IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

F.M.A 707 of 2023

National Insurance Company Ltd.
-Vs-
Tanushri @ Tanushree Bag (Bera) & Ors.

For the Appellants : Mr. Rajesh Singh

For the Respondents : Mr. Amit Ranjan Roy

Heard & Judgment on : 07.05.2025

<u>Ananya Bandyopadhyay, J.:-</u>

1. The instant appeal was heard earlier and judgment was reserved. However, the matter was listed under the heading 'For Hearing' for further clarification.
2. Both the Learned Advocates representing the appellant/Insurance Company and the respondents/claimants are present.
3. The instant appeal had been filed against the judgment and award dated 30.01.2023 passed by the Learned Additional District Judge, Motor Accident Claims Tribunal, Fast Tract, 1st Court, Tamluk, Purba Medinipur in M.A.C. Case No. 4of 2016.
4. Four claimants filed an application under Section 166 of the M.V. Act in the Court of Motor Accident Claims Tribunal, Additional District and Sessions Judge, Fast Track 1st Court, Tamluk, Purba Medinipur being MAC

Case No. 4/2016 claiming an award of Rs. 41,00,000/- as well as interest and costs whereby the aforesaid deceased expired due to a road traffic accident on 19.10.2015 at about 11 pm.

5. The offending vehicle, bearing Registration No. WB-30C/8757 hit the aforesaid victim in a rash and negligent manner who was walking on the road.

6. Consequently, the victim was sent to Purba Medinipur District Hospital where he was pronounced dead.

7. Subsequently, based on a complaint, Nandakumar PD Case No. 542/15 dated 02/11/2015 and Tamluk P.S. Case No. 437/15 dated 20.10.2015 was instituted against the driver of the offending vehicle as aforesaid.

8. The owner of the offending vehicle appeared and filed a written statement but did not contest the case, thus the case was conducted ex parte against him.

9. The respondent, National Insurance Company Ltd. contested the aforesaid MAC case.

10. The Learned Tribunal as aforesaid disposed of the issues framed considering the oral as well as documentary evidences and awarded a sum of Rs. 47,99,000/- plus interest at the rate of 6% per annum and 8% per annum if the money is not debited within 30 days of the judgement.

11. The Learned Advocate representing the Appellant/Insurance Company submitted that the complaint was filed after 14 days of the occurrence of the accident, an amount of Rs.1,70,000/- was granted towards loss of

consortium instead of Rs.44,000/-, interest of 8% per annum was granted to have been excessive. He further referred to the evidence of OPW 1 who had been the officer of the appellant/Insurance Company who stated that the accused driver Kalobaran Das professed lending non-professional and non-transport driving licence in motor accident cases, who even lent his own driving licence on hire. The said driver was shown as the accused driver in Nandakumar P.S. Case 170/14 dated 19.05.2014 where the involved vehicle was WB-30C/8685 for the accident dated 18.04.2014. The said driver Kalobaran Das was shown as the accused driver in Nandakumar P.S. Case No. 273/2014 dated 23.07.2014 where the involved vehicle was WB-02N/7628 for the accident dated 21.07.2014. However, during his cross-examination controverted himself stating the owner-cum-driver of the concerned vehicle was Kalobaran Das.

12. The learned Advocate representing the respondents/claimants did not admit the submissions of the learned Advocate representing the appellant/Insurance Company.

13. Considered the rival contentions of the learned Advocates representing the respective parties.

14. 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 rectifying the compensation awarded in the following manner.

15. The charge-sheet filed on completion of investigation mentioned the role of the accused driver inferring prima facie the negligent act on his part subject to trial. The Tribunal or this Court cannot act a Trial Court dealing with criminal cases in disposing of cases within the purview of beneficial legislation.

16. Considering the observations of the Hon'ble Apex Court in National insurance company Ltd. Vs. Pranay Shetty & Anr1 and Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr.2, the impugned award of Rs. 47,99,000/- is modified as follows:-

Annual Income	Rs. 2,55,000/-
Add : 50% Future Prospect	Rs. 1,27,500/-
	Rs. 3,82,500/-
Less : 1/4th Personal Expenses	Rs. 95,625/-

	Rs. 2,86,875/-
Multiplier '16'	X 16
	Rs. 45,90,000/-
Add : General Damages	Rs. 84,000/-
Total Compensation	Rs. 46,74,000/-

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

2 (2009) 6 SC 121

15. The learned Advocate representing the appellant/Insurance Company submits to have deposited a sum of Rs.70,01,991/- as per challan filed by the learned advocate representing the appellant/insurance company.

16. The Respondents/claimants are entitled to receive the amount of Rs. 46,74,000/- along with interest at the rate of 6% per cent per annum from the date of filing of the claim application till the date of actual realization.

17. The office of the learned Registrar General High Court at Calcutta, shall encash the cheques and thereafter disburse the entire awarded amount so deposited to the respondents/claimants as mentioned in the impugned judgment of the Learned Additional District Judge, Motor Accident Claims Tribunal, Fast Track, 1st Court, Tamluk, Purba Medinipur in M.A.C. Case No. 4 of 2016 on proof of proper identification of the respondents/claimants subject to payment of ad valorem Court fees and refund the balance amount through a cheque to the Learned Advocate for the Appellant/Insurance Company for the accounts of the insurance company.

18. The interest generated on the sum of money deposited by the appellant/insurance company at the office of the Learned Registrar General, High Court at Calcutta which has already been deposited in the nationalized bank by the office of the Learned Registrar General, High Court at Calcutta is to be apportioned and the sum of interest accrued on the aforesaid amount is to be disbursed in favour of the appellant/insurance company for the accounts of the insurance company.

19. The appellant/Insurance Company is at liberty to initiate proceedings to establish its claim that the driver of the offending vehicle lend his driving

lincece to initiate false motor vehicles accident claim cases. The appellant/Insurance Company is to pay the awarded compensation and will exercise the right to recover the same from the owner of the offending vehicle having proved that the licence of the driver of the offending vehicle was being used to objectifying ulterior motive in instituting false motor accident claims cases.

20. The instant appeal is disposed of accordingly.

21. The pending applications, if any, stands disposed of.

22. 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.)