IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 1348 of 2024

With

IA No.:CAN/2/2025

National Insurance Co. Ltd.

VERSUS

Sri Biswanath Mukherjee & Anr.

With

C.O.T. 21 of 2025

Biswanath Mukherjee

VERSUS

National Insurance Co. Ltd. & Anr.

For the Insurance Co.: Ms. Sucharita Paul, Adv.

For the appellant in COT 21 of 2025 and respondents in FMA 1348/2024: Mr. Saidur Rahman, Adv.

Last Heard on: July 09, 2026

Judgment on: July 20, 2026

Biswaroop Chowdhury,J:

The appellant before this Court was an opposite party in a case under Section 166 of the Motor Vehicles Act 1988 and is aggrieved by the Judgment

and Award dated 23rd July 2024 passed by Learned Additional District Judge 1st Court Barasat North 24 Parganas in MAC case No. 47 of 2012.

The case of the claimant/respondent before the Learned Trial Court may be summed up thus;

On 17-07-2012 the victim was returning from Sealdah Court to his residence near 16 No. Tank. Salt Lake by the offending vehicle bearing No. WB-04C/9267 (Bus) of route No. 239 which was proceeding with terrific high speed in a rash and negligent manner. When the victim came forward near the gate of the Bus for getting down at the stoppage i.e. 16 No. Tank, Mother Dairy Milk Booth all on a sudden the bus driver turned the bus and pressed the heavy break to stop the bus, though the bus was speedy condition, as a result of which the victim was thrown away from the gate and fell down on the road due to heavy jerking and got grievous injuries on his person. The victim till the happening of the aforesaid accident was healthy person with active habits and he was the only earning member of his family but now he is permanently disabled person.

Pursuant to filing of the case notice was issued to the opposite parties. Opposite Party vehicle owner did not appear to contest the case. However opposite party Insurance Company contested the case by filing written statement. ISSUES were framed and evidence was adduced. Learned Trial Judge upon considering the evidence adduced and upon hearing the Learned

Advocates was pleased to dispose the claim case by observing and directing as follows:-

'Hence it is ORDERED that the instant claim case is allowed on contest against the OP No. 2 (National Insurance Co. Limited) and exparte against the O.P. No. 1 (the owner of the vehicle) without any cost.

The O.P. No. 2 National Insurance Co. Ltd. is directed to pay Rs. 12,09,722/- (Twelve lakhs Nine thousand seven hundred and Twenty Two only) by way of one A/C payee cheque within two months from this date of order in default, the claimant/petitioner will be entitled to get interest @9% per annum on the above mentioned amount from the date of filing of this case till its realization.

Sheristadar to assess the additional Court fee on the enhanced compensation amount from Rs. 3,90,000/- to Rs. 12,09,722/- and report. Put up the record before sheristadar at once. Necessary order will be passed immediately after getting report from sheristadar in this regard.'

The appellant National Insurance Company Limited being aggrieved by the Judgment and Award passed by the Learned Trial Court has come up with the instant appeal. The claimant/respondent no-1 being also aggrieved by the quantum of compensation awarded has filed cross objection.

Heard Learned Advocate for the appellant Insurance Company and Learned Advocate for the respondent/claimant perused the evidence adduced and materials on record.

Learned Advocate for the Appellant National Insurance Company Limited submits that the Learned Trial Judge erred in considering the income of the claimant as Rs. 12,000/- per month without any, proof.

Learned Advocate further submits that the income of the claimant for the year 2010-11 which is ascertained after enquiry from Income Tax Return for the assessment year 2011-2012 is Rs. 77,845/-.

Learned Advocate also submits that Route permit was not seized by the Police Authority thus the vehicle was plying without route permit and it is a violation of policy condition for which Insurance Company should be absolved.

Learned Advocate for the respondent/claimant submits that the accident took place on 17th July 2012 and the income tax return relied by the Appellant Insurance Company is with regard to income of year 2010-2011, thus the income of the said year should not be relied upon.

Learned Advocate further submits that the Learned Trial Judge ought to have considered the issue of future prospect and has erred in not considering the same.

Learned Advocate also submits that the compensation awarded should be enhanced.

With regard to the first submission of Learned Advocate for the appellant that the income tax return of the claimant/respondent reflects that the claimant earned Rs. 77,845/- per year cannot be accepted at this stage when such evidence was not adduced by the Insurance Company before trial court. Moreover the Income Tax Return relied by Learned Advocate reflected income for the year 2010-2011, and not 2011-2012, although the accident took place on July 2012. Learned Trial Judge upon considering the evidence of the claimant P.W.-1 was pleased to observe as follows:

'As per claim petition the injured Sri Biswanath Mukherjee used to earn Rs. 12,000/- per month from his legal profession and even during his evidence he has categorically stated the same. Even Exhibit-7 reveals that he has been enrolled as an Advocate under the Advocate's Act 1961, under Bar Council of West Bengal. There is nothing on record to suspect or disbelieve the evidence on record in this regard and the same may be safely relied upon. In my view the claim of the petitioner with regard to his monthly income is honest and bona-fide and there is no scope to disbelieve the same as claimed by the O.P./Insurance.

I therefore conclude that the claim made in the claim petition with regard to monthly income of the victim to the extent of Rs. 10,000/- per month prior to his accident is just and proper and the same may be taken into consideration to calculate the compensation.'

Thus considering the occupation of the claimant and the evidence adduced upon assigning specific reasons Learned Trial Court considered the monthly income of the claimant/injured as Rs. 12,000/- per month. Thus there is no necessity to interfere on this issue. Now with regard to the submission of Learned Advocate for the Appellant that the vehicle was driven without permit, on the ground that no permit was seized by the Police Authority it is to be remembered that mere non-seizure of permit from the vehicle will not establish that vehicle is driven without permit. Moreover in the instant case although charge-sheet and FIR is exhibited, but the seizure list is not exhibited. As in the usual course Insurance Company conducts investigation upon receipt of notice of claim case to ensure genuine claims are honoured and frivolous claims are dismissed in the instant case there is no pleadings and evidence that investigation was conducted. In the absence of investigation by Insurance Company by ascertaining from vehicle owner about existence of route permit and absence of examination of Investigating officer about the materials seized in course of investigation the plea of driving without route permit cannot be sustained. The contention made that a vehicle is driven without permit without proper investigation by Insurance Company and without adducing necessary evidence is nothing but a mere suspicion, and suspicion however strong may be cannot be substituted in place of proof. Thus in the instant case the Insurance Company cannot be absolved of its liability.

Now with regard to future prospect as submitted by Learned Advocate for the respondent/claimant this Court is of the view that although future

prospect ought to have been taken into consideration but considering the quantum of compensation awarded i.e. Rs. 12,09,722/- it would be just and reasonable if the same is enhanced to Rs. 12,50,000/-.

Hence this Appeal FMA-1348 of 2024 along with COT-21/2025 is disposed. The Judgment and Award dated 23rd day of July 2024 passed by the Learned Additional District Judge 1st Court Barasat North 24 Parganas in MAC Case No. 47 of 2012 stands modified to the extent that the claimant/respondent is entitled to Rs. 12,50,000/- as compensation along with interest @6% per annum from date of filing claim case till today. The Appellant National Insurance Company Limited shall deposit Rs. 12,50,000/- along with interest @6% per annum before Registrar General High Court Calcutta within 8 weeks from the date of communication of this Order. In the event compensation awarded by Learned Trial Court is already deposited balance amount be deposited.

The claimant/respondent will be entitled to withdraw the compensation amount upon compliance of necessary formalities. Balance amount if any with accrued interest be returned to the appellant Insurance Company.

Urgent photostat certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(Biswaroop Chowdhury, J.)