

Form No. J(2)

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 1479 of 2024

**Oriental Insurance Company Limited
Versus
Moumita Bhattacharjee & Ors.**

For the Appellant : Mr. Rajesh Singh

For the Respondent Nos. 1 & 2 : Mr. Subhankar Mandal

Heard & Judgment on : 5th February, 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 01.10.2024 passed by the Learned Judge, Motor Accident Claims Tribunal and Additional District Judge, Fast Track Court No. 2, Barasat, North 24-Parganas M.A.C. Case No. 6/2022.
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 16.02.2020 at about 7:30 P.M. with the

involvement of the offending vehicle (Bolero) being No. WB 26AZ/3119 which hit the victim on his return towards his home being a passenger of the Bolero which on its approach near Desmukh, Dankuni Side (27 No. Road) collided with another vehicle resulting in serious injuries being sustained by the victim who ultimately expired at Chanditala Gramin Hospital.

4. The learned Advocate representing the appellant/Insurance Company submits that the offending vehicle being the Bolero had been the victim of the accident and, therefore, was not liable for paying the compensation.
5. The learned Advocate representing the respondent Nos. 1 and 2/claimants submitted that the learned Tribunal considering each and every aspect of the claim application concerning the accident in question granted the compensation amount which should not be interfered with. The learned Tribunal in paragraphs 8 and 9 of the impugned judgment and order opined as follows:-

"8. Learned Advocate for the petitioners/claimants referred to the notification of the Ministry of Transport and Highways dated 22nd May, 2018. It is related to amendment of Second Schedule of the Motor Vehicles Act, 1988 and the then existing schedule was substituted by a new schedule by virtue of the said notification. After going through the substituted schedule it appears that the compensation payable in case of death under Sec-163A of the Motor Vehicles Act, 1988 was fixed to be Rs.5,00,000/- (Rupees Five Lakhs only) irrespective of the income of the victim/deceased at the material time of the accident.

9. In view of the above notification, I am of the opinion that the petitioners are entitled to get the compensation amount of

Rs.5,00,000/- (Rupees Five Lakh only) in connection with this case under Section – 163A of the Motor Vehicles Act, 1988. The petitioners/claimants are further entitled to get an interest @ 6% over such compensation amount from the date of filing of this case till the date of realization of the compensation amount. In addition to that the petitioners shall get a sum of Rs.20,000/- for loss of consortium, a sum of Rs.15,000/- for funeral expenses and a sum of Rs.15,000/-for loss of estate”.

6. In view of the notification 22nd May, 2018 and the observation of the Hon’ble Supreme Court in Urmila Halder v. The New India Assurance Company Ltd¹. the respondent No.1 and 2/claimants is entitled to composite sum of Rs.50,0,000/- which is the consolidated compensation taken into account various heads which might be implied. Therefore, an additional sum of Rs.50,000/- should not have been granted. In contradiction to the intent and purport of the aforesaid notification as well as the observation of the Hon’ble Supreme Court in Urmila Halder v. The New India Assurance Company Ltd. the contention of the learned Advocates representing the appellant/Insurance Company in view of the essence of an application under Section 163A of the Motor Vehicles Act as well as the aforesaid notification the offending vehicle to claim itself to be the victim of the accident is not maintainable.

1. The learned Advocate representing the appellant/Insurance Company submits to have deposited a sum of Rs. 6,74,677/

¹ 2019(2)TAC 143

through two separate cheques as per challan filed by the learned advocate representing the appellant/insurance company.

2. 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.
3. 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 dated 01.10.2024 passed by the Learned Judge, Motor Accident Claims Tribunal and Additional District Judge, Fast Track Court No. 2, Barasat, North 24-Parganas M.A.C. Case No. 6/2022 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.
4. 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.

5. The instant appeal is disposed of accordingly.
6. The interim order if any stand vacated.
7. The TCR be sent down to the concerned tribunal forthwith.
8. 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./C.M. A.R.