entitlement of the brother of a deceased who died in a motor vehicle accident to maintain a claim petition under the provisions of the MV Act, held as under:

“12. We feel that the view taken by the Gujarat High Court is in consonance with the principles of justice, equity and good conscience having regard to the conditions of the Indian society. Every legal representative who suffers on account of the death of a person due to a motor vehicle accident should have a remedy for realisation of compensation and that is provided by Sections 110A to 110F of the Act. These provisions are in consonance with the principles of law of torts that every injury must have a remedy. It is for the Motor Vehicles Accidents Claims Tribunal to determine the compensation which appears to it to be just as provided in Section 110B of the Act and to specify the person or persons to whom compensation shall be paid. The determination of the compensation payable and its apportionment as required by Section 110B of the Act amongst the legal representatives for whose benefit an

application may be filed under Section 110A of the Act have to be done in accordance with well-known principles of law. **We should remember that in an Indian family brothers, sisters and brothers' children and sometimes foster children live together and they are dependent upon the bread-winner of the family and if the breadwinner is killed on account of a motor vehicle accident, there is no justification to deny them compensation relying upon the provisions of the Fatal Accidents Act, 1855** which as we have already held has been substantially modified by the provisions contained in the Act in relation to cases arising out of motor vehicles accidents. We express our approval of the decision in ***Megjibhai Khimji Vira v. Chaturbhai Taljabhai, 1977 ACJ 253 (Gujarat)*** and hold that the brother of a person who dies in a motor vehicle accident is entitled to maintain a petition under Section 110A of the Act if he is a legal representative of the deceased.”

19. In ***Hafizun Begum vs. Mohd. Ikram Heque and Ors.***, (2007) 10 SCC 715, it was held that:

“12. As observed by this Court in ***Custodian of Branches of Banco National Ultramarino v. Nalini Bai Naique, 1989 Supp (2) SCC 275***, the definition contained in Section 2(11), CPC, is inclusive in character and its scope is wide, it is not confined to legal heirs only. **Instead, it stipulates that a person who may or may not be legal heir, competent to inherit the property of the deceased, can represent the estate of the deceased person. It includes heirs as well as persons who represent the estate even without title either as executors or administrators in possession of the estate of the deceased. All such persons would be covered by the expression ‘legal representative’.** As observed in ***Gujarat SRTC v. Ramanbhai Prabhatbhai. 1987 ACJ 561 (SC)***, a legal representative is one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent and child.”

20. In ***Montford Brothers of St. Gabriel vs. United India Insurance Co. Ltd., 2014 ACJ 667 (SC)***, this Court was considering the claim petition of a charitable society for award of compensation on account of the death of its member. The appellant-society

therein was a registered charitable society and was running various institutions as a constituent unit of Catholic Church. Its members, after joining the appellant-society, renounced the world and were known as 'brothers'. In this case, a 'brother' died in a motor vehicle accident. The claim petition filed by the appellant-society seeking compensation on account of the death of aforesaid 'brother' was rejected by the High Court on the ground of its maintainability. This Court after examining various provisions of the MV Act held that the appellant-society was the legal representative of the deceased 'brother'. While allowing the claim petition it was observed as under:

“16. A perusal of the judgment and order of Claims Tribunal discloses that although Issue No. 1 was not pressed and hence decided in favour of the appellants-claimants, while considering the quantum of compensation for the claimants, the Tribunal adopted a very cautious approach and framed a question for itself as to what should be the criterion for assessing compensation in such case where the deceased was a Roman Catholic and joined the church services after denouncing his family, and as such having no actual dependents or earning? For answering this issue, the Tribunal relied not only upon judgments of

American and English Courts but also upon Indian judgments for coming to the conclusion that even a religious order or an organisation may suffer considerable loss due to death of a voluntary worker. The Tribunal also went on to decide who should be entitled for compensation as legal representative of the deceased and for that purpose it relied upon the Full Bench judgment of Patna High Court in ***Sudama Devi v. Jogendra Choudhary, AIR 1987 Patna 239***, which held that the term “legal representative” is wide enough to include even “intermeddlers” with the estate of a deceased. The Claims Tribunal also referred to some Indian judgments in which it was held that successors to the trusteeship and trust property are legal representatives within the meaning of Section 2(11) of the Code of Civil Procedure.”

11. In the 4th referred judgment, the Hon’ble Supreme Court held in Paragraph 15 as under:

“15. It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to

apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the concerned legal representative was fully dependant on the deceased and not to limit the claim towards conventional heads only. The evidence on record in the present case would suggest that the claimants were working as agricultural labourers on contract basis and were earning meagre income between Rs. 1,00,000/- and Rs. 1,50,000/- per annum. In that sense, they were largely dependent on the earning of their mother and in fact, were staying with her, who met with an accident at the young age of 48 years.”

12. At the same time, the judgment referred by the respondent/insurance company where the Hon’ble Supreme Court held in Paragraphs 4, 5, 6, 7 and 8 are as under:

4. In support of his contention, Mr. Kumar relies on *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 S.C.C. 121: 2009 (2) T.A.C. 677, wherein this Court held as under:

“31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his

getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.”

5. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents as because they will either be independent and earning, or married, or be dependent on the father.

6. On the above, Mr. Ashok Kumar Sharma, learned senior Counsel refers to the evidence to point out that although deceased was having separate residence, he used to frequently visit his siblings and also have meals together with the brothers. Accordingly, it is argued that the brothers cannot be said to be separate from the victim.

7. On the above, it is necessary for us to be conscious that there are two family registers. This would indicate that the victim resided separately as was noted by the Motor Accident Claims Tribunal. The siblings of the victim were older and were married with their own respective families.

In these circumstances, they being dependent on the victim's earnings is unlikely particularly when the victim resided separately.

8. Looking at the above, the Tribunal and the High Court should not have considered the three older married siblings, to be dependent on the deceased victim. The compensation awarded to the married siblings is therefore found to be unmerited. The appeal is accordingly allowed by setting aside the impugned award of the Motor Accident Claims Tribunal as upheld by the High Court under the impugned judgment.”

13. Considering the above judgments referred by the parties, this Court is of the considered view that the judgment referred by the Ld. Advocate for the Respondent/insurance company is not applicable in the facts and circumstances of this case because the brothers of the deceased sister are entitled to get compensation from the respondent/insurance company as legal representatives in view of the provision stipulated in Section 166 of the Motor Vehicles Act as well as in pursuance of the observations made in the judgments above referred by the appellants/claimants. Here, the brothers are legal representatives and legal heirs of the deceased Sister, who had no other legal heirs. Section 166 of the M.V. Act makes it clear that every legal representative who suffers on account of death of a person in a motor vehicle accident should

have a remedy for realization of compensation and are entitled to inherit the surviving estate of the deceased. 'Legal Representative' means a person who in law represents the estate of the deceased person and includes any person or persons in whom legal right to receive compensatory benefit vests. A legal heir may also be a legal representative though the M.V Act does not define the terms 'Legal Representative'. In addition to that, deceased had no any issue and for that reason she was divorced by her husband 15 years ago from the date of examination of P.W. 1 and she was looking after family members of the claimants and used to contribute her earning for herself and other family members. As such claimants being the brothers/legal heirs/legal representatives dependent upon her income are entitled to get compensation.

14. Now, what would be the adequate or just compensation? Keeping in mind the submissions made by the learned advocate appearing on behalf of the appellants/claimants and the evidence adduced by the P.W. 1, it appears the victim's income was Rs. 2,000/- per month as per the claim application that is very reasonable and can be considered as her monthly income. Apart from that, she is entitled to get 40% Future Prospect as per the age of the deceased. She was 35 years old at the time of accident. It falls under the age of 40 years and General Damages of Rs. 36,000/-.

There is no question of granting compensation under the head of Consortium.

15. Keeping in mind of the above observations and judgments of the Hon'ble Apex Court, the calculation of compensation would be assessed as follows:

CALCULATION OF COMPENSATION

Monthly Income	Rs. 2,000/-
Total Annual Income 2,000 X 12	Rs. 24,000/-
Add 40% Future Prospect	Rs. 9,600/-
Total income	Rs. 33,600/-
1/2 nd Deduction for personal living expenses	Rs. 16,800/-
Multiplier 15 (Rs. 16,800/- X 15)	Rs. 2,52,000/-
Add General Damages	Rs. 36,000/-
Total Compensation	Rs. 2,88,000/-
Less awarded amount received under Section 140 of the M.V. Act	Rs. 50,000/-

Total Compensation receivable	Rs. 2,38,000/-
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16. Thus, the appellants/claimants are further entitled to get a compensation amount to the tune of Rs. Rs. 2, 38,000/= (Rs. Two Lakh Thirty-Eight Thousand Only) which shall carry interest @ 6% per annum from the date of filing of the claim application i.e. on and from 26.09.2000 till final payment.

17. It is informed that the appellants/claimants have already received the compensation amount of Rs. 50,000/- in an application filed under Section 140 of the Motor Vehicles Act, 1988 under no fault liability as such interest would be calculated on the aforesaid awarded sum @ 6% per annum from the date of filing the claim application i.e. 26.09.2000 till payment, if not already paid.

18. The Respondent No. 1/Insurance Company is directed to deposit the enhanced compensation amount i.e. Rs. 2, 38,000/= (Rs. Two Lakh Thirty-Eight Thousand Only) together with the interest as indicated above by way of cheque before the Office of learned Registrar General, High Court, Calcutta within a period of 4 weeks from date.

19. Learned Registrar General, High Court, Calcutta, upon deposit of the enhanced compensation amount together with interest on the enhanced awarded compensation amount as well as compensation awarded by the learned Tribunal as indicated above, shall release the amount in favour of the appellants/claimants in equal share to the appellants/claimants, upon proper identification and subject to verification of the payment of ad valorem Court fees on the enhanced amount, if not already paid.

20. The impugned judgment and award of the learned Tribunal dated 13th December, 2006 passed in MACC Case No. 739 of 2000 filed under Section 166 of the Motor Vehicles Act, 1988 by the Learned Judge, Motor Accident Claims Tribunal, Paschim Medinipur is hereby set aside.

21. With the above observations, the instant appeal being **FMA 650 of 2007** is, thus, allowed without order as to costs. Consequently, **CAN 1 of 2008 (Old CAN 780 of 2008)** is, also thus, disposed of.

22. Let a copy of this Judgment along with Lower Court Records, if any, be sent back to the learned Tribunal forthwith for information.

23. All parties shall act on a server copy of the judgment and order uploaded from the official website of High Court at Calcutta.

24. Urgent photostat copy of this Judgment and Order be given to the parties upon compliance of all legal formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)