

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 1931 of 2016
Dinabandhu Biswas & Anr.

-Vs-

The New India Assurance Co. Ltd. & Anr.

For the Appellants/claimants : Mr. Saidur Rahaman

For the respondent No.1/insurance co. : Mr. Rajesh Singh

Heard on Judgment on : 01.07.2025

Ananya Bandyopadhyay, J. :-

1. The Learned Advocates for the appellants/claimants as well as the respondent No.1/insurance company are present in Court.
2. The instant appeal had been filed against the judgment dated 21st December, 2012 passed by the Learned Judge, Motor Accident Claims Tribunal cum Additional District Judge, 3rd Court, Nadia, Krishnagar in MAC Case No. 8 of 2018 under Section 163A of the Motor Vehicles Act, 1988.
3. An application under Section 163A of the Motor Vehicles Act had been filed by the claimants on account of the death of 18 year old boy in an accident which occurred on 26th May, 2006 at about 6.30 P.M. on National Highway 34 near Chatimtala within the jurisdiction of Chakdha police station in the District of Nadia with the involvement of offending vehicle being a bus bearing

registration No.WGB-3569 which proceeding at an exceeding speed rashly and negligently hit the victim who sustained severe injuries and died at a hospital.

4. The Learned Advocate representing the appellants/claimants submitted that the Learned Tribunal on the basis of an observation that the appellants/claimants did not implead the lorry bearing registration No.WB-Q-5987 to be a party, the appellants/claimants were not entitled to 50% of the compensation award. The Learned Tribunal had considered the charge-sheet submitted by the police against the driver of both the vehicles and also the submissions of the Learned Advocate representing the appellant/insurance company before the same.
5. The Learned Advocate representing the respondent No.1/insurance company submitted that the charge-sheet mentioned the liability of the bus bearing registration No. WGB-3569 to the extent of 50% since it had not specifically mentioned that the driver of the offending vehicles being lorry and the bus were equally liable it can be construed that 50% of the liability was bestowed on either of the vehicles. Accordingly the respondent No.1/insurance company had been liable to disburse 50% of the compensation award.
6. Heard the submissions of the Learned Advocates representing both the parties.

7. Since, the occurrence of the accident, involvement of the offending vehicle, driving licence, route permit and insurance policy etc. have not been disputed by the Learned Advocate representing the respondent No.1/insurance company, this Court restricts itself only to the extent agitated by the Learned Advocates representing the respective parties. The learned tribunal in the impugned judgment and order *inter alia* stated as follows:

"In this context, Id. Advocate appeared on behalf of claimant, submits 2000 W.B.L.R. (Cal) 289, whereas, Insurance Company placed his reliance on 2003 ACJ Page 1002 and 2008 ACJ 1165. In these two contexts, it appears the rulings cited by the Insurance Company, are latest and of Apex Court and the facts of the case, are supported the case law cited by the Insurance Company and from the evidences as came to court, that both the vehicles are liable for the said accident and charge-sheet has been submitted by the police against the driver of both the vehicles and the arguments as advanced by the Insurance Company is accepted. When the number of the vehicles has been lighted, then, it is not proper to invite another case and it is also true to avoid further litigation and chance of double payment, the said owner and Insurance Company are necessary party of this suit. But these petitioners did not take any step to made them party to this suit. According to that, this Insurance Company is liable to pay 50% of compensation money".

8. Considering the beneficial intent of the legislation the essence of motor vehicles claim cases are pre-dominantly to cater to the needs and requirements of the claimants having lost their near and dear ones/relatives in unwarranted, hapless and precarious incidents whereby stringent rules adopted by the Learned

Tribunal as to the effect of a criminal trial cannot be accepted. The observation of the Learned Tribunal with regard to the apportionment of the compensation award depriving the claimants to the extent of 50% having failed to implead the owner of the lorry as necessary party in the claim application too cannot be accepted. The claimants could not be penalized for what appeared to be a technical error on the face of the record which should have been adequately addressed, redressed, rectified by the Learned Tribunal at its own volition. Such deprivation of the appellants/claimants enhance their possibility of being subjected to further pain and suffering which had already been endured by them. The Supreme Court in *Khenyei Vs. New India Assurance Co. Ltd. & Ors.*¹ *inter alia* observed as follows:

“It would not be appropriate for the court/Tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tortfeasors. In such a case, impleaded joint tortfeasor should be left, in case he so desires, to sue the other joint tortfeasor in independent proceedings after passing of the decree or award”.

9. The respondent No.1/insurance company is directed to have been equally liable as the owner of the vehicle/other insurance company of the offending vehicle being lorry should be made equally liable in view of the prima facie involvement in the accident of the same as mentioned in the charge-sheet. The

¹ 2015 ACJ 1441

Learned Advocate for the respondent No.1/insurance company is to pay the entire sum of Rs. 5,00,000/- along with interest at the rate of 6% per annum and thereafter institute a separate proceedings before the appropriate forum for execution of the 50% of the awarded sum as paid by the insurance company. In view of the Notification dated 22nd May, 2018 and as also the decision of the Hon'ble **High Court in Urmila Halder v. The New India Assurance Company Ltd** and the same being affirmed by the Supreme Court in Special Leave Petition, the appellants/claimants are entitled to Rs.5,00,000/- of just compensation with regard to the Second Schedule 1(a) as aforesaid which is replicated as follows: -

“Fatal Accidents:
Compensation payable in case of
Death shall be five lakh rupees.”

10.The Learned Advocate representing the respondent No.1/insurance company is to deposit the balance sum of Rs. 5,00,000/- along with interest at the rate of 6% per annum from the date of filing of the claim application till the date of realization before the office of the learned Registrar General, High Court Calcutta within three months from the date of passing of this order. In view of the observation of the Hon'ble Supreme Court in

Parminder Singh Vs. Honey Goyal & Ors.² 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 disbursement of the compensation amount.

11. On receipt of the said amount, 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 along with accrued interest as mentioned in the impugned judgment and order passed by the Learned Judge, Motor Accident Claims Tribunal cum Additional District Judge, 3rd Court, Nadia, Krishnagar in MAC Case No. 8 of 2018 under Section 163A of the Motor Vehicles Act, 1988 on proof of proper identification of the appellants/claimants subject to payment of ad valorem Courts fees within four weeks thereafter.
12. The instant appeal is disposed of accordingly.
13. Pending applications, if any, stands disposed of.
14. The TCR be sent down to the concerned tribunal forthwith.
15. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)

² 2025 INSC 361