Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice Ananya Bandyopadhyay

FMA 1050 of 2023

New India Assurance Company Limited
Versus
Allo Hembram & Ors.

For the Appellant/Insurance Company	:	Mr. Rajdeep Bhattacharya
For the Respondents/Claimants	:	Mr. Saidur Rahman
Heard & Judgment on	:	28th August, 2025.

Ananya Bandyopadhyay, J:

1. The Learned Advocates representing the respective parties are present in Court today.
2. The instant appeal had been preferred against the impugned judgment and order dated 30.09.2022 passed by the Learned Additional District & Sessions Judge, Motor Accident Claims Tribunal, Fast Track Court – I, Malda in M.A.C. Case No. 174 of 2017.
3. The Learned advocate representing the appellant/Insurance Company submitted to have filed the instant appeal solely on the ground that the Insurance Company was not liable to pay the compensation awarded since the accident occurred prior in date

and time to the issuance of the Insurance Policy and relied on the Judgment of the Apex Court as cited in (2007) 7 SCC 792 [National Insurance Company Limited –Vs.- Sobina Iakai (Smt.) & Ors.] .

"*19. In order to curb this widespread mischief of getting insurance policies after the accidents, it is absolutely imperative to clearly hold that the effectiveness of the insurance policy would start from the time and date specifically incorporated in the policy and not from an earlier point of time".*

4. It was further submitted that the Learned Tribunal had granted a sum of Rs.95,000/- towards loss of funeral consortium in determining the application filed under Section 163A of the Motor Vehicles Act which should have been deducted.

5. The Learned Advocate representing the respondents/claimants submitted that the impugned Judgment and order was delivered on 30.09.2022 after the notification dated 22.05.2018 had been issued whereby the respondents/claimants were entitled to a comprehensive sum of Rs.5,00,000/-.

6. Since the occurrence of the accident, insurance policy, the driving licence, route permit etc and other ancillary issues are not disputed by the learned advocate representing the appellant/Insurance Company, this Court restrict itself only to the extent of determine the above-mentioned issues.

7. Considered the rival contentions of the Learned Advocates representing the respective parties.

8. The Insurance policy as marked as Exhibit 3 series and Exhibit 5 the date of acceptance of premium had been mentioned as 23.04.2017 and the period of coverage had been mentioned 21.04.2017 to 23.04.2018. The acceptance of premium was received on 23.04.2017 and the accident occurred on midnight 23.04.2017/24.04.2017 which cannot be construed to have been manipulative or that the Insurance policy was obtained with mala fide intention. It had been an unfortunate coincident that the date of accident coincided midway between date of acceptance of premium of the Insurance policy as well as the period of policy coverage.

12. *In Oriental Insurance Co. Ltd. –Vs.- Dharam Chand, (2010) 15 SCC 141, the Court noted 'When this appeal was taken up, the counsel for the Insurance Company very fairly stated that since the cheque for the premium amount was received by the Company at 4:00 p.m. on 07-05-1998, the insurance must be deemed to have commenced from that time and four hours later when the vehicle met with the accident, the owner must be deemed to have been covered by the insurance policy. We appreciate the fairness shown by the counsel for the Insurance Company. Clearly, Dharam Chand (supra) did not entail any*

examination of the law due to the fair stand taken by the insurer therein. However, herein we have examined the 'Certificate of Insurance cum Policy Schedule' which states PERIOD OF INSURANCE From: 11/04/2017 To: midnight of 10/04/2018'. It also records 'Date of commencement of risk : 11/04/2017'. In this factual backdrop, we have no hesitation to hold that the vehicle was insured when the accident took place. As such, currently, we need not dwell on the law, except to reiterate the view in National Insurance Co. Ltd. –Vs.- Sobina Iakai (Smt.), (2007) SCC 786 [considering the position, and change, in law enunciated in New India Assurance Co. Ltd. Vs. Ram Dayal, (1990) 2 SCC 680; National Insurance Co. Ltd. –Vs. Jikubhai Nathuji Dabhi, (1997) 1 SCC 66; Oriental Insurance Co. Ltd. –Vs. Sunita Rathi, (1998) 1 SCC 365; New India Assurance Co. –Vs.- Bhagwati Devi, (1998) 6 SCC 354; New India Assurance Co. Ltd. –Vs. Sita Bai, (1999) 7 SCC 575; National Insurance Co. Ltd. –Vs.- Chinto Devi, (2000) 7 SCC 50 and J. Kalaivani –Vs.- K. Sivashankar, JT (2001) 10 SC 396] that '…the effectiveness of the insurance policy would start from the time and date specifically incorporated in the policy and not from an earlier point of time.'.

9. Under such circumstances, the claim of the appellant/Insurance Company fails. However, since the accident occurred on 23.04.2017 and the impugned Judgment and order was passed

on 30.09.2022 the claimants is entitled to the comprehensive sum of Rs,5,00,000/- with regard to second schedule 1(a) and Notification dated 22nd May, 2018 and also the aforesaid observations of the High Court at Calcutta and the Hon'ble Supreme Court.

The second schedule 1(a) as aforesaid is stated as follows: -

"Fatal Accidents:

Compensation payable in case of Death shall be five lakh rupees."

10. The impugned judgment passed by the aforesaid tribunal is modified to the extent of Rs. Rs.5,00,000/- along with interest to be paid at the rate of 6 % per annum from the date of filing of the application till the date of its actual realization.

11. The Learned Advocate representing the appellant/insurance company is to deposit the sum of Rs. 5,00,000/- along with 6 % interest per annum from the date of filing of the application till the date of its realization before the office of the Learned Registrar General, High Court, Calcutta within a period of two months from the date of passing of this order.

12. The Office of the Learned Registrar General, High Court at Calcutta, shall encash the cheques and thereafter disburse the entire awarded amount so deposited with accrued interest directly to the Bank accounts of the respondents/claimants in equal proportion as mentioned in the impugned judgment of the

Learned District & Sessions Judge, Motor Accident Claims Tribunal, Fast Track Court - I, Malda in M.A.C. Case No. 174 of 2017 on proof of proper identification of the respondents/claimants subject to payment of ad valorem Court fees.. The Office of the Learned Registrar General, High Court at Calcutta will instruct the claimants to provide details of their Bank accounts with relevant documentary proof, prior to such disbursal as aforesaid

13. The instant appeal and connected application are disposed of accordingly.

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.)