

In The High Court At Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present:-

The Hon'ble Justice Ananya Bandyopadhyay

FMA 1779 of 2015

Smt. Asha Das & Anr.

v.

Oriental Insurance Co. Ltd. & Anr.

Mr. Krishanu Banik

Mr. Tathagata Banik

... for the appellants/claimants.

Ms. Nibedita Chakraborty ... for the respondent no.1/insurance company.

Heard & Judgment on: 26th 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 23rd June, 2014 passed by the Learned Judge, Motor Accident Claims Tribunal, 3rd Court, Dakshin Dinajpur at Balurghat in MAC Case No.45 of 2010.
3. The Learned Advocate representing the appellants/claimants submitted that the Learned Tribunal had dismissed the application under Section 163A of the Motor Vehicles Act filed by the claimants on account of the death of the victim in an accident which occurred on 22nd January, 2020 at about 6.30 a.m. when the victim approaching towards Patiram from

Balurghat side of his bicycle was clashed by the offending vehicle bearing Registration No. WB-61/4461 at an excessive speed. The victim instantaneously died at the spot and was thereafter shifted to Balurghat Hospital where post-mortem had been conducted. The Learned Advocate representing the appellants/claimants further submitted that the Learned Tribunal disbelieved the identity of the victim since the deceased to have been expired as a result of the accident on the ground that the GD entry in reference Balurghat Police Station Case No. 29/10 dated 22.01.2010 was not proved. The Learned Tribunal further disbelieved the evidence of P.W.2 to have been witnessed the accident and been named in the charge-sheet was not sufficient to establish the probative value of the witness.

4. The Learned Advocate representing the respondent No.1/insurance company submitted of several discrepancies in the evidence of both the prosecution witnesses. She further pointed out that the name of the victim did not appear in the Post Mortem report. The P.W.1 as an independent witness of the accident failed to identify the victim whose identity could not be proved. The claimants did not cite any witness to that extent. The Learned Tribunal was not justified in dismissing the claim application under Section 163A of the Motor Vehicles Act.
5. Considered the rival contentions of the respective parties.
6. Since, the occurrence of the accident, involvement of the offending vehicle, 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 claim application as

aforesaid application was filed on 24th March, 2020. The accident occurred on 22nd January, 2020 the postmortem was conducted on the same date of accident i.e. 22nd January, 2020. The said post mortem was marked as Ext. 4 along with the declaration issued by the Superintendent District Hospital, Dakshin Dinajpur, Balurghat stated “ *in reference to Balurghat Police Station U.D. case No. 29/10 dated 22nd January, 2010 the name of the unknown deceased to be read as Nemai Das 50 years M instead of unknown 50 years M as per the affidavit No. 01 dated 10.02.2010 and No. 34AA/262871 on 13.02.2010.* A copy of the postmortem as well as the aforesaid declaration both marked as Ext. 4 was signed by the Superintendent District Hospital, Balurghat Dakshin Dinajpur on 15th February, 2010. The document marked as Ext. 4 as aforesaid reliably indicated the unknown dead body to have been identified by the wife of the victim as per her deposition before the Learned Tribunal wherein after conducting the postmortem the concerned authority of the District Hospital as aforesaid issued a declaration that the unknown body was of the victim i.e. Nemai Das. The entire procedure was conducted prior to the institution of the MAC case No. 45 of 2020 by filing an application under Section 163A of the Motor Vehicles Act. The statutory intent in case of an application under Section 163A of the Motor Vehicles Act did not have to prove the rash and negligent act on the part of the offending vehicle. More-over, the charge-sheet prima facie indicated the cause of the death to have been consequent upon the occurrence of the accident as aforesaid wherein P.W.2 had not been cited as a witness. Under such facts and circumstances, there was no occasion to disbelieve that the victim did

not die out of the accident. The impugned judgment and order is set aside. This Court restricts itself only to the extent of granting compensation to the tune of Rs.5,00,000/- notification dated 22nd May, 2018 and the decisions of the Hon'ble Supreme Court in Urmila Haldar Vs. The New India Assurance Company Ltd and also the aforesaid observations of the High Court at Calcutta and the Hon'ble Supreme Court.

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

7. The appellants/claimants are entitled to receive the balance amount of Rs. 5,00,000/- at the rate of 6% per cent per annum from the date of filing of the claim application till the date of actual realization. In view of the observation of the **Hon'ble Supreme Court in Parminder Singh Vs. Honey Goyal & Ors.**¹ 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.
8. The Learned Advocate for the respondent No.1/insurance company is to deposit the balance sum of Rs. 5,00,000/- along with 6 % per cent interest as aforesaid before the office of the learned Registrar General, High Court Calcutta within four weeks from the date of passing of this order.

¹ 2025 INSC 361

9. On receipt of the said amount, the office of the Learned 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 MAC Case No.45 of 2010 on proof of proper identification of the appellants/claimants subject to payment of ad valorem Courts fees.
10. The instant appeal is disposed of accordingly.
11. The pending applications if any stands disposed of.
12. Copy of the order be sent to the Department as well as the concerned Tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)

c.m. Ar. Ct.