

Form No. J(2)

District:

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

Appellate Side

Present :

The Hon'ble Justice Ananya Bandyopadhyay

FMA 851 of 2025

NATIONAL INSURANCE CO. LTD.

VS.

BINA RAJWAR & ORS.

Ms. Sucharita Paul

... for the appellant/Insurance Company

Mr. Jayanta Kumar Mondal

Mr. Sayantan Rakshit

... for the respondents/claimants

Heard on : 08.07.2025

Judgment on : 08.07.2025

Ananya Bandyopadhyay J.

1. The learned advocates representing both the parties are present in court.

2. The instant appeal had been filed against the judgement and order dated 13.11.2019 passed by the learned Judge, Motor Accident Claims Tribunal, 1st Court at Purulia in MAC Case No.38 of 2017/40 of 2017.

3. An application under Section 166 of the Motor Vehicle Act, has been filed by the respondents/claimants on account of death of the victim in an accident which took place on 13.12.2016 at about

5:00/5:30 pm on Manbazar, Purulia, Pitch Road within jurisdiction of Purulia(M) Police Station with the involvement of the offending vehicle Mahindra Maxima bearing WB-42D-2996 which approaching at a excessive speed rashly and negligently clashed the victim who was returning home from his work driving a Motor Cycle bearing registration WB-56 G/7467. The victim expired on his way to the Deben Mahato Sadar Hospital, Purulia.

4. Learned advocate representing the appellant Insurance Company submitted that the appellant Insurance Company was not liable to pay the compensation since the complaint was lodged after a delay of 28 days. Moreover, the Form-16 marked as exhibit-11/2 for the assessment year 2017-18 related to nine months income instead of the entire year. Further, the learned tribunal had erroneously granted the interest at the rate of nine per cent from the date of filing the deficit court fees till the date of its actual realization.

5. The learned advocate representing the respondents/claimants submitted that the tribunal after assessing the oral as well as the documentary evidence in its proper perspective had justifiably award compensation which should not be interfered with.

6. Since the quantum and any other issue had not been agitated with regard to compensation awarded the reason for delay in filing the complaint had been adequately expressed.

7. The documents marked as exhibit-I, being the complaint palpably and reasonably mentioned the reason for delay of filing the

same which eradicated the possibility of false of implication of the offending vehicle.

8. The learned Tribunal had vividly explained the reason for considering the monthly income of the victim to be Rs.37,942/- which was reduced to Rs.37,000/- only approximately and the same can be replicated as follows :-

“ Regarding the income of the deceased Purusottam Rajwar, claimants side by adducing evidence of PW3, Partha Sarathi Upadhya, Assistant Divisional Finance Manager, Adra Division, claimants side able to show that deceased was an employee of Indian Railway of South Eastern Railway under Adra Division. The witness proved the computer generated Form 16 of the deceased for the assessment year 2015-16, 2016-17, 2017-18 (exhibit-11 series). On perusal of Exhibit-11 series and Exhibit-9, I find that Gross Salary of the deceased for the month of November was Rs.40,526/- which includes an amount of 2584 towards arrear Dearness Allowance. Obviously, amount received towards arrear D.A is not a recurring income and as such the same should be deducted to calculate the monthly income of the deceased. On going through Exhibit-11 series (Form 16) of the deceased, I find that consecutive three previous years from the death of Purusottam Rajwar, Income Tax of the deceased was NIL. That being position, in calculating the compensation the monthly salary of the deceased should be taken as Rs.37,942/- (40526/- -2584/) and which comes around Rs.37,000/-.”

9. In view of the aforesaid reasons cited by the learned Tribunal, this court does not find it necessary to interfere with the same. However, the impugned Judgement and Order is modified to the

following extent that the entire compensation awarded by the learned tribunal should be paid at a rate of interest @ 6 percent per annum from the date of filing of the application under Section 166 of the Motor Vehicle Act till the date of its realisation.

10. Learned advocate representing the appellant/Insurance Company submitted to have deposited a sum of Rs.56,32,743/- at the High Court at Calcutta. The balance amount whether in excess was in deficit should be appropriately dealt with in receiving the same to the learned advocate representing the appellant Insurance Company through a cheque and/or otherwise to be deposited by the learned Tribunal representing the appellant/Insurance Company proportionately within two months.

11. 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 directly bank accounts of the respondents/claimants as mentioned by learned Judge, Motor Accident Claims Tribunal, 1st Court at Purulia in MAC Case No.38 of 2017/40 of 2017 on proof of proper identification of the respondents/claimants subject to payment of ad valorem Court fees and refund the balance amount, if any, along with accrued interest through a cheque to the Learned Advocate for the Appellant/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.

12. The instant appeal is disposed of accordingly.
13. The interim order if any stand vacated.
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.
16. Urgent Photostat Certified copy of this Judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Ananya Bandyopadhyay, J.)