

Form No. J(2)

**IN THE HIGH COURT AT CALCUTTA  
CIVIL APPELLATE JURISDICTION  
APPELLATE SIDE**

Present:

**The Hon'ble Justice Ananya Bandyopadhyay**

**IA No.:CAN/1/2013 (Old No: CAN 7335 of 2013),  
CAN/2/2016 (Old No: CAN 7429 of 2016)  
in  
FMA 102 of 2007**

**Smt. Protima Mitra & Anr.  
Versus  
The New India Assurance Co. Ltd. & Anr.**

|                     |   |                                             |
|---------------------|---|---------------------------------------------|
| For the Appellant   | : | Mr. Krishanu Banik,<br>Mr. Tathagata Banik. |
| For the Respondents | : | Mr. Animesh Das                             |
| Heard & Judgment on | : | 19 <sup>th</sup> August, 2025.              |

**Ananya Bandyopadhyay, J:**

1. The Learned Advocates representing the respective parties are present in Court.
2. The instant appeal had been preferred against the impugned judgment and award dated 13.06.2006 passed by the Learned Judge, Motor Accident Claims Tribunal, Hooghly in MAC Case No. 365 of 2004.

3. The learned advocate representing the appellants/claimants submitted to have filed the instant appeal exclusively on the ground that the Learned Tribunal had awarded a compensation to the extent of Rs.1,74,500/- to be paid by the owner of the offending vehicle which till date has not been complied with. Moreover, the Learned Tribunal disregarding the fact that the victim had been a gratuitous passenger whereby the Insurance Company should have been made liable to pay the compensation awarded and thereafter recover the same from the owner of the offending vehicle had exclusively directed the owner of the offending vehicle to pay for such compensation as awarded.
4. Learned Advocate representing the respondents/Insurance Company submitted that the insurance policy had not been possessed by the owner of the offending vehicle with regard to the same and the respondents/Insurance Company should not have been made liable to pay the compensation.
5. Since the occurrence of the accident, the driving licence, route permit etc and other ancillary issues are not disputed by the learned advocate representing the respondent/Insurance Company, this Court restrict itself only to the extent of determine the above-mentioned issues.
6. Considered the rival contentions of the Learned Advocates representing the respective parties.

7. The written statement filed by the respondents/Insurance Company before the Learned Tribunal, *inter alia*, stated as follows:-

*"11. That the statements made in para nos.14, 15, 16 & 17 of the claim petition, this answering opposite party only admits the alleged lorry bearing No.WB.41/3893(Lorry) covered by a policy of insurance with the New India Assurance Co. Ltd. at the material date and time of alleged accident subject to the terms and conditions, limitation and exception therein and all other allegations are denied by this answering opposite party. Moreover, it transpires on enquiry that owner of the vehicle died on 8.11.99."*

8. The charge-sheet mentioned the articles to have been seized vide the seizure list which mentioned the policy number with regard to the insurance policy issued by the respondents/Insurance Company against the offending vehicle bearing registration No.WB-41/3893 being a lorry. It had been an indisputable fact that the victim had been a gratuitous passenger in view of the reasoning of the Learned Tribunal in the impugned judgment and order as follows:-

*"It is proved that truck is for carrying articles and it is not for carrying passengers. The deceased was not the helper of that offending vehicle. But nonetheless he voluntarily came by means*

*of that offending vehicle as passenger. In such a case Insurance Co. can have no liability to pay compensation for the death of gratuitous passengers. It is held in the ruling of 2005ACJ (Accidents' Claims Journal) 721 that Insurance Co. is not liable to pay compensation for the death of gratuitous passengers in the offending vehicle.*

*Furthermore, the petitioners moved this petition so casually that they did not produce the insurance certificate. P.W.1 also did not state that the offending vehicle was then under the insurance coverage in the book of O.P. No.2 Insurance Co. So the Court is really handicapped to assess whether at the day of the incident the offending vehicle was really under insurance coverage in the book of the O.P. No.2, Insurance Co. In such a case the petitioners are only entitled to receive compensation from the owner of the offending vehicle."*

9. The learned Tribunal having observed that the victim had been a gratuitous passenger should have directed the Insurance Company to pay the compensation awarded and thereafter recover the same from the owner of the offending vehicle.
10. In an application filed under Section 163A of the MV Act in the year 2004, the Learned Tribunal did not have the scope to compute the compensation in accordance to the notification dated

22<sup>nd</sup> May, 2018. The compensation granted by the Learned Tribunal accordingly is not interfered with at this stage.

11. The respondents/Insurance Company is to pay the amount of compensation awarded by the learned Tribunal in the impugned judgment and order to the extent as mentioned therein along with 6% interest per annum to be paid from the date of filing of the claim application till the date of its actual realization and thereafter recover the same from the owner of the offending vehicle on strict proof of its claim. In view of the observation of the Hon'ble Supreme Court in Parminder Singh –Vs.- Honey Goyal & Ors.<sup>1</sup> the appellants/claimants are to provide the details of Bank accounts held in the name of the appellants/claimants at the office of the Learned Registrar General, High Court at Calcutta for disbursal of the compensation amount.
12. The Learned Advocate representing the respondent no. 1/Insurance Company is to deposit the amount of compensation awarded by the Learned Tribunal along with the interest at the rate of 6% per annum from the date of filing of the claim application before the office of the Learned Registrar General, High Court, Calcutta within two months from the date of passing of this order.

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<sup>1</sup> 2025 INSC 361

13. The office of the Registrar General, High Court, Calcutta shall encash the said cheque and thereafter disburse the same directly to the Bank accounts of the present appellants/claimants in equal proportion as mentioned in the award passed by the Learned Judge, Motor Accident Claims Tribunal, Hooghly in MAC Case No. 365 of 2004.
14. The instant appeal is disposed of accordingly.
15. The pending applications, if any, stands disposed of.
16. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

**(Ananya Bandyopadhyay, J.)**