

Form No. J(2)

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 1035 of 2024

**National Insurance Company Limited
Versus
Swarup Chatterjee & Ors.**

For the Appellant : Ms. Gopa Das Mukherjee

For the Respondent Nos. 1 & 2 : Mr. Debabrata Nanda

Heard & Judgment on : 17th March, 2025.

Ananya Bandyopadhyay, J:

1. Both the Learned Advocates representing the appellant/Insurance Company and the respondent Nos. 1 and 2/claimants are present.
2. The instant appeal had been filed against the judgment and award dated 27.02.2024 passed by the Learned Judge, Motor Accident Claims Tribunal cum Additional District Judge, FTC-IV Bench, Alipore Court, South 24 Parganas M.A.C. Case No. 11 of 2016.
3. An application under Section 163A of the Motor Vehicles Act had been filed on account of the death of the victim in an accident

which occurred on 05.05.2015 at about 11.30 a.m. at the crossing of the N.S.C. Bose Road to D.P.P. Road near Ananda Ashram with the involvement of the offending vehicle being Motor Cycle bearing registration No. WB-20AF-0309 which proceeded at an exceeding speed, rashly and negligently hit the victim who had been a pedestrian was sifted to M.R. Bangur Hospital, Kolkata and eventually expired on 10th May, 2015.

4. The learned Advocate representing the appellant/Insurance Company that the Learned Tribunal despite having noted that the appellant/insurance company would pay the compensation amount and subsequently recover the same from the owner of the offending vehicle did not mention the same in the final portion of the impugned judgment. More-over, the learned Tribunal had granted an interest at the rate of 6% per cent per annum of Rs. 5,00,000/- with effect from 22.05.2018 till the date of issuing cheques for payment together with another interest @ 9% per annum on Rs. 1,14,500/- with effect from the date of filing of the case i.e. 21.01.2016 till 21.05.2018. The entire amount has to be divided equally between the claimants.
5. The learned Advocate representing the respondent Nos. 1 and 2/claimants did not object to the submission of the Learned Advocate representing the appellant/insurance company.

6. The Learned Tribunal in paragraph 13 of the impugned judgment and order observed as follows:

“Applying the principle of ‘pay & recovery’ in the facts and circumstances of the instant case, I am of the view that the insurance company has to pay compensation to the claimants at the first instance and then it will have the liberty to recover the amount from the owner of the vehicle subject to fulfillment of the conditions as enunciated by the Hon’ble Apex Court. However, so far as the instant case is concerned, OP 2 has not made any attempt to examine the owner of the offending vehicle to establish willful violation”.

7. Since the occurrence of the accident, the driving license, the Insurance policy, the route permit etc. and other ancillary issues have not been disputed by the learned advocate representing the respondent No.1/insurance company, this Court restricts itself in only modifying the impugned judgment and order granting liberty to the appellant/insurance company to recover the compensation award to the tune of Rs. 5,00,000/- along with interest at the rate of 6% per annum from the date of filing of the claim application under Section 163A of the Motor Vehicles Act till the date of its realization and recover the same from the owner of the offending vehicle.
8. The learned Advocate representing the appellant/Insurance Company submits to have deposited a sum of Rs. 9,28,797/=(Rs. 25,000 + 9,03,797) through two separate cheques as per challan

filed by the learned advocate representing the appellant/insurance company.

9. The respondent Nos.1 and 2/claimants is entitled to receive the balance amount of Rs. 5,00,000/- at the rate of 6% per cent per annum from the date of filing of the claim application till the date of actual realization.
10. The office of the Registrar General, High Court at Calcutta is to calculate the award passed by this Court today together with interest as aforesaid and thereafter disburse the same to the present respondent No.1 and 2/claimants as mentioned in the impugned judgment passed by the Learned Judge, Motor Accident Claims Tribunal cum Additional District Judge, FTC-IV Bench, Alipore Court, South 24 Parganas M.A.C. Case No. 11 of 2016 on proof of proper identification of the respondent No.1 and 2/claimants subject to payment of ad valorem Court 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.
11. 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 been further 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 through a cheque to be deposited at the office of the appellant/insurance company.

12. The instant appeal is disposed of accordingly.
13. The interim order if any stand vacated.
14. The pending applications if any stands disposed of.
15. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)

c.m. A.R.