

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

Present:

The Hon'ble Justice Ajay Kumar Gupta

FMA 36 of 2025

The National Insurance Company Limited

Versus

Mongra Oraon & Anr.

For the Appellant : Ms. Supriya Singh, Adv.
Ms. Shreyosi Roy, Adv.

For the Respondents : Mr. Bhaskar Roy Mahasaya, Adv.

Heard on : 02.07.2026

Judgment on : 08.07.2026

Uploaded on : 08.07.2026

Ajay Kumar Gupta, J.:-

1. The present appeal is directed against the Judgment and Award dated 30.03.2022 passed by the Learned Judge, Motor Accident Claims Tribunal -cum- Learned Additional District Judge, 3rd (Special) Court, Jalpaiguri in M.A.C. Case No. 240 of 2012 under section 163A of the Motor Vehicles Act, 1988.

- 2.** By the said judgment, the Learned Tribunal Judge allowed the MAC Case on contest against the opposite party no. 2 – National Insurance Company Ltd. and *ex parte* against the rest without cost and awarded compensation to the tune of Rs. 3,54,000/- in favour of the respondent no. 1/claimant.
- 3.** Learned counsel appearing on behalf of the appellant/Insurance Company submitted that the instant appeal has been filed only on the point that the Insurance Company is not liable to pay any compensation amount awarded by the learned Tribunal. There is no dispute regarding the accident and the victim, who expired due to the motor traffic accident. However, the victim was a gratuitous passenger at the time of the accident since the vehicle involved in the accident was a goods carrying truck bearing registration No. WB-73-7414.
- 4.** It was further submitted that the learned Tribunal did not take notice of the facts and contents of the chargesheet, which was exhibited without any objection from the side of the respondent no. 1/claimant. If any driver of the goods vehicle carries any gratuitous passenger in the subject vehicle, then it would be a violation of the terms and conditions of the insurance policy. Accordingly, the Insurance Company is not liable to pay any compensation as awarded by the learned Tribunal. Therefore, the judgment and award passed against

the Insurance Company is liable to be set aside and/or the awarded amount may be realised from the owner of the offending vehicle for violation of the terms and conditions of the Insurance Policy. It is further submitted that the learned Tribunal further ignored the relevant statutory provisions under section 149 of the Motor Vehicles Act, 1988.

5. On the other hand, learned counsel appearing on behalf of the respondent no. 1/claimant vehemently opposed such submission and further submitted that the other pedestrian also died in the said accident. The learned Tribunal allowed their applications for compensation and directed the Insurance Company to pay the compensation amount. The Insurance Company has paid the compensation amount to those claimants without any demur. Those claimants have already received the compensation amount in those cases. The Insurance Company did not raise any objection or file any appeal against those judgments and awards passed by the Learned Tribunal. He relies on the Judgments and Awards dated 20.04.2013 and 02.04.2024 passed in the cases of **(i) Jhari Bala Roy & Anr. Vs. Rajkumar Das & Anr.**¹ and **(ii) Sunil Roy Vs. National Insurance Company Ltd. & Anr.**² Therefore, the contention of the Learned Counsel for the Appellant/Insurance Company is not tenable in law;

¹ M.A.C. Case No. 220 of 2008;

² M.A.C. Case No. 236 of 2012.

as such, the amount, awarded by the learned Tribunal, is correct and requires no interference.

- 6.** Heard the learned counsels for the rival parties and on perusal of the materials on record, this Court finds that the learned Tribunal has awarded a sum of Rs. 3,54,000/- on account of the death of the victim, Kamal Oraon. On 26.01.2008, the victim went to Mahakal Dham to perform a Puja of Mahakal Baba along with his friends, and after completion of the Puja, they were standing on the extreme Kuccha portion of the road near Mahakal Dham. At that point of time, the offending vehicle was moving at a very high speed in rash and negligent manner, and as the said truck reached near Mahakal Dham, all of a sudden, it overturned and fell down on the road. As a result, the victim and his friends, who were standing on the kuchha road, sustained grievous injuries on their persons. Immediately, the local people made arrangements for their treatment. The victims who were seriously injured were admitted to North Bengal Medical College and Hospital, Siliguri, but, unfortunately, the victim, Kamal Oraon, died on the night of the incident.
- 7.** The legal heir and representative of the victim filed an application for compensation under Section 163A of the MV Act and adduced evidence of P.W. 1 and exhibited a number of documents, including

an Insurance Policy of the offending vehicle, which was valid on the date of the accident.

- 8.** It is an admitted fact that the accident occurred and the victim died due to serious injuries caused by the said accident. When the case is filed under Section 163A of the Motor Vehicles Act, there is no need to prove the rash and negligent driving of the driver of the offending vehicle since it falls under “no fault liability”.
- 9.** So far as the arguments raised by the Learned counsel for the appellant/Insurance Company regarding the issue that the victim was a gratuitous passenger, the same has not been discussed by the Learned Tribunal in the Judgment and Award. Learned counsel has drawn attention to the copy of the complaint and charge sheet submitted by the Investigating Officer. It indicates that the victim was a gratuitous passenger. It appears from the written statement filed by the Insurance Company that the Insurance Company did not raise such an issue of a gratuitous passenger in the written statement. Without pleading or argument before the Learned Tribunal, the same was ignored. The Insurance Company did not adduce any oral evidence or produce any documentary evidence to discard the contention of the respondent no. 1/claimant that the victim was not a passenger of the offending vehicle.

- 10.** The case of the respondent no. 1/claimant is totally different. As per respondent no. 1/claimant's case, after completion of the Puja, the victim and his friends were standing on the extreme Kuccha portion of the road near Mahakal Dham, at that point of time the offending vehicle was moving at a very high-speed in rash and negligent manner and as and when the said truck reached near Mahakal Dham, all of a sudden, the said truck overturned and fell down on the road. As a result, the victim and his friends sustained grievous injuries in their persons. The victim died in the hospital at Siliguri.
- 11.** Upon careful perusal of the FIR and Charge-sheet produced and exhibited by the respondent no. 1/claimant himself, marked as Exhibit Nos. 2 and 4, it clearly mentioned therein that the victim, Kamal Oraon, and others were passengers of the truck. This court can safely relies upon such documents since it was produced by the respondent no. 1/claimant during the trial. However, the said documents do not ensure to prove the victim's presence on the truck at the time of the accident.
- 12.** P.W.1 has able to prove by oral evidence that the victim was standing on the extreme Kuchha portion of the road near Mahakal Dham. At that point in time, the offending vehicle was coming at a very high speed in a rash and negligent manner, and as the said truck got close to the Mahakal Dham, all of a sudden, the said truck overturned and

fell down on the road. As a result, the victim and his friends sustained grievous injuries on their persons. Learned Counsel appearing on behalf of the Insurance Company neither put any question to the P.W.1 regarding the manner of the accident nor made any suggestion on the issue of whether the victim was a passenger at the time of the accident or not. The insurance company also failed to rebut the contention and the manner of the accident narrated by the P.W.1.

- 13.** In the above backdrop, this court is not satisfied with the arguments of the learned Counsel for the appellant/Insurance Company. Furthermore, the Insurance Company also failed to raise such an issue in the written statement. Without pleading in the W.S., the Tribunal did not prefer to frame on the issue of gratuitous passenger and discussed it in his judgment. Accordingly, the appeal is devoid of merit.
- 14.** Consequently, the Judgment and Award dated 30.03.2022 passed by the Learned Judge, Motor Accident Claims Tribunal –cum- Learned Additional District Judge, 3rd (Special) Court, Jalpaiguri in M.A.C. Case No. 240 of 2012 calls for no interference.
- 15.** Accordingly, the National Insurance Company Ltd. is directed to pay Rs. 3,54,000/- along with interest @ 6 % per annum from the date of filing of the application, i.e. on 26.06.2012 till realisation of the said

amount, by way of cheque. The same shall be deposited before the Office of Learned Registrar, Circuit Bench of Calcutta High Court at Jalpaiguri within a period of one month from this date, if not already deposited.

- 16.** Learned Registrar, Circuit Bench of Calcutta High Court at Jalpaiguri, upon deposit of the compensation amount together with interest on the awarded compensation amount, pay the same in the mode and manner stipulated in the judgment and award of the Tribunal. The compensation shall be released in favour of the respondent no. 1/claimant upon proper identification and subject to verification of the payment of ad valorem Court fees on the total compensation amount, if not already paid.
- 17.** With the above observations, the instant appeal being **FMA No. 36 of 2025**, is thus, **dismissed** without order as to costs.
- 18.** Connected applications, if any, are also, thus, disposed of.
- 19.** Let a copy of this Judgment along with Trial Court Records, if any, be sent back to the learned Court below forthwith for information.
- 20.** All parties shall act on the server copy of this judgment uploaded on the official *website* of High Court at Calcutta.

21. Urgent Photostat certified copy of this Judgment, if applied for, be given to the parties upon compliance of all legal and necessary formalities.

(Ajay Kumar Gupta, J.)

(P.A.)