

District:

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

Appellate Side

Present :

The Hon'ble Justice Ananya Bandyopadhyay

FMA 955 of 2011

+

IA No.: CAN1 of 2025,

GOPAL GHORAI @ KENARAM GHORAI

VS

THE NEW INDIA ASSURANCE CO LTD& ANR

Mr. Niranjana Maity

Ms. Indrani Ghosh

Ms. Adrija Bhattacharjee

... for the appellant/claimant

Mr. Gopa Das Mukherjee

... for the respondents/ Insurance Co.

Heard on & Judgment on : 19.08.2025

Ananya Bandyopadhyay J.

1. The Learned Advocates representing both the parties are present in court.

2. The instant appeal had been filed against the judgment and order dated 08.09.2010 passed by the Learned Judge, Additional District and Sessions Judge, 4th Court, Alipore, M.A.C Tribunal, Alipore in MAC Case No.144 of 2009.

3. The Learned Advocate representing the appellant/claimant submitted to have filed the instant appeal since the Learned

Tribunal did not consider the permanent disablement to the extent of 35% as assessed by a private Doctor. Moreover, the liability to pay the compensation was cast upon the owner of the offending vehicle instead of directing the Insurance Company to satisfy the award since the claimant had been a gratuitous passenger in a truck.

4. The Learned Advocate representing the respondent No.1/Insurance Company submitted that in an application under Section 163A of the M. V. Act, the Learned Tribunal had granted compensation to the extent of Rs.57,000/- instead of Rs.25,000/- as per the Notification dated 22nd May, 2018.

5. Since the occurrence of the accident, the driving license, the route permit etc. and other ancillary issues have not been disputed by the Learned advocate representing the respondent No.1/insurance company, this Court restricts itself only to consider the point agitated by both the parties. The accident occurred on 06.10.2006 the application was filed under Section 163A of the Motor Vehicles Act in the year 2006. The claimant himself in his deposition before the Court adducing evidence as P.W.1 stated that he along with other businessmen travelled in a mini truck bearing registration No. WB-41B/7527 as owner of the betel leaves paying hire charges. The private doctor adduced evidence as P.W.3 who had only clinically examined the victim, however, did not treat the victim at any point of time and assessed disability to the extent of 35% due to painful stiffness of right shoulder joint. In his cross examination PW-3 stated on perusal of fresh x-ray plate he found old healing

fracture of right clavicle. No operation was performed and the patient was treated conservatively.

6. Learned Tribunal considered the aforesaid aspect had considered the disability to the extent of 10%. Since, the impugned judgment was pronounced on 09.04. 2010, the Learned Tribunal did not have scope to grant the compensation on the basis of the Notification issued on 22nd May, 2018. The Learned Tribunal had reasonably granted the compensation after considering each and every aspect and this court is not inclined to interfere with same.

7. The Learned Advocate representing the respondent No.1/Insurance Company is to pay the compensation as awarded by the Learned Tribunal and thereafter recover the same from the owner of the offending vehicle on strict proof of its claim of gratuitous passenger.

8. Accordingly, the instant appeal is dismissed.

9. Pending applications, if any, stands dismissed.

10. Urgent Photostat Certified copy of this Judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(**Ananya Bandyopadhyay, J.)**