bm Form No. J(2)

District: Kolkata

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

Appellate Side

Present :

The Hon'ble Justice Ananya Bandyopadhyay

FMA 743 of 2023

NATIONAL INSURANCE CO. LTD.
VS.
MAYA SINGH & ORS

Mr. Sanjay Paul
... for the appellant/Insurance Company
Mr. Debabrata Nanda
... for the respondent nos.1 & 2/claimants
Mr. Shibaji Kumar Das
... for the respondent no.3/Owner

Heard on : 01.07.2025

Judgment on : 01.07.2025

Ananya Bandyopadhyay J.

1. The learned Advocates representing both the parties are present in court.

2. The instant appeal had been filed against the judgement and order dated 22nd June, 2023 passed by the learned Judge, Motor Accident Claims Tribunal cum 11th Bench, City Civil Court, Calcutta in MAC Case No.346 of 2011.

3. An application under Section 166 of the Motor Vehicle Act, has been filed by the claimants being parents of the deceased victim

who died in an accident which occurred on 18.06.2011 at about 4:45 hours on Jatindra Mohan Avenue at the crossing of Jatindra Mohan Avenue and Arabinda Sarani with involvement of offending vehicle being Lorry bearing registration No.WB-59 5777 which proceeded along J. M. Avenue at a high speed negligently and rashly clashed a vehicle being Maruti Swift Registration No.WB06F-1495 wherein the victim had been an occupant who sustained severe injuries and was admitted at R.G. Kar Hospital and wherefrom she was transferred to DESUN Hospital on 18.06.2011 and discharged on 26.06.2011 to be admitted at Institute of Neuro Sciences, Kolkata wherein she expired on 22.06.2011.

4. Learned advocate representing the appellant/Insurance Company submitted that the learned Tribunal erroneously computed the compensation award considering the I.T Return filed prior to her death not pertaining to the year in which the accident occurred since the accident was occurred by the involvement of the Lorry and the Maruti Swift as stated above, the compensation award should be apportioned in view of the composite negligence. Moreover, the road permit was not seized and exhibited before the Learned Tribunal.

5. Learned advocate representing the respondent Nos.1 and 2/claimant submitted that charge sheet on completion of the investigation was submitted against the driver of the offending vehicle being Lorry which exonerated the involvement of the Maruti Swift. Since, the victim died within the year prior to the I.T Return to

have been filed for the assessment year it was not possible for the victim to have filed the I.T Return for succeeding year after her death. However, the I.T Return for a succeeding year after her death. However, the I.T return for the financial year prior to her death was submitted and had been considered by the learned tribunal for assessing the amount of compensation.

6. Learned advocate representing the owner submitted that the route permit was not seized and the issue of the same was not agitated before the learned tribunal of excluding possibility agitating the same before this court for the first time.

7. Since the occurrence of the accident, the driving licence, the Insurance policy etc. and other ancillary issues have not been disputed by the learned advocate representing the appellant/insurance company, this Court restricts itself only to the extent of issues agitated by the learned Advocate representing the respective parties.

8. The charge sheet marked as Exhibit-I had categorized the role of individual of the offending vehicle prima facie impleading the lorry bearing WB-59-577 to have been involved in the occurrence of the accident which had collided with Maruti Swift and finally the charge sheet had been filed against the driver of the offending vehicle being Lorry whereby the issue of composite negligence referred to the learned Advocate representing the appellant/Insurance Company was negated.

9. The document as marked Exhibit-13 being I.T return filed for the year assessment year 2010-2011 mentioned the annual income of the victim which had been considered by the learned Tribunal. The victim expired on 22nd June, 2011 much prior for submission of the Income Tax return pertaining to the financial year as well as assessment year precluding her from practically filing IT return for the subsequent year as claimed by the learned advocate representing the appellant Insurance Company after her demise. The appellant Insurance Company did not raise issue of route permit to have not been seized and exhibited before the learned Tribunal despite ample scope to have agitated the same.

10. Considering the facts and circumstances of this case, this court inclined to inclined to interfere with the compensation awarded by the learned Tribunal. However, modifies the rate of interest so awarded to the extent of 6% per annum from the date of filing of the application under Section 166 of the Motor Vehicles Act till the date of its realization. Accordingly, the instant appeal stands dismissed.

11. The learned Advocate representing the appellant/Insurance Company submits to have deposited a sum of Rs.28, 23,778/- (Rs.25,000/- + 27,98,778) through two separate cheques as per challan filed by the learned advocate representing the appellant/insurance company.

12. The Respondent Nos.1 /claimant is entitled to receive the amount of Rs.20,47,097/- 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.

13. 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 /claimant in MAC Case No.346 of 2011 on proof of proper identification of the respondent No. 1/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.

14. 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.

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.)