

# National Insurance Co. Ltd. vs Ashalata Bhowmik on 31 August, 2018

**Equivalent citations:** AIR 2018 SUPREME COURT 4133, 2018 (9) SCC 801, (2018) 3 ACC 894, (2018) 2 WLC(SC)CVL 545, AIR 2018 SC (CIV) 3055, (2018) 4 RECCIVR 211, (2018) 10 SCALE 383, (2018) 4 ACJ 2825, (2018) 6 ALL WC 6077, (2018) 6 ANDHLD 72, (2019) 193 ALLINDCAS 25 (SC), (2019) 132 ALL LR 751, (2018) 4 TAC 5, AIRONLINE 2018 SC 226

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**Bench:** S. Abdul Nazeer, N.V. Ramana

REPORT

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9100 OF 2018  
(Arising out of SLP (Civil) No. 20085 of 2017)

NATIONAL INSURANCE CO. LTD.

.... APPELLANT

VERSUS

ASHALATA BHOWMIK AND ORS.

.... RESPONDENT

JUDGMENT

S.ABDUL NAZEER, J.

1. Leave granted.

2. National Insurance Co. Ltd. has filed this appeal challenging the judgment and order in MACAP No.25/2015 dated 15 th March, 2017 whereby the High Court of Tripura at Agartala has directed the appellant-insurer to pay the compensation to the respondents awarded by the Motor Accidents Claims Tribunal, West Tripura, Agartala (for short 'the Tribunal') in a sum of Rs.10,57,800/- with interest at the rate of 8% per annum from the date of filing of the claim petition till the date of payment.

3. The first respondent is the mother of deceased Dilip Bhowmik. The second respondent is his wife and respondent Nos. 3 and 4 are his children. On 20.5.2012 at about 7.00 p.m. Dilip Bhowmik was

returning from Kathaltali to his house by driving his vehicle bearing No. TR-01-U-0530. When he reached near the bridge of Agartala Railway Station situated on the bye-pass under Amtali police station, he met with an accident and sustained grievous injuries on his person. He was initially rushed to Dr. B.R. Ambedkar Memorial Teaching Hospital, Hapania. Thereafter, he was referred to AGMC and GBP hospital, Agartala, where he was declared dead. At the time of the accident he was aged 43 years. The respondents alleged that the deceased was a businessman and his monthly income was Rs.15,000/-. They filed a claim petition seeking compensation amounting to Rs.68,15,000/-. The claim petition was opposed by the appellant-insurer. The Tribunal passed an award granting total compensation in a sum of Rs. 10,57,800/-.

4. The appellant challenged the said award of the Tribunal before the High Court mainly contending that the deceased himself was the owner-cum- driver of the offending vehicle. He was not a third party within the meaning of the Motor Vehicles Act, 1988 (for short 'the Act'). The accident had occurred due to the negligence of the deceased. Therefore, the appellant, being insurer of the vehicle, was not liable to pay the compensation.

5. The High Court accepted the contention of the appellant that the deceased was not a third party and that the accident had occurred due to the rash and negligent driving of the offending vehicle. However, the High Court directed the appellant to pay the compensation with a rider that the said order shall not be treated as a precedent. On perusal of the policy of the insurance, the High Court in the course of the order observed that indemnification extended to personal accident of the owner-cum-driver was limited to the extent of Rs.2,00,000/-. The finding of the High Court on this question is as under:

"As it has been established by the claimant- respondents that the premium was paid for the personal accident the insurance company is liable to pay the said compensation, even though it is limited to Rs.2,00,000/- to the claimant-respondents. There is no challenge, however, against the determination of the compensation."

6. Learned counsel for the appellant has contended that the deceased himself was driving the offending vehicle and has caused the accident. No other vehicle was involved in the accident. He cannot be treated as a third party. Therefore, the High Court has rightly held that the claim petition filed by the respondents was not maintainable. In view of this finding, the High Court was not justified in directing the appellant to pay the compensation. Learned counsel appearing for the respondents, on the other hand, has sought to justify the impugned order.

7. We have carefully considered the submissions of the learned counsel made at the Bar and perused the materials placed on record. It is an admitted position that the deceased was the owner-cum-driver of the vehicle in question. The accident had occurred due to the rash and negligent driving of the vehicle by the deceased. No other vehicle was involved in the accident. The deceased himself was responsible for the accident. The deceased being the owner of the offending vehicle was not a third party within the meaning of the Act. The deceased was the victim of his own action of rash and negligent driving. A Claimant, in our view, cannot maintain a claim on the basis

of his own fault or negligence and argue that even when he himself may have caused the accident on account of his own rash and negligent driving, he can nevertheless make the insurance company to pay for the same. Therefore, the respondents being the LR's of the deceased could not have maintained the claim petition filed under Section 166 of the Motor Vehicles Act.

8. This Court in *Oriental Insurance Co. Ltd. v. Jhuma Saha (Smt) and Ors.* (2007) 9 SCC 263, was considering a similar case where the owner himself was driving the vehicle which due to his negligence dashed with a tree on the roadside as a result of which he died. The Court held that the claim petition filed by his LR's was not maintainable. It was held thus:-

"10. The deceased was the owner of the vehicle. For the reasons stated in the claim petition or otherwise, he himself was to be blamed for the accident. The accident did not involve motor vehicle other than the one which he was driving. The question which arises for consideration is that the deceased himself being negligent, the claim petition under Section 166 of the Motor Vehicles Act, 1988 would be maintainable.

11. Liability of the insurer Company is to the extent of indemnification of the insured against the respondent or an injured person, a third person or in respect of damages of property. Thus, if the insured cannot be fastened with any liability under the provisions of the Motor Vehicles Act, the question of the insurer being liable to indemnify the insured, therefore, does not arise".

9. Therefore, the High Court was not justified in directing the appellant/insurer to pay the compensation determined by the Tribunal. Since the indemnification extended to personal accident of the deceased is limited to Rs. 2,00,000/- under the contract of insurance, the respondents are entitled for the said amount towards compensation. Hence, the appellant is directed to deposit the said sum of Rs. 2,00,000/- with interest @ 9 per cent per annum from the date of the Claim Petition till the date of deposit with the Tribunal within a period of four weeks from today.

10. The appeal is allowed in the aforesaid terms without any order as to costs.

.....J. (N.V. RAMANA) .....J. (S. ABDUL NAZEER) New Delhi;

August 31, 2018.