

Form No. J(2)

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 1394 of 2024

**The Oriental Insurance Company Limited
Versus
Bandana Das & Ors.**

For the Appellant : Mr. Rajesh Singh,
Mr. Samim Ahammed,
Mr. Aniruddha Singh.

For the Respondents : Mr. Krishanu Banik,
Mr. Tathagata Banik.

Heard & Judgment on : 17th March, 2025.

Ananya Bandyopadhyay, J:

1. Both the Learned Advocates representing the appellant/Insurance Company and the respondents/claimants are present.
2. The instant appeal had been filed against the judgment and award dated 16.07.2024 passed by the Learned Additional District Judge, Motor Accident Claims Tribunal, 4th Court, Birbhum at Suri in M.A.C. Case No. 304 of 2016.

3. An application under Section 166 of the Motor Vehicles Act had been filed due to the death of the victim in an accident which took place on 31.07.2016 at Caqlwal More, Jamuna Jore, Deoghar within the jurisdiction of Deoghar Town Police Station with the involvement of the offending vehicle being a Bus bearing registration no. JH-15D/3231 which hit the victim from behind who had been a pedestrian. The victim was declared as dead when he was shifted to Sadar Hospital, Deoghar.
4. The Learned Advocate representing the appellant/Insurance Company submitted that the monthly income of the victim to have been assessed as Rs.6,000/- had been excessive, the learned Tribunal erroneously did not grant the right to recover compensation to be paid to the claimants in absence of route permit to have been issued in favour of the offending vehicle as evinced by O.P.W. 1 through his oral evidence as well as documentary evidence vide exhibit marked as exhibit 12 collectively. Moreover, the consortium to the extent of Rs.40,000/- was individually granted to each of the six claimants to the extent of Rs.2,40,000/-.
5. The learned Advocate representing the respondents/claimants opposed the submission of the learned Advocate representing the appellant/Insurance Company and submitted that the learned Tribunal was justified in granting compensation amount.

6. Considered the rival submission of the learned Advocates representing both the parties.
7. 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 the points agitated in the Memo of Appeal as well as the submission of the learned Advocate representing the appellant/Insurance Company. At the very inception this Court is not inclined to interfere with the monthly income assessed by the learned Tribunal. The learned Tribunal perceived an element of assumption on the part of O.P.W. 1 to have been hesitant in stating that the route permit was not issued in favour of the offending vehicle. The learned Tribunal, inter alia, in the impugned Judgment and order observed as follows:-

"From the cross-examination of this witness I find that he is not certain about non-issuance of any permit. According to him, he has claimed that no permit was issued in respect of this vehicle on the basis of assumption. From the documents, marked Exbt. C & D, I do not find any column meant for route permit. Thus, in my humble view from these documents, I cannot said that no route permit was there in respect of the vehicle at the relevant point of time".

8. Contrary to such opinion it would reveal that O.P.W. 1 in his evidence stated as follows:-

“Deogarh Transport Authority is under Dumka Regional Transport Authority. The office of Dumka Regional Transport Authority issues permit of vehicle. The registration of the vehicle was done at Deoghar and permit was issued from Dumka. This is why we had to ask for sending permit of the vehicle bearing no. JH-15D/3231 from Dumka Regional Transport Authority. I have filed forwarding letter along with registered vehicle’s detail in respect of vehicle no. JH-15D/3231. These are those documents. Registered vehicle’s detail of vehicle bearing no. JH-15D/3231 along with forwarding report containing 03 pages are marked as Exbt. 12 collectively (with objection). As per the documents, submitted by me, no permit was issued in respect of vehicle bearing no. JH-15D/3231”.

9. O.P.W. 1 in his deposition categorically stated that the documents marked as Exhibit 12 collectively did not mention permit to have been issued in respect of his offending vehicle. The deposition was devoid of any kind of hesitation or ambiguity. It was in unequivocal terms stated that the vehicle was not issued a permit which corroborated with documents marked as the Exhibit no. 12 collectively. It would be evident vide a communication dated 21.02.2023 addressed by Deputy Transport Commissioner-Cum-

Secretary, Santhal Pargana Regional Transport Authority, Dumka to the District Transport Officer, Deogarh stated that the offending vehicle bearing registration no. JH-15D/3231 registered in the name of Smt. Bina Singh being the wife of Shri Nirmal Kumar Singh on 10.02.2009 was not issued with route permit and the same had not been recorded in the official records.

10. Under such circumstance, the appellant/Insurance Company is to pay the compensation awarded and thereafter recover the same from the owner of the offending vehicle. 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. **14,04,000/-** is modified as follows:-

Monthly Income	Rs. 6,000/-
Annual Income	X 12
	Rs. 72,000/-
Future prospect be assessed 40%, i.e.	Rs. 28,800/-
	Rs. 1,00,800/-
Less 1/4 th Personal Expenses (1,00,800-25,200)	Rs. 75,600/-
Multiplier to be "15" (Rs.75,600/-X15)_	Rs. 11,34,000/-
General damages	Rs. 84,000/-
Total	Rs. 12,18,000/-

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

² (2009) 6 SC 121

11. The learned Advocate representing the appellant/Insurance Company submits to have deposited a sum of Rs.25,000/- on 30.09.2024 and Rs.20,16,685/- on 30.10.2024 amounting to a total of Rs. 20,41,685/- through two distinct cheques as per challan filed by the learned advocate representing the appellant/insurance company.
12. The Respondents/claimants are entitled to receive the amount of Rs. 12,18,000/- at the rate of 6% per cent per annum from the date of filing of the claim application till the date of actual realization.
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 to the present respondents /claimants in equal proportion as mentioned in the impugned judgment of the Learned Additional District Judge, Motor Accident Claims Tribunal 4th Court, Birbhum at Suri in M.A.C. Case No. 304 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.
14. 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.

15. The instant appeal is disposed of accordingly.
16. The pending applications, if any, stands disposed of.
17. 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.)