Form No. J(2)
c.m. . A.R. (CT)

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction
(Appellate Side)

Present: The Hon'ble Justice Ananya Bandyopadhyay

F.M.A. No.63 of 2025

Jyotsna Bera & Ors.

Vs.

Cholamandalam MS General Insurance Co. Ltd. & Anr.

For the Appellants	:	Mr. Amit Ranjan Roy
For the Respondent	:	Mr. Rajesh Singh
Heard & Judgment On	:	24.10.2025

<u>Ananya Bandyopadhyay, J.:</u>

1. Both the Learned Advocates representing the respective parties are present in Court.

2. The instant appeal had been filed against the judgment and award dated 25th September, 2024 passed by the Learned Judge, Motor Accident Claims Tribunal, Fast Track Court, Tamluk, Purba Medinipur in Motor Accident Claim Case No. 78 of 2020 under Section 166 of the Motor Vehicles Act.

3. An application under Section 166 of the motor vehicles Act had been filed by the claimants owing to the death of the victim in an accident which occurred on 29^{th} December, 2019 at about 6.30. P.M. at Madhakhali near Matara Feed Center within the jurisdiction of Mouja Madhakhali, J.L. No. 221 within the jurisdiction of Bhupatinagar Police station with the involvement of the offending vehicle being a motor cycle bearing registration No. WB-30AE/3540 approaching at an excessive speed rashly and negligently which collided with the victim who subsequently expired on 01.01.2020 at N.R.S. Medical Collage and Hospital as a consequence of receiving injuries out of the said accident.

4. The Learned Advocate representing the appellants/claimants submitted to have filed the instant appeal since the Learned Tribunal had deducted $1/4^{th}$ instead of 1/3 on account of personal expenses without considering the number of the claimants to be 4. The Learned Advocate representing the appellants/claimants further submitted that the Learned Tribunal did consider the claimants No. 1 to 4 to be entitled for receiving the compensation, however, at the time of computing the compensation deducted $1/3^{rd}$ towards personal expenses instead of $1/4^{th}$ and relied on the decisions of the Hon'ble Supreme Court in National Insurance Company Ltd. Vs. Birender[1] and Seema Rani & Ors. Vs. The Oriental Insurance Co. Ltd. & Ors.[2] . It was further submitted that the married daughters in view of the aforesaid decisions were entitled to compensation irrespective of the factor of their dependency

[1] AIR 2020 Supreme Court 434
[2] 2025 SAR online (SC) 171

upon the deceased victim being legal representative entitled to the compensation amount as mentioned therein.

5. Learned Advocate representing the respondent No.1/ Insurance Company refuted the contentions of the Learned Advocate representing the appellants and relied on the decisions of the Hon'ble Supreme Court in Manjuri Bera Vs. Oriental Insurance Company Ltd.[3] And Deep Shikha & Anr. Vs. National Insurance Company Ltd. & Ors.[4] stating the status of the married daughters in absence of their exclusive dependency upon the deceased victim did not entitle them to any kind of compensation and the Learned Tribunal should have considered the number of claimants to be 2 instead of 4 in the instant case.

6. The observations of the Hon'ble Supreme Court in National Insurance Company Ltd. Vs. Birender and Seema Rani & Ors. Vs. The Oriental Insurance Co. Ltd. & Ors *inter alia* stating as follows:

> *11. According to Section 2(11) CPC, "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued. Almost in similar terms is the definition of legal representative under the Arbitration and Conciliation Act, 1996 i.e. under Section 2(1)(g).*
>
> *12. As observed by this Court in Custodian of Branches of Banco National Ultramarino v. Nalini Bai Naique [Custodian of Branches of Banco National Ultramarino v. Nalini Bai Naique, 1989 Supp (2) SCC 275] the definition contained in Section 2(11) CPC is inclusive in character and its scope is wide, it is not confined to legal heirs only. Instead it stipulates that a person who may or may not be legal heir competent to inherit the property of the deceased can represent the*

[3] (2007) 10 Supreme Court Cases 643
[4] 2025 INSC 675

estate of the deceased person. It includes heirs as well as persons who represent the estate even without title either as executors or administrators in possession of the estate of the deceased. All such persons would be covered by the expression "legal representative". As observed in Gujarat SRTC v. Ramanbhai Prabhatbhai [Gujarat SRTC v. Ramanbhai Prabhatbhai, (1987) 3 SCC 234 : 1987 SCC (Cri) 482] a legal representative is one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent and child." In paragraph 15 of the said decision, while adverse Section 140 of the Act, the Court observed that even if there is no loss of dependency, the claimant representative, will be entitled to compensation. In the concurring judgment of Justice S.H. Kapadia, it is observed that there is distinction between 'right to apply for compensation' and 'entitlement of compensation constitutes part of the estate of the deceased. As a result, the legal representatives of the estate. Indeed, in that case, the Court was dealing with the case of a married daughter of the deceased Section 140 of the Act. Nevertheless, the principle underlying the exposition in this decision would the respondent Nos. 1 and 2 (Claimants) even though they are major sons of the deceased and also earn.

14. *It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the legal representative concerned was fully dependent on the deceased and not to limit the claim towards conventional heads only. The evidence on record in the present case would suggest that the claimants were working as agricultural labourers on contract basis and were earning meagre income between Rs 1,00,000 and Rs 1,50,000 per annum. In that sense, they were largely dependent on the earning of their mother and in fact, were staying with her, who met with an accident at the young age of 48 years.*

9. *We have heard the learned counsel for the Appellants. We are unable to agree with the view taken by the Tribunal on the dependants of the deceased. This Court in National Insurance Company Ltd. V. Birender & Ors. Had expounded that major married and earning sons of the deceased, being legal representatives, have a right to apply for compensation, and the Tribunal must consider the application, irrespective of whether the representatives are fully dependent on the deceased or not. The Court went on to conclude that since the sons, in that case, were earning merely Rs. 1,50,000/- per annum, they were largely dependent on the earnings of the deceased and were staying with her".*

Section 166 of the Act corresponds to Section 110 of the Motor Vehicles Act, 1939 (hereinafter referred to as "the Old Act") and the same reads as follows:

> "*166. Application for compensation*.—(1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of Section 165 may be made—
>
> (*a*) by the person who has sustained the injury; or
>
> (*b*) by the owner of the property; or
>
> (*c*) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or
>
> (*d*) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:
>
> Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.
>
> (2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred, or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:
>
> Provided that where no claim for compensation under Section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.
>
> ***
>
> (4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of Section 158 as an application for compensation under this Act."

9. In terms of clause (*c*) of sub-section (1) of Section 166 of the Act in case of death, all or any of the legal representatives of the deceased become entitled to compensation and any such legal representative can file a claim petition. The proviso to said sub-section makes the position clear that where all the legal representatives had not joined, then application can be made on behalf of the legal representatives of the deceased by impleading those legal representatives as respondents. Therefore, the High Court was justified in its view that the appellant could maintain a claim petition in terms of Section 166 of the Act.

10. Section 168 of the Act reads as follows:

> "168. *Award of the Claims Tribunal*.—On receipt of an application for compensation made under Section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of Section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be:
>
> Provided that where such application makes a claim for compensation under Section 140 in respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter X.
>
> (2) The Claims Tribunal shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case within a period of fifteen days from the date of the award.
>
> (3) When an award is made under this section, the person who is required to pay any amount in terms of such award shall, within thirty days of the date of announcing the award by the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct."

The Tribunal has a duty to make an award, determine the amount of compensation which is just and proper and specify the person or persons to whom such compensation would be paid. The latter part relates to the entitlement of compensation by a person who claims for the same.

11. According to Section 2(11) CPC, "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued. Almost in similar terms is the definition of legal representative under the Arbitration and Conciliation Act, 1996 i.e. under Section 2(1)(*g*).

12. As observed by this Court in *Custodian of Branches of BANCO National Ultramarino* v. *Nalini Bai Naique* [1989 Supp (2) SCC 275 : AIR 1989 SC 1589] the definition contained in Section 2(11) CPC is inclusive in character and its scope is wide, it is not confined to legal heirs only. Instead it stipulates that a person who may or may not be legal heir competent to inherit the property of the deceased can represent the estate of the deceased person. It includes heirs as well as persons who represent the estate even without title either as executors or administrators in possession of the estate of the deceased. All such persons would be covered by the expression "legal representative". As observed in *Gujarat SRTC* v. *Ramanbhai Prabhatbhai* [(1987) 3 SCC 234 : 1987 SCC (Cri) 482 : AIR 1987 SC 1690] a legal representative is one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent and child.

13. There are several factors which have to be noted. The liability under Section 140 of the Act does not cease because there is absence of dependency. The right to file a claim application has to be considered in the background of right to entitlement. While assessing the quantum, the multiplier system is applied because of deprivation of dependency. In other words, multiplier is a measure. There are three stages while assessing the question of entitlement. Firstly, the liability of the person who is liable and the person who is to indemnify the liability, if any. Next is the quantification and Section 166 is primarily in the nature of recovery proceedings. As noted above, liability in terms of Section 140 of the Act does not cease because of absence of dependency.

………………………………..

> *"Once a daughter is married, logical presumption is that she now has rights on her matrimonial household and is also financially supported by her husband or his family, unless proven otherwise. It is more than likely that her dependence on her natal family, including her mother has now ceased. Sections 166 and 168 of the Motor Vehicles Act, 1988 focus on the financial relationship between the deceased and the Claimant. A married daughter may be considered a legal representative, as per Manjuri Bera, but she will not be eligible for loss of dependency compensation unless it is proven by the daughter that she was financially dependent on the deceased. Thus, it is clear from the record that Appellant No. 1 has failed to prove that she was being financially supported by her mother post marriage and hence cannot be said to be a dependent of her mother, the deceased.*
>
> *Therefore, it is our opinion the High Court correctly relied on Manjuri Bera while holding that Appellant No.1, as the legal representative of the deceased, will only be entitled to compensation envisaged in Section 140 of the Motor Vehicle Act, 1988 as liability under the same does not cease to exist in the absence of dependency.*
>
> *However, the High Court erred in setting aside the Tribunal's award as it relates to Appellant No. 2, the mother of the deceased. Appellant No. 2 was aged about 70 years of age at the time of the accident resulting in the death of her daughter, the deceased, and was solely dependent on the deceased as she lived with her and had no independent income, there is no evidence on record to rebut the same.*
>
> *The obligation of a child to maintain their parent in old age is as much of a duty as the obligation of a parent to maintain their child during*

minority. The deceased, being the only provider, would be assumed to be fulfilling this obligation, further reinforcing Appellant No. 2's status as a dependent. Therefore, the untimely demise of the deceased may create difficulties for Appellant No. 2 going forward, resulting in hardship. Even if it is assumed that Appellant No. 2 was not dependent on the deceased at the time of the accident, the possibility of future dependency cannot be disregarded."

7. The composite reading of the aforesaid decisions deduced the right of a legal representative to claim compensation in the event of the death of a victim in an accident and it is the incumbent upon the Learned Tribunal to assess the right to claim such compensation on the basis of his or her dependency on the deceased victim. In a case of a married daughter the absolute dependency on her father/mother is required to be proved. The P.W.1 in her evidence before the Learned Tribunal stated "all the claimants were fully dependent upon the income of my deceased husband except his income there are no source of income of our family". The respondent No.1/insurance company did not controvert the deposition of P.W.1 in her examination in chief through the cross examination and uncontroverted evidence assumed the status of admissibility. The uncontroverted evidence can gain probative value on failure to cross examine the witness amounting to tacit admission. The standard on proof in such cases contrary to a criminal trial construed preponderance of probability and not " beyond reasonable doubt". It is inferred to be more likely to be true based on the evidence presented when a party fails to prove contrary evidence or through cross examination of witnesses on the disputed facts. In the instant case the deposition of the P.W.1 in the examination in chief made her version

of dependency on the appellant Nos. 3 and 4 being the married daughters more probable in absence of cross examination on the said point by the respondent No.1/insurance company. The appellants/claimants in the facts and circumstances of the case, therefore, had the right to claim compensation the Learned Tribunal accordingly should have deducted 1/4th of the annual income of the deceased victim while computing the compensation to be awarded.

8. Considering the observations of the Hon'ble Apex Court in National insurance company Ltd. Vs. Pranay Shetty & Anr5 and Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr.6 The impugned award of Rs. 22,77,057/- is modified as follows:

Annual Income	Rs. 2,72,981/-
Personal Expenses	Rs. 68,245/-
	Rs. 2,04,736/-
Future Prospect (10%)	Rs. 20,473.60/-
	Rs. 2,25,209.60 P
Multiplier to be "11"	X 11
	Rs.24,77,305.60/-
General Damages	Rs. 70,000/-

1 2017(4)TAC 673(S.C)
[6] (2009) 6 SC 121

	Rs. 25,47,305.60/-
Less Award	Rs. 22,77,057/-
Entitlement	Rs. 2,70,248.60/-

9. The Learned Advocate for the appellants/claimants submitted that the appellants/claimants have withdrawn a sum of Rs. 22,77,057/-. The appellants/claimants are entitled to a sum of Rs. 2,70,248.60/- along with interest at the rate of 6 per cent per annum to be paid from the date of filing of the claim application till the date of realization. In view of the observation of the Hon'ble Supreme Court in **Parminder Singh Vs. Honey Goyal & Ors.**[7] the appellants/claimants are to provide the details of Bank Accounts held in the name of the appellants/claimants at the office of the Learned Registrar General, High Court at Calcutta for disbursal of the compensation amount.

10. The Learned Advocate for the respondent No.1/insurance company is to deposit the balance sum of Rs. 2,70,248.60/- along with interest before the office of the Learned Registrar General, High Court at Calcutta within two months from the date of passing of this order.

[7] 2025 INSC 361

11. The office of the Registrar General, High Court, Calcutta shall encash the said cheque and, thereafter disburse the same directly to the bank accounts of the present appellants/claimants as mentioned in the impugned judgment and order passed by the Learned Judge, Motor Accident Claims Tribunal, Fast Track Court, Tamluk, Purba Medinipur in Motor Accident Claim Case No. 78 of 2020 under Section 166 of the Motor Vehicles Act on proof of proper identification of the appellants/claimants subject to payment of *ad valorem* court fees.

12. The instant appeal is disposed of accordingly.

13. The pending applications, if any, stands disposed of.

14. The TCR be sent down to the concerned Tribunal forthwith.

15. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)