

Form No. J(2)

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 3209 of 2016

**ICICI Lombard General Company Limited
Versus
Shibani Bose & Ors.**

With

COT/20/2016

**Shibani Bose & Ors.
-Vs.-
ICICI Lombard General Company Limited & Anr.**

For the Appellant : Mr. Parimal Kumar Pahari

For the Respondent No.1 to 4 : Mr. Jayanta Kumar Mondal
Mr. Sayantan Rakshit

Heard & Judgment on : 25th April, 2025.

Ananya Bandyopadhyay, J:

1. Both the Learned Advocates representing the appellant/Insurance Company and the respondent No.1 to 4/claimants are present.

2. The instant appeal had been filed against the judgment and award dated 30th November, 2015 passed by the Learned Judge, Motor Accident Claims Tribunal cum Additional District Judge, Paschim Midnapore, Sadar in M.A.C. Case No. 412 of 2013.
3. The learned Advocate representing the appellant/Insurance Company submitted that the learned Tribunal had erroneously cast liability upon the appellant/insurance company to pay the compensation disregarding the fact that the driver of the offending vehicle possessed the driving licence issued in his favour for driving light motor vehicles. However, the driver of the offending vehicle drove the passenger carrying goods contrary to the conditions stipulated in the insurance policy issued by the appellant insurance/company and for such violation thereafter the appellant/insurance company is not liable to pay the compensation award.
4. The Learned Advocate representing the respondent No.1 to 4/claimants submitted to have filed a cross objection being COT 20 of 2016 agitating that the learned Tribunal had failed to grant compensation on account of future prospect and wrongly considered the multiplier to be 8 instead of 9 with regard to the age of the victim to be 58 years at the time of the accident. More-over, general damages granted to the extent of Rs. 9,500/- was required to be modified in the light of the judgment of the

Hon'ble Supreme Court in National insurance company Ltd. Vs. Pranay Shetty & Anr. to the extent of Rs. 84,000/-

5. 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 only to the extent of issues agitated by the learned Advocates representing the respective parties.
6. In view of the observation of the Hon'ble Supreme Court in M/S. Bajaj Alliance General Insurance Co. Ltd. Vs. Rambha Devi & Ors.¹ which states the Paragraph 131 as follows:

"131. Our conclusions following the above discussion are as under

(I) A driver holding a license for Light Motor Vehicle (LMV) class, under Section 10(2)(d) for vehicles with a gross vehicle weight under 7.500 kg, is permitted to operate a "Transport Vehicle" without needing additional authorization under Section 10(2) (e) of the MV Act specifically for the "Transport Vehicle" class. For licensing purposes, LMVs and Transport Vehicles are not entirely separate classes. An overlap exists between the two. The special eligibility requirements will however continue to apply for, inter alia, e-carts, e-rickshaws, and vehicles carrying hazardous goods.

(II) The Second Part of Section 3(1), which emphasizes the necessity of a specific requirement to drive a "Transport Vehicle" does not supersede the definition of LMV provided in Section 2(21) of the MV Act.

(III) The additional eligibility criteria specified in the MV Act and MV Rules generally for driving "Transport Vehicle" would apply only to those intending to operate vehicles with gross vehicle weight exceeding 7,500 k.g.

¹ Civil Appeal No. 841 of 2018

i.e. 'medium goods vehicle', 'medium passenger vehicle' 'heavy goods vehicle' and 'heavy passenger vehicle'.

(IV) The decision in Mukund Dewangan (2017) is upheld but for reasons as explained by us in this judgment. In the absence of any obtrusive omission, the decision is not per incuriam, even if certain provisions of the MV Act and MV Rules were not considered in the said judgment".

7. Considering the observations of the Hon'ble Apex Court in National insurance company Ltd. Vs. Pranay Shetty & Anr² and Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr.³ The impugned award of Rs. 30,26,000/- is modified as follows:

Monthly Income(Rs. 47283 -150.00)	Rs. 47133/-
Annual Income(47133 x 12)	Rs. 5,65,596/-
	Rs. 84,839/-
Future Prospect to be added(15%)	Rs. 6,50,435/-
Personal Expenses (1/3)	Rs. 2,16,811/-
	Rs. 4,33,624/-
	x 9
Multiplier to be "9"	Rs. 39,02,616/
Non-Pecuniary Damages	Rs. 84,000/-
Entitlement	Rs. 39,86,616/-

8. The learned Advocate representing the appellant/Insurance Company submits to have deposited a sum of Rs. 35,36,581/=(Rs. 25,000 + 35,11,581) through two separate cheques as per challan filed by the learned advocate representing the appellant/insurance company. The learned advocate representing the appellant/insurance company will deposit the

enhanced awarded amount before the office of the learned Registrar General, High Court at Calcutta.

9. The Respondent Nos. 1 to 4/claimants are entitled to receive the amount of Rs. 39,86,616/- at the rate of 6% per cent per annum from the date of filing of the claim application i.e. 23rd February, 2017 till the date of actual realization.
10. The office of the learned Registrar General High Court at Calcutta, shall encash the cheques and thereafter disburse the entire awarded amount so deposited with accrued interest to the present respondent Nos. 1 /claimants as mentioned by Learned Judge, Motor Accident Claims Tribunal cum Additional District Judge, Paschim Midnapore, Sadar in M.A.C. Case No. 412 of 2013 on proof of proper identification of the respondent No.1 to 4/claimants subject to payment of ad valorem Court fees within four weeks.
11. The instant appeal and cross objection are disposed of accordingly.
12. The interim order if any stand vacated.
13. The TCR be sent down to the concerned tribunal forthwith.
14. 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.