

Item **05.01.**
No. **2026**
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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Ct
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FMA 137 of 2011
With

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IA NO: CAN 1 of 2011 (Old No. CAN 5526 of 2011)

Maya Das & Anr.
Vs

The New India Assurance Co. Ltd. & Anr.

Mr. Saidur Rahaman.

... for the appellants.

Mr. P. K. Pahari.

... for the respondent/insurance company.

Learned advocate for the appellants and learned
advocate for the respondent no.1/New India
Assurance Co. Ltd. are present.

Heard the learned advocates.

The appellants before this Court were the
claimants in a case under Section 163A of the Motor
Vehicles Act 1988 and is aggrieved by the judgement
and award dated 04.02.2010 passed by the Learned
Additional District Judge, 3rd Court, Malda in MAC
Case No. 37 of 2008. The case of the
appellants/claimants may be summed up thus:-

On 20.10.2005 at about 12.30 p.m. the deceased
victim Nikhil Das who was the driver of the truck
bearing No. WB-65/5381 was coming with his truck
loaded with bamboos from Silchar and proceeding

toward Guwahati and when he reached at Chichruphi village the said truck dashed against the hillock, and as result the driver of the said truck i.e. Nikhil Das died on spot and one Uttam Roy, who was the helper of the said truck, sustained multiple grievous injuries. One S.I. D.R.R. Lakiang lodged the written complaint at Khlichriat P.S. about the accident and on the basis of said G.D.E. No. 545 KIT U.D. Case No.22(10)/2005 was started. Post mortem examination over the dead body was held at District Medical and Health Office, Jamtia Hills, Jawai. The contention of the claimants was that due to death of the victim the claimants being the wife and son have filed this appeal for compensation amounting to Rs.3,50,000/-.

Pursuant to the institution of the case, notice was served upon the vehicle owner and the respondent no.1/ New India Assurance Co. Ltd. The respondent no.1/New India Assurance Co. Ltd. contested the case by filing written statement. Issues were framed and evidence was adduced by the claimants/appellant.

By the judgement and award dated 04.02.2010, the Learned Trial Judge was pleased to dismiss of MAC Case No. 37 of 2008 by observing and directing as follows:-

“Hence,

ORDERED

That the M.A.C. Case No.37/2008 be and the same is dismissed on contest against the O.P./New India Assurance Co. Ltd and the same is dismissed ex-parte against the O.P./owner of the offending vehicle No. WB-65/5381.”

The appellants/claimants being aggrieved by the judgment and award has come up with the instant appeal. It is the contention of the appellants that the Learned Trial Court failed to appreciate the claimant's version of the case in its proper perceptive and erroneously dismissed the claim case. It is further contended that the Learned Trial Judge has mechanically held that there is no evidence at all that any accident took place and have also contended that the Learned Trial Judge failed to appreciate the fact that while the offending vehicle met with an accident and driver died, a Suo-Moto FIR lodged by S.I. of police of the concerned police station is sufficient to prove the accident.

Heard the learned advocate for the appellants/claimants and learned advocate for the respondent no.1/ New India Assurance Co. Ltd. Perused the evidence adduced and materials on record.

Learned advocate for the appellant submits that the Learned Trial Judge without applying his mind to the facts of the case has dismissed the claim case.

Learned advocate further draws attention to the complaint made by the police authority and the observation made in the report and submits that these relevant documents will go to show that death of the victim took place due the motor vehicle accident. Learned advocate also submits that in spite of the relevant documents being submitted the Learned Trial Judge erred in dismissing the complain case.

Learned advocate appearing for the respondent no.1/ New India Assurance Co. Ltd. submits that relevant documents were not submitted by the claimant/appellants and the vehicle involved in the accident did not have any valid fitness certificate.

Upon hearing the learned advocates and upon considering the materials on record, it appears that on 24.10.2005 a report was submitted to the Officer-in-Charge of Khlichriat police station regarding the accident which mentions the name of the victim Nikhil Das and the vehicle number. Further upon perusing the final report with regard to the UD case also it appears that the vehicle number and the name of the victim was mentioned. The Post Mortem report also mentions that death of the victim took place due to shock and hemorrhage caused due to injury in an accident. Although relevant documents were submitted by the appellants save and except the fitness certificate which was not valid others were not

disputed. Although it is submitted by the learned advocate for the appellants that relevant documents are usually produced before the insurance authority for renewing the policy of insurance but at this stage there is no evidence with regard to the same. It is an admitted position that vehicle involved in the accident did not have any fitness certificate but considering the fact that the other documents regarding registration certificate, the driving licence, the valid permit and the insurance policy was produced, it was incumbent of the insurance company to prove by adducing evidence that by not obtaining fitness certificate, the vehicle owner has violated the condition of the policy.

It is also well settled that if the condition of the policy of insurance is violated by the vehicle owner the insurance company cannot be absolved but will be granted liberty to recover from the owner of the vehicle upon payment of the insurance claim.

Before proceeding to make further observation it is also necessary to consider the provision of Section 163A of the Motor Vehicles Act 1988. The Section 163A of the Motor Vehicles Act provides as follows:-

“163.-A. Special provisions as to payment of compensation on structural formula basis.-(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or

permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation.- For the purposes of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule."

Thus from the plain reading of the Section 163A of the Motor Vehicles Act, it is not necessary to prove that there was rash and negligent driving but an accident occurred out of use of the motor vehicle. As motor vehicles accident claims is welfare legislation there should be liberal construction of the provision contained therein and rigid view should not taken.

Upon considering the provision of section 163A of the Motor Vehicles Act and the facts of the case, it is an admitted position that death of the victim took place due to use of motor vehicle being truck No. WB-65/5381.

Thus, the claimants/appellants are entitled to compensation. It is an admitted position that occupation of the victim was a driver and although the income could not be established but considering the

remuneration usually paid to the driver it would not be unreasonable to treat the monthly income of the victim to be Rs.3000/- per month. As the victim is to earn Rs.3000/- per month the yearly income to comes to Rs.36,000/-. 1/3rd should be deducted on account of personal expenditure and thus the annual dependency loss comes to Rs.24,000/-. Thus total dependency loss comes to Rs. 3,12,000/-. Further the claimants are entitled to Rs.9500/- as general damages. Thus Rs. 3,21,500/- is the total compensation which appellants/claimants are entitled to from respondent no.1/ New India Assurance Co. Ltd.

Hence, this appeal stands allowed. The judgment and award dated 04.02.2010 passed by Learned Additional District Judge, 3rd Court, Malda in MAC Case No. 37 of 2008 is set aside.

The appellants/claimants are entitled to compensation to Rs. 3,21,500/- from the respondent no.1/ New India Assurance Co. Ltd. along with interest @ 5% per annum from the date of filing of the claim case till today.

Such deposit shall be made before the Registrar General, High Court, Calcutta within a period of eight weeks from the date of communication of this order.

Upon deposit of the amount being made the claimants/appellants will be permitted to withdraw

the same upon compliance of all necessary formalities in equal shares.

With the aforesaid observation, the appeal along with connected application stand disposed of

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Biswaroop Chowdhury, J.)