

## Kabita Halder and Others Vs The New India Assurance Co. Ltd. and Another

**Court:** Calcutta High Court

**Date of Decision:** Nov. 30, 2009

**Acts Referred:** Motor Vehicles Act, 1988 â€” Section 166  
Penal Code, 1860 (IPC) â€” Section 279, 304A, 338

**Citation:** 114 CWN 271 : (2011) 7 RCR(Civil) 1436

**Hon'ble Judges:** Bhaskar Bhattacharya, Acting C.J.; Prasenjit Mandal, J

**Bench:** Division Bench

**Advocate:** Amit Ranjan, for the Appellant; Saibalendu Bhowmick, for the Respondent

### Judgement

Bhaskar Bhattacharya, A.C.J.

1. This appeal is at the instance of the claimants in a proceeding u/s 166 of the Motor Vehicles Act and is directed against an award dated 9th

November, 2006 passed by the learned Judge, Motor Accident Claims Tribunal and Eleventh Court of Additional District Judge, Alipore, in

M.A.C. Case No.67 of 2006 thereby dismissing the claim-application on the simple ground that there was a wrong statement made in paragraph

23 of the claim-application and such wrong statement had not been rectified by way of amendment. According to the appellants, on 17th January,

2002 the victim, namely, one Sripati Haider, the predecessor-in-interest of the appellants, died of an accident. He was travelling in a bus which due

to rash and negligent driving overturned resulting in his death. According to the claimants, Sripati Haider was aged 45 years and used to earn

Rs.4,000/- a month by selling vegetables. The widow of the victim who was a co-passenger of her husband in the said bus at the time of accident

appeared as P.W. 1 and proved the incident. The statement of P.W. 1 was also corroborated by P.W. 2. It appears that F.I.R. was marked as

Exbt.1 which revealed that a case under Sections 279 / 338 / 304A of the Indian Penal Code was filed against the driver of the offending vehicle.

Exbt.2 was the seizure list. Exbt.3 was the Xerox copy of the certificate of registration. Exbt.4 was the Insurance Certificate showing that the said

vehicle was insured at the relevant time with the New India Assurance Company Ltd. Exbt.5 was the copy of the post-mortem report showing that

Sripati Haider aged about 45 years died due to accidental injuries.

2. As indicated earlier, the learned Tribunal below held that in column 23 of the claim-application, it was mentioned that one Sambhu Nath Mondal

and other persons were travelling in the offending vehicle which was involved in the accident and as a result, Sambhu Nath Mondal and other

persons sustained serious injuries and Sambhu Nath Mondal died on the spot. According to the Tribunal, thus, there was a clear contradiction as

regards the name of the victim inasmuch as in the cause title of the application the name of Sripati Haider appeared as the victim whereas in column

23 of the application, a different name, viz. Sambhu Nath Mondal, has been mentioned.

3. We have already pointed out that due to the said bus accident, which was upturned, several persons were injured and died. The fact that Sripati

Haider had died has been well established from the oral and the documentary evidence adduced. The Insurance Company in the written statement

did not dispute the death of Sripati Haider, the predecessor-in-interest of the appellants. It, however, appeared that in column 23, the fact that

Sambhu Nath Mondal and others were injured had been indicated. If the entire claim-petition was read as a whole it will appear that Sripati

Haider, the predecessor-in-interest of the petitioner, died in the accident along with Sambhu Nath Mondal and others whose names appeared in

column 23. Such statement in column 23 cannot be a ground for dismissing the application altogether when the death of Sripati Haider is not in

dispute and it is also proved that the death occurred due to the fact that the bus overturned.

4. We, thus, find no reason of dismissal of the claim-application. Since the matter is pending for a long-time, instead of remanding the matter back,

we propose to dispose the same on the basis of materials on record.

5. In this case, it has been proved from the evidence that Sripati Haider was a vegetable seller and according to the claimants he used to earn

Rs.4,000/- a month. As pointed out by the Supreme Court in the case of Smt. Laxmi Devi vs. Md. Tabbar reported in AIR 2008 SC 1858 even

an unskilled labourer can nowadays earn Rs. 3,000/- a month. Therefore, we propose to accept the income of the victim to be at least Rs.3,000/-

a month when he has been found to be a vegetable seller. We, however, find that from Voters' Identity Card, Exbt. 8, the age of the victim

appears to be 59 years at the time of death and, thus, we are unable to accept the age of 45 years given in the claim-application. On the basis of

income of Rs. 3,000/- a month and by applying the multiplier of 8 as provided in Second Schedule of the Motor Vehicles Act for a victim aged 59

years, the amount of compensation comes to Rs. 201,500/- in terms of the Second Schedule of the Act. The claimants are also entitled to get

interest at the rate of 8% per annum from the date of filing of the application till actual payment.

6. We accordingly set aside the award impugned and allow the application for compensation by passing an award of Rs. 201,500/- with interest at

the rate of 8% per annum from the date of filing of the application till actual payment. The Insurance Company is directed to pay the amount within

a month from today by depositing the same before the Tribunal. The amount should be disbursed by issuing four cheques by equally dividing the

amount among the four claimants.

7. In the facts and circumstances, there will be, however, no order as to costs.

Prasenjit Mandal, J.

I agree.