Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice Ananya Bandyopadhyay

FMA 699 of 2023

National Insurance Co. Ltd.
Versus
Smt. Rinku Roy & Ors.

For the Appellant	:	Mr. Sanjay Paul.
For the Respondent Nos. 1 to 4	:	Mr. Amit Ranjan Roy
Heard & Judgment on	:	29th January, 2026

Ananya Bandyopadhyay, J:

1. Both the Learned Advocates representing the appellant/Insurance Company and the respondent Nos. 1 to 4/claimants are present.
2. The instant appeal had been filed against the judgment and award dated 03.06.2023 passed by the Learned Judge, Motor Accident Claims Tribunal cum Additional District, Fast Track Court-III, Howrah in M.A.C. Case No. 113 of 2018.
3. An application under Section 166 of the Motor Vehicles Act had been filed on account of the accident which occurred on 23rd March, 2018 at about 10.00 a.m. with the involvement of the

offending vehicle being truck bearing registration No. WB-11C/5615 approaching at an exceeding speed, rashly and negligently collided with a bicycle being driven by the victim as a result of which the victim sustained severe injuries on his body and was declared dead at Medical Collage and Hospital, Kolkata on the same date.

4. The Learned Advocate representing the appellant/Insurance Company submitted that the Learned Tribunal had erroneously considered the monthly income of the victim to be Rs. 6000/- notionally without considering the age of the victim to be 68 years at the time of the accident. More-over, the victim was survived by two married daughters and two sons. The married daughters of the victim were not entitled to any compensation. A sum of Rs. 44,000/- was granted towards loss of spousal consortium which was contrary to the principle enumerated in National insurance company Ltd. Vs. Pranay Shetty & Anr. The penal interest of 12% was exorbitant.

5. The learned Advocate representing the respondent Nos. 1 to 4/claimants submitted that the Learned Tribunal was justified in assessing the amount of compensation and that the married daughters of the victim being the legal representatives were entitled to receive the compensation.

6. Considered the submissions of the learned Advocates representing both the parties.

7. Since, the occurrence of the accident, involvement of the offending vehicle, the driving license, Insurance certificate etc. are not disputed by the learned advocate representing the appellant/insurance company,

8. However, in view of The Hon'ble Supreme Court held the following in **National Insurance Co. Ltd.. v. Birender**[1]

14. "The legal representatives of the deceased could move application for compensation by virtue of clause (c) of Section 166(1). The major married son who is also earning and not fully dependant on the deceased, would be still covered by the expression "legal representative" of the deceased. This Court in Manjuri Bera (supra) had expounded that liability to pay compensation under the Act does not cease because of absence of dependency of the concerned legal representative. Notably, the expression "legal representative" has not been defined in the Act. In Manjuri Bera (supra), the Court observed thus:

9. In terms of clause (c) of subsection (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 subsection 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. .....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

[1] **, AIR 2020 Supreme Court 434**

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 de ceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or issued 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 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 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 adverting to the provisions of Section 140 of the Act, the Court observed that even if there is no loss of dependency, the claimant, if he was a legal representative, will be entitled to compensation. In the concurring judgment of Justice S.H. Kapadia, as His Lordship then was, it is observed that there is distinction between "right to apply for compensation" and "entitlement to compensation". The compensation constitutes part of the estate of the deceased. As a result, the legal representative of the deceased would inherit the estate. Indeed, in that case, the Court was dealing with the case of a married daughter of the deceased and the efficacy of Section 140 of the Act. Nevertheless, the principle underlying the exposition in this decision would clearly come to the aid of the respondent Nos. 1 and 2 (claimants) even though they are major sons of the deceased and also earning".

15. However, in view of The Hon'ble Supreme Court held the following in **Seema Rani & Ors. Vs. The Oriental Insurance Co. Ltd. & Ors.**[2]

> ***9. We have heard the learned counsel for the Appellants. We are unable to agree with the view taken by the Tribunal on the dependents of the deceased. This Court in National Insurance Company Limited v. Birender & Ors., had expounded that the 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 of 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.***
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> ***10. Adverting to the facts at hand, on a perusal of the statement of Shashi Kumar, the son of the deceased (Appellant No. 2 herein), annexed as Annexure P6, was working at a petrol pump, while the other son was involved in temporary employment opportunities only. Both of them were residing with the deceased. In such circumstances, it cannot be said that they were self-sufficient or independent of the deceased. Similarly, applying the exposition in Birender (supra), there is no reason to exclude a married daughter from compensation. Therefore, in view of the High Court erred in excluding these dependents.***

16. In view of the opinion of the Hon'ble Supreme Court as cited above, the monthly income of the married daughters should be considered as Rs. 6000/- per month.

17. Considering the observations of the Hon'ble Apex Court Pranay in National insurance company Ltd. Vs. Pranay Shetty & Anr3 and

[2] 2025 SAR (CIV) 447

1 2017(4)TAC 673(S.C)

Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr.[4] The impugned award of Rs. 3,47,000/- is modified as follows:

Monthly Income Annual Income	Rs. 6000/- X 12
	Rs. 72,000/-
Less 1/4th Personal Expenses	Rs. 18,000/-
	Rs. 54,000/-
Multiplier to be "5"	X 5
	Rs. 2,70,000/-
General damages	Rs. 33,000/-
	Rs. 3,03,000/-

1. The learned Advocate representing the appellant/Insurance Company submits to have deposited a sum of Rs.3,47,000/-(Rs. 25,000/- + 3,22,000/-) through two separate cheques as per challan filed by the learned advocate representing the appellant/insurance company.

18. The Respondent Nos. 1 to 4/claimants are entitled to receive the amount of Rs. 3,03,000/- at the rate of 6% per cent per annum from the date of filing of the claim application till the date of actual realization.

19. The office of the learned Registrar General High Court at Calcutta, shall encash the cheques and thereafter disburse the

[4] (2009) 6 SC 121

entire awarded amount so deposited along with accrued interest to the bank account of the present respondent Nos. 1 to 4/claimants in equal proportion as mentioned in the impugned judgment and order passed by the Learned Judge, Motor Accident Claims Tribunal cum Additional District, Fast Track Court-III, Howrah in M.A.C. Case No. 113 of 2018 on proof of proper identification of the respondent No.1 to 4/claimants subject to payment of ad valorem Court fees and refund the balance amount, if any, through a cheque to the Learned Advocate for the Appellant/Insurance Company for the accounts of the insurance company.

20. The instant appeal is disposed of accordingly.

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

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

(Ananya Bandyopadhyay, J.)