

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/1/2024, CAN/2/2024
in
FMA 453 of 2024**

**National Insurance Company Limited
Versus
Santanu Bera & Ors.**

For the Appellant/
Insurance Company : Mrs. Sucharita Paul.

For the Respondents/claimants : Mr. Amit Ranjan Roy

Heard & Judgment on : 20th August, 2025.

Ananya Bandyopadhyay, J:

1. Both the Learned Advocates representing the appellant/Insurance Company and the respondents/claimants are present in Court.
2. The instant appeal had been filed against the judgment and award dated 12.10.2023 passed by the Learned Additional District Judge, Motor Accident Claims Tribunal, Fast Track Court, Tamluk, Purba Medinipur M.A.C. Case No. 402 of 2020.
3. An application under Section 166 of the Motor Vehicles Act had been filed by the claimants on account of the death of their

mother who died in an accident which occurred on 6th May, 2020 at about 9:15 A.M. near Chathra Bus Stand besides Tamluk Mechada Road within the jurisdiction of Tamluk Police Station with the involvement of the offending vehicles being a Matuti car bearing registration no. WB-30C/8317 which proceeded at an exceeding speed and rashly and negligently collided with the scooty which was stationed by the side of the road whereupon the victim was awaiting to meet one of her complainants. As an impact of such collision, the victim fell on the ground and sustained injuries and was immediately shifted to Mechada Popular Nursing Home and thereafter she was admitted to AMRI Hospital at Kolkata where she expired on 21st May, 2020.

4. The Learned Advocate representing the appellant/Insurance Company submitted the accident occurred due to the fault on the part of the owner who had stationed his scooty by the side of the road given an opportunity to the offending vehicle to collide with the same owing to contributory negligence on his part. Moreover, the respondent no. 1/claimant did not possess a valid driving licence to drive the scooty. From the deposition of the respondent no. 1/claimant it further transpired the victim was once been affected by Covid and, therefore, she died out of Covid pandemic and not in the accident. Moreover, the complaint was filed after a lapse of 139 days which raised presumption and

suspicion that offending vehicle had been falsely implicated. Under such circumstances of the case, the appellant/Insurance Company was not liable to pay the compensation awarded by the Learned Tribunal.

5. The Learned Advocate representing the respondents/claimants submitted the evidence on record as well as the statement in the charge-sheet would reveal that the scooty was stationed by the side of the road and was not mobile. The offending vehicle on its own accord in a rash and negligent manner collided with the same without an iota of fault on the part of the respondent no. 1/claimant to be the owner of the scooty who had just facilitated the victim to reach the spot of the accident.
6. Since, the occurrence of the accident, involvement of the offending vehicle, the driving license, Insurance certificate etc. are not disputed by the Learned advocate representing the appellant/Insurance Company, this Court restricts itself only to the extent of modifying the above-mentioned issues.
7. Considered the rival contentions of the Learned Advocates representing the respective parties.
8. The document marked as exhibit-1 being the complaint filed under Section 156(3) of the Criminal Procedure Code being M.P. Case No. 224/2020 in the Court of Learned Chief Judicial Magistrate, Purba Medinipur at Tamluk, inter alia, explained the

reason for filing the same after a delay of 139 days. It stated that Covid pandemic was in vogue and the respondents/claimants had informed the accident to the Tamluk Police Station on 2nd July, 2020. However, the said Police Station failed to initiate any action on the basis of such complaint. Compelled by such failure on the part of the concerned Police Station to act on its part a further complaint was lodged on 6th July, 2020 at the office of Superintendent of Police, Purba Medinipur but in vain. Moreover, in the intermittent time was consumed in performing the funeral rites and rituals of the deceased mother of the claimants as well as being mentally shattered, further restricted by the effect of the prevailing Covid pandemic. The reason cited by the respondents/claimants for the delay in filing the complaint had not been refuted by the concerned authorities and the same had been considerably explanatory. The statement of the eye-witness being P.W. 4 who had also been cited as an witness in the charge-sheet marked as Exhibit-2 corroborated the act of the Driver of the offending vehicle and the manner in which the accident occurred which had also been stated in similar narrative in the charge-sheet. The deposition of the eye-witness being P.W. 4 as well as the report of the Investigating Officer corroborated the fact that the scooty belonging to the respondent no. 1/claimant was stationed by the side of the road which

indubitably could not have attributed to the occurrence of the accident on its own volition without any involvement.

9. Under such circumstances and the evidence on record this Court is not inclined to accept the contention of the Learned Advocate representing the appellant/Insurance Company. However, the compensation granted by the Learned Tribunal is modified to the extent that the sum as granted by the Learned Tribunal is to be disbursed along with the interest at the rate of 6% per annum only from the date of filing of the application under Section 166 of the Motor Vehicles Act till the date of its realization without the default interest which had been imposed by the Learned Tribunal.
10. The Learned Advocate representing the appellant/Insurance Company submits to have deposited a sum of Rs.1,00,54,918/- through two separate cheques as per challan filed by the Learned advocate representing the appellant/insurance company.
11. 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 respondents/claimants in proportion as mentioned in the impugned judgment of the Learned Additional District Judge, Motor Accident Claims Tribunal, Fast Track Court, Tamluk, Purba Medinipur in M.A.C. Case No. 402 of 2020 on proof of proper identification of the respondents/claimants subject to

payment of ad valorem Court fees and refund the balance amount, if any, along with accrued interest through a cheque to the Learned Advocate for the Appellant/Insurance Company for the accounts of the insurance company. 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.

12. The instant appeal is disposed of accordingly.
13. The 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.)

Srimanta, A.R.(Ct.)