

In The High Court At Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present:-

The Hon'ble Justice Ananya Bandyopadhyay

**F.M.A. No. 658 of 2024
CAN 3 of 2024
National Insurance Co. Ltd.
Versus
Ashoke Ruitdas & Ors.
With
COT 140 of 2024
Ashoke Ruitdas & Ors.
Vs.
National Insurance Co. Ltd. & Anr.**

Ms. Sucharita Paul

...for the Appellant/Insurance Company.

Mr. Amit Ranjan Roy

...for the Respondent Nos. 1 to 4/Claimants.

Heard on

: 21st January, 2025

Judgment on

: 28th February, 2025.

Ananya Bandyopadhyay, J:-

1. Both the learned Advocates for the appellant/insurance company and the respondent Nos. 1 to 4/claimants are present.
2. The instant appeal had been filed against the judgment and award dated 29th September, 2022 passed by the learned Judge, Motor

Accident Claims Tribunal cum Additional District Judge, Fast Track Court, Suri, Birbhum in M.A.C. Case No. 274 of 2018

3. An application under Section 166 of the Motor Vehicles Act had been filed by the claimants on account of the death of the victim in an accident which occurred on 17th December, 2013 at about 5.00 p.m. Dangalpare village main road Laudoha Hospital quarter with the involvement of the offending vehicle being Scorpio bearing registration No. WB 40G/9070 which collided with the motor cycle bearing registration No. WB44A-8326 which was driven by the victim. The offending vehicle at an exceeding speed rashly and negligently collided with the motor cycle driven by the victim which resulted in sustaining severe injuries on his body and had been transmitted to the hospital for treatment wherein he eventually expired.
4. The Learned Advocate for the appellant/insurance company submitted that the Learned Tribunal did not consider the contributory negligence on the part of the driver of the motor cycle in view of the evidence adduced by the prosecution witnesses. More-over, the age of the victim to have been a major cannot be relied upon with regard to the age of the son of the victim to be 10 years. More-over, the Learned Tribunal erroneously granted a default interest along with simple interest. The Learned Advocate representing the appellant/insurance company submitted delay of two months in filing the complaint.

5. The Learned Advocate for the respondent Nos. 1 to 4/claimants submitted to have filed a cross objection being COT 140 of 2024 agitated that the Learned Tribunal had erroneously granted the monthly income of the victim to be of Rs. 20,600/- instead of Rs. 39,340/- as stated in the pay slip issued in the name of the victim for the month of November 2013.
6. Heard the submissions of the learned advocates representing both the parties and perused the documents on record. The Learned Advocate representing the appellant/insurance company could not cite any facts and circumstances either to have been stated in the written statement as well as in the evidence with regard to the delay in filing the written complaint as well as the element of contributory negligence on the part of the victim. It was explained that the complainant was engaged in the observance of funeral right of the victim along with trauma resulting in delay in filing the complaint and the same was acceptable. More-over, the issue of contributory negligence was not agitated by the appellant/insurance company before the Learned Tribunal and the evidence of contributory to the accident was not forthcoming. The pay slip marked as Ext. 9 mentioned date of birth to be 1962 wherefrom it was apparent that the age of the deceased victim and his son being respondent No.2 had been 10 years. The Learned Tribunal did not justifiably grant the rate of interest as a default clause. The document marked as Ext. 9 to be pay slip with regard to the issuance of salary to

the tune of Rs. 39,334/- in favour of the deceased victim was inclusive of the leave encasement salary which of-course could not be an integral part of the monthly slip to have been disbursed in favour of the victim and the Learned Tribunal had been justified in considering the monthly income of the victim to be Rs. 20,600/-

7. It was further submitted by the Learned Advocate for the appellant/insurance company that the Appellant/Insurance Company had already deposited the entire awarded sum of Rs.31,20675/-(Rs. 25,000 + Rs. 30,95,675) through two separate cheques as per challan filed by the learned advocate representing the appellant/insurance company.
8. The respondent Nos. 1 to 4/claimants are entitled to receive the balance amount of Rs. Rs. 24,15,244/- along with interest at the rate of 6% per cent per annum from the date of filing of the claim application i.e. 04.12.2018 till the date of actual realization.
9. The office of the Registrar General, High Court, Calcutta shall encash the cheque and thereafter disburse the entire awarded amount so deposited along with accrued interest to the present respondent No.1 to 4/claimants with accrued interest as mentioned in the award passed by learned Judge, Motor Accident Claims Tribunal cum Additional District Judge, Fast Track Court, Suri, Birbhum in M.A.C. Case No. 274 of 2018 on proof of proper identification of the respondent Nos.1 to 4 /claimants subject to payment of ad valorem

Courts fees and refund the differential amount if any through a cheque to the learned advocate for the insurance company for the accounts of the insurance company.

10. The instant appeal and cross objection are disposed of accordingly.
11. The interim order if any stand vacated.
12. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)