

**(2010) 03 CAL CK 0050**

**Calcutta High Court**

**Case No:** F.M.A.T. No. 4730 of 2005 and C.A.N. No. 4077 of 2009

Debanti Debi

APPELLANT

Vs

National Insurance Co. Ltd. and  
another

RESPONDENT

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**Date of Decision:** March 23, 2010

**Acts Referred:**

- Motor Vehicles Act, 1988 - Section 166

**Citation:** (2011) ACJ 758

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

**Bench:** Division Bench

**Advocate:** Jayanta Kumar Mandal, for the Appellant; M.P. Chakraborty and Mr. Saswati Biswas, for the Respondent

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### **Judgement**

Bhaskar Bhattacharya & Prasenjit Mandal, JJ.

By consent of the parties the application being C.A.N. No. 1303 of 2010, for condonation of delay is taken up for hearing treating the same as on day's list.

2. After hearing the learned counsel for the parties and after going through the explanation given in this application, we are convinced that the appellant was prevented by sufficient cause from preferring this appeal within the period of limitation. We, thus, condone the delay of one day in preferring the appeal within the period of limitation.

3. The application, being C.A.N. No. 1303 of 2010 is, thus, disposed of.

4. Since the owner of the offending vehicle, being the employer of the appellant, did not contest the claim of the appellant and rather supported the same by giving evidence in favour of the appellant as PW 3, we shall dispense with the service of notice of appeal upon the owner of the vehicle.

5. This appeal is at the instance of the claimant in a proceeding u/s 166 of the Motor Vehicles Act, 1988 and is directed against an award dated 31.8.2005 passed by the Motor Accidents Claims Tribunal First Court at Howrah in Motor Accident Claim Case No. 854 of 2003 thereby disposing of the proceeding by awarding a sum of Rs. 1,14,500 as compensation with a direction upon the insurance company to pay the said amount within two months from the date of the order with further stipulation that in default of payment within the said period, the awarded sum should carry interest at the rate of 5 per cent per annum till realization.

6. Being dissatisfied the claimant has come up with the present appeal.

7. There is no dispute as regards death of the victim in an accident where the vehicle was owned by his employer and the death occurred in course of employment. There is also no dispute that National Insurance Co. Ltd. is the insurer.

8. At the time of hearing of the application, the learned Tribunal found that the death occurred due to rash and negligent driving of the driver.

9. Only dispute in this appeal is as regards amount of compensation awarded by the Tribunal.

10. Although the owner of the offending vehicle figures as witness of the claimant and in support of the claim of the claimant deposed that the victim used to earn Rs. 3,000 per month, the learned Tribunal disbelieved such version and decided to follow the principle of "notional income" and by applying multiplier of 4 arrived at the said figure.

11. After hearing the learned counsel for the parties and after going through the materials on record, we find that when the owner of the vehicle, being the respondent No. 2, against whom the claim has been lodged, has himself deposed that the victim used to earn Rs. 3,000 per month, there is no justification in disbelieving the owner of the vehicle when the court is going to pass award against the owner himself. Since in this case, the owner is also the employer, the liability of the insurance company will however be restricted to the amount payable to the claimant by application of the provisions of the Workmen's Compensation Act and the balance amount payable should be recoverable from the owner of the vehicle.

12. It has been established from the materials on record that the victim was aged 25 years at the time of his death. The mother of the victim, the only heir, was aged 50 years. In such circumstances, for the purpose of assessing the total amount of compensation payable by the owner, we propose to apply multiplier of 15 on the aforesaid amount of Rs. 3,000 after deducting 1/3rd for his personal expenditure. We can reasonably accept that the mother will be alive till attaining the age of 65 years. On that basis, the total amount comes to Rs. 3,60,000. The claimant is also entitled to get interest at the rate of 8 per cent per annum from the date of filing of the application till actual payment by the owner.

13. However, as indicated earlier, the liability of the insurance company, in this case, will be limited to the amount that will be payable after the proceeding was initiated under the provision of Workmen's Compensation Act. If we calculate the amount on that basis, the total amount will come to Rs. 3,25,365 with interest at the rate of 12 per cent per annum from expiry of one month from the date of accident (20.6.2003)

14. Therefore, out of the total amount of Rs. 3,60,000 with interest from 20.6.2003 till actual deposit of the balance amount should be recoverable from the owner of the vehicle.

15. The insurance company and the owner of the vehicle are directed to deposit their respective shares, indicated above, within a month from today before the Tribunal below.

16. We are conscious that in this case the claimant has limited her claim to Rs. 3,00,000 in the application but as pointed out by the Supreme Court in the case of [Nagappa Vs. Gurudayal Singh and Others](#), , that if the court itself comes to the conclusion that just compensation is higher than the amount actually claimed, there no bar in granting the award in excess of the amount claimed even without an application for amendment of the claim.

17. With the above observation, the appeal itself is thus disposed of.

18. The award impugned is modified to the extent indicated above.

19. In view of disposal of the appeal itself, the connected application, being C.A.N. No. 4077 of 2009, has become in-fructuous and is disposed of accordingly.

20. Urgent xerox certified copy, if applied for, be supplied to the appellant within one week from the date of making of such application upon compliance of all requisite formalities.