

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
(CIVIL APPELLATE JURISDICTION)
APPELLATE SIDE**

Present:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

FMAT 2 of 2021

Gouri Singha & Anr

Versus

Abhijit Biswas & Anr.

For the Appellants : Mr. Uday Sankar Sarkar
Mr. Ajoy Kumar Singhanian

For the Respondent/Insurance Co. : Mr. Abhijit Ray Chaudhuri

Heard on : 11.03.2025

Judgment on : 19.03.2025

Dr. Ajoy Kumar Mukherjee , J.:

1. The instant appeal has arisen against the order of dismissal passed by the Tribunal below dated 29th February, 2020 in MAC Case no. 32 of 2016. The background incident of preferring the claim application by the petitioners/ appellants is that while on the date of accident the victim was proceeding on riding his own motor cycle bearing no. WB 64D 3898 from western side towards eastern direction and when he reached near ITI More

choupathi, another motor cyclist of Motor cycle no. WB 64 0967 knocked and dashed him. It is the specific case of the appellants that at the relevant point of time, the said motor cyclist was driving his motor cycle in a rash and negligent manner and caused the accident.

2. Due to such accident victim sustained fatal injuries and in connection with the said accident Kotwali P.S. case no. 190/15 dated 21.02.2015 under sections 279/338/304A of the IPC was initiated against the said Motor Cyclist.

3. The petitioners made a prayer for awarding compensation of Rs. 31, 05,664/- contending that the victim was a government employee and posted at MJN District Hospital, having monthly salary of Rs.20,241/- and that the victim was 49 years old at the time of his death, as he was born on 15.06.1966.

4. The Tribunal below framed five issues for adjudication of the claim application. On perusal of the judgment impugned it appears that the Tribunal below has not discussed the issues on merit but on perusal of exhibit 15 and 16, he came to a finding that this is not a fit case where the compensation can be awarded in favour of the claimants as exhibit 15 is a manufactured certificate prepared at the instance of petitioners and issued by District Magistrate Cooch behar, where he only declared son and wife of the victim as the legal heirs but excluded the two married daughters of the victim and exhibit 16 is the service book wherein though the name of the victim has been appearing but the person's father's name has been written as "late Birendra Chandra Singha" though father's name of victim admittedly is "Brindaban Singha". Accordingly Tribunal below came to a

finding that the claimants have not come before the court with clean hand, as they obtained the heirship certificate from the District Magistrate with mala fide intention suppressing that the deceased died leaving behind two married daughters also and that the service book which has been marked as exhibit 16 in connection with the present case may not be the service book of the deceased, since father's name of the employee is appearing therein as "Birendra Chandra Singha", and not "Brindaban Singha" who was the actual father of victim.

5. Being aggrieved by that judgment the appellants herein submits that they have no role to play, if the father's name of the deceased have been wrongly recorded by the government staff in the service book and as such the order of dismissal is not at all justified which has been passed on the basis of assumption that exhibit 15 and 16 as stated above are manufactured documents which were obtained from government office to which the petitioners had no control. However, appellants submits that in the cause title of the claim application the claimants have impleaded all the legal heirs of deceased Sankar Singh including the married daughters who has been impleaded as Proforma Respondents. Regarding identity of the deceased the claimants have filed and proved victim's valid Identity Card issued by the Government of West Bengal bearing photo of the victim which is marked as exhibit 11.

6. Having heard learned counsel appearing on behalf of the claimants/ appellants as well as insurance company/respondents it appears to me that the judgment impugned suffers from perversity in view of the fact that the identity of the deceased was never under challenge nor it was ever the

case of the respondents in their written statements that the victim was not an employee of Health and Family Welfare Department, Government of West Bengal and posted at MJN District Hospital. The last payslip of the victim for the month of January 2015 was also never under challenge. The insurer/Respondents only stated in their written statement that they are not aware of such fact. In such view of the matter, if the government authority misspelt his father's name in the service book, that is beyond the control of the petitioners/claimants and that cannot stand as a ground for dismissal of the claim application under the Motor vehicles Act, suo moto questioning identity of the deceased without having any evidence to that effect.

7. The impugned judgment is also perverse in view of the fact that even if there is any suppression of mentioning any of the legal heirs of the victim anywhere either on any documents or in the claim application, that cannot stand as a ground for dismissal of a claim application, because the determinative factor of "legal representative" is whether the persons has actually suffered loss due to the death of the victim or not, to be entitled to claim compensation.

8. Even in a very recent judgment in ***Sadhana Tomar and others Vs. Ashok Kushwaha and others*** reported in **2025 Live Law (SC) 309**, Supreme court held that the term 'legal representative' under the Motor Vehicle Act, 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 or child. However in the present case the claimants in their claim applications have impleaded all the legal

heirs of the deceased and as such the Tribunal below had no occasion to dismiss the claim application on that ground.

9. When the claimants have able to prove the last income of the deceased, as well as the age of the deceased and able to show that victim's death is due to rash and negligent driving on the part of the Motor Cyclist of offending cycle, the legal representatives mentioned in the claim application are entitled to get compensation in accordance with following calculation, from the valid insurance of the offending vehicles.

(i) After deducting professional tax paid by victim his monthly income stands Rs.20,111/- and as such his annual income was Rs.2,41,332/-

(ii) Less $1/4^{\text{th}}$ of the amount for personal living expenses = Rs. 60,333/-

(iii) Multiplicand = Rs.1,80,999/-

(iv) Multiplicand is to be multiplied with multiplier 13 since at the time of the victims death he was within the age group of 40 to 50 years = Rs.23,52,987/-

(v) Add 30% future prospect Rs. 30,58,833/-

(vi) Add loss of estate Rs.15,000/-

(vii) Add funeral expenses Rs. 15,000/-

(viii) As loss of consortium Rs.40,000/-

(ix) Add 20% enhancement of General damages Rs.14,000/-

(x) Total Rs.31,42,883/-

10. In view of aforesaid discussion and in view of material available in the record the appeal being **FMAT 2 of 2021** is allowed. The respondent Bajaj Alliance General Insurance company Limited is hereby directed to pay

31,42,883/- along with 5% simple interest calculated from the date of the filing of the application, to all the legal representatives mentioned in the claim application in equal share, within a period of 6 (six) weeks from the date of communication of the order, failing which the claimants/appellants will be at liberty to initiate appropriate execution proceeding for realization of the claim amount.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Dr. AJOY KUMAR MUKHERJEE, J.)