

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 44 of 2023

**National Insurance Company Limited
Versus
Smt. Mira Rani Biswas & Ors.**

For the Appellant : Mr. Sanjay Paul
Ms. Jaita Ghosh.

For the Respondent Nos.1 to 5 : Mr. Saidur Rahaman.

Heard & Judgment on : 6th February, 2025.

Ananya Bandyopadhyay, J:

1. The Learned Advocates representing the appellant/insurance company as well as respondent Nos. 1 to 5/claimants are present.
2. Being aggrieved by and dissatisfied with the award dated 23rd April, 2018 passed by the Learned Judge, M.A.C. Tribunal, Fast Track Court No.2, Barasat, 24 Parganas (North) in M.A.C. Case No. 15 of 2015 under Section 166 of the Motor Vehicles Act the instant appeal had been filed.
3. An application under Section 166 of the Motor Vehicles Act was filed by the claimants by the death of 62 years old victim in an accident which occurred on 9.7.2014 at about 14.30 hours. with the involvement of the offending vehicle being Lorry bearing registration no. WB-25A/4919 which hit the victim riding his by-cycle at Chandpur, Champagachi road near Rajarhat Police Station at an exceeding speed rashly and negligently. The victim was declared dead at Reckjoani Hospital, Rajarhat.

4. The learned Advocate representing the appellants/Insurance Company submitted that the learned Tribunal had erroneously deducted 1/5th towards personal expenses instead of 1/4th since the number of claimants had been 5. More-over, the claimants could not prove the valid route permit to have been possessed by the drivers/owner of the offending vehicle as aforesaid. Therefore, the insurance company was not liable to pay compensation awarded.
5. The learned Advocate representing the respondent Nos.1 to 5/claimants submitted that the Learned Tribunal had considered the notional income of the victim in the year 2014 to be Rs. 3000/- per month which was a meager amount which should be enhanced to be Rs. 4000/- per month
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 considering the issue of route permit and the personal deduction to the extent of 1/4th of the annual income. The evidence of OPW 1 being the concerned person representing the A.R.T.O. had produced the computer output information which revealed that the vehicle No. WB-25A/4919 was not issued the route permit. During his cross-examination the OPW1 stated as follows:

"I cannot say whether without permit number this copy is available from the Computer.

I cannot say whether all the details is being put in the Computer is going on.

I cannot say whether the manual register we show that permit was issued against the vehicle no. WB-25A/4919.

Permit can be obtained in respect of a vehicle from any other R.T.O. Office.

The summons does not bear any permit number".

7. Considering the fiscal index prevalent in the year 2014 the monthly income of the victim is enhanced to be Rs. 4000/- per month.
8. Considering the observations of the Hon'ble Apex Court in *Pranay in National insurance company Ltd. Vs. Pranay Shetty & Anr*¹ and *Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr.*² The impugned award of Rs. 2,31,600/- is modified as follows:

Monthly Income	Rs. 4000/-
Annual Income	X 12
	Rs. 48,000/-
Less ½ Personal Expenses	Rs. 12,000/-

Multiplier to be "7"	Rs. 36,000/-
	X 7
General Damages	Rs. 2,52,000/-
	Rs. 70,000/-
	Rs. 3,22,000/-
Entitlement	Rs. 3,22,000/-

9. The appellant/insurance company is to pay the compensation amount and thereafter granted the right to recover the same from the owner of the vehicle after adducing evidence that the route permit was never issued in respect of the offending vehicle since there can be a possibility of the route permit being issued in favour of the offending vehicle to have been registered manually which was not brought before the Court.
10. The learned Advocate representing the appellant/Insurance Company submits to have deposited a sum of Rs.3,35,936/- under OD challan No. 1156 dated 02.08.2018 and Rs. 25,000/- as statutory deposit through another cheque under challan No. 808 dated 02.07.2018.

1 2017(4)TAC 673(S.C)

² (2009) 6 SC 121

11. The Respondent Nos. 1 to 5/claimants are entitled to receive the amount of Rs. 3,22,000/- at the rate of 6% per cent per annum from the date of filing of the claim application till the date of actual realization.
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 along with accrued interest to the present respondent Nos. 1 to 5/claimants in equal proportion as mentioned in the impugned judgment dated Learned Judge, M.A.C. Tribunal, Fast Track Court No.2, Barasat, 24 Parganas (North) in M.A.C. Case No. 15 of 2015 on proof of proper identification of the respondent No.1 to 5/claimants subject to payment of ad valorem Court fees and refund the balance amount if any through a cheque to the Learned Advocate for the Appellant/Insurance Company for the accounts of the insurance company.
13. The instant appeal is disposed of accordingly.
14. The interim order if any stand vacated.
15. The TCR be sent down to the concerned tribunal forthwith.
16. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)