

**District: North 24 Parganas**

**IN THE HIGH COURT AT CALCUTTA**

**Civil Appellate Jurisdiction**

**Appellate Side**

**Present :**

**The Hon'ble Justice Ananya Bandyopadhyay**

**FMA 581 of 2024**

**+**

**IA NO.: CAN 2 of 2023**

CHOLAMANDALAM MS GENERAL INSURANCE  
COMPANY LTD.

VS

TAZMIRA BIBI AND ORS.

Mr. Soumalya Ganguly

... for the appellant/Insurance Company

Mr. Subhankar Mandal

... for the respondent Nos. 1 & 2/claimants

Heard on & Judgment on : 03.09.2025

**Ananya Bandyopadhyay J.**

1. The Learned Advocates representing the appellants/Insurance company is present in court.
2. The instant appeal had been filed against the judgment and order dated 17.08.2023 passed by the Learned Judge, Motor Accident Claims Tribunal & Additional District Judge, 3<sup>rd</sup> Court, Barasat, North 24 Parganas, in MAC Case No.498 of 2018.

3. The Learned Advocates representing the appellant/Insurance Company submitted to have filed the instant appeal exclusively on the ground that the victim had been a gratuitous passenger of the alleged offending vehicle bearing registration No. WB 25H/3615 and the Insurance Company was not liable to grant the compensation awarded under Section 163A of the Motor Vehicle Act, 1988 since the Insurance Policy did not mention liability towards any gratuitous passenger. The Learned advocate representing the appellant Insurance Company further referred to the document marked as Exhibit-8 being a certificate of fitness which provided seat arrangement for two passengers including the Driver. However, in the instant case the number of passenger exceeded more than two to the extent of nearly nine passengers as mentioned in the charge sheet. For violation of the terms and condition of the Insurance Company, the appellant Insurance Company was not liable to compensate the claimants complying the order passed by the Learned Tribunal in MAC Case No. 498 of 2018.

4. The Learned Advocate representing the respondents/claimants submitted the Learned Tribunal to have taken each and every aspect into consideration and thereafter granted the compensation. It was further submitted the issue of gratuitous passenger was not agitated by the Learned Advocate representing the appellant/Insurance Company before the Learned

Tribunal, the contradictions of the terms and conditions of the Insurance policy was not controverted through cross examination of the prosecution witnesses.

5. Since the occurrence of the accident, the driving license, the route permit etc. and other ancillary issues have not been disputed by the Learned Advocate representing the appellant/insurance company, this Court restricts itself only to consider the point agitated by both the parties.

6. An application under Section 163A of the M.V Act does not accord the concept of fault liability, the issue of offending vehicle being occupied by more than two passengers were not taken before the Learned Tribunal. In view of the Notification dated 22nd May, 2018 as also the decision of the Hon'ble High Court in Urmila Halder v. The New India Assurance Company Ltd and the same being affirmed by the Supreme Court in Special Leave Petition, the respondent Nos. 1 and 2/claimants are entitled to Rs.5,00,000/- of just compensation with regard to the Second Schedule 1(a) as aforesaid which is replicated as follows: -

“Fatal Accidents:  
Compensation payable in case of  
Death shall be five lakh rupees.”

7. It was further submitted by the Learned Advocate for the appellant/insurance company that the Appellant/Insurance

Company submits to have deposited a sum of Rs. 8,15,456/-(Rs. 25,000 + Rs. 7,90,456/-) through two separate cheques as per challan filed by the Learned Advocate representing the appellant/insurance company.

8. The office of the Learned Registrar General, High Court, Calcutta shall encash the cheques and, thereafter, disburse the same directly to the bank accounts of the present respondent Nos. 1 and 2 /claimants as mentioned in the award passed by the Learned Judge, Motor Accident Claims Tribunal & Additional District Judge, 3rd Court, Barasat, North 24 Parganas, in MAC Case No.498 of 2018 under Section 163A of the Motor Vehicles Act, 1988 subject to payment of ad valorem Courts 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. 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.

9. Liberty granted to the appellant/Insurance Company to recover awarded amount from the owner of the offending vehicle if it is found just as directed in the impugned judgment and order is not interfered with.

10. The instant appeal and connected applications are dismissed accordingly.

11. The interim order, if any, stand vacated.
12. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

**( Ananya Bandyopadhyay, J. )**