

**CALCUTTA HIGH COURT CIRCUIT BENCH
AT JALPAIGURI
(Civil Appellate Jurisdiction)
Appellate Side**

Present:

The Hon'ble Justice Bibhas Ranjan De

FMAT (MV) 13 of 2022

Smt. Aloka Mandal & Ors.

Vs

United India Insurance Company Ltd. & Ors.

Mr. Gobinda Saha

Mr. Tamal Kr. Sen,

Ms. Priyanka Dey,

Mr. Milan Ch. Laskar.

Mr Sanghai Chowdhury.

... For the appellants/claimants.

Mr. B. R. Bhattacharjee.

..... for the Insurance Company.

WITH

FMAT (MV) 29 of 2022

United India Insurance Company Ltd. & Ors.

Vs

Smt. Aloka Mandal & Ors.

Mr. Pasupati Nath for the Appellants

Mr. Gobinda Saha. ... for the respondents.

Heard on : July 05,2023
Judgment on : July 07,2023

Bibhas Ranjan De, J.

1. Both the appeals arose out of judgement and award passed by Ld. Motor Accident Claims Tribunal, 3rd (special) Court, Jalpaiguri in connection with Motor Accident Claim Case No. 365 of 2021 under Section 166 of the Motor Vehicles Act, are being taken up for disposal by this common judgement.
2. Claim petition under Section 166 was filed by the wife, son & minor daughter of the deceased Ajit Kumar Mandal who died in a motor accident on 21.06.2021 at about 10.30 a.m. while he was proceeding towards Sannyasikata High School from his resident by a scooty bearing no. WB-72-R-2177 as a pillion rider. Near Fatapukur under PS Rajganj one Maruti Dzire bearing no. WB-72-R-1064 coming with high speed dashed the back side of the said scooty. Consequently, said Ajit Kumar Mandal sustained severe injury on his person and succumbed to his injuries.
3. According to claim petition, Ajit Kumar Mandal was an Assistance Teacher of Sannyasikata High School and would

earn Rs. 62,400/- per month as salary. Claimants were totally dependent on the income of the deceased. Claimants filed the claim petition with the prayer for compensation to the tune of Rs. 85,06,480/- from the Insurer of the Maruti Dzire bearing reg. no. WB 72R 1064.

4. Owner of the Maruti Dzire bearing Reg. No. WB 72R 1064 filed written objection denying all averments of the claim petition, contending, *inter alia*, that the case was insured with United India Insurance Company Limited.
5. The claim petition was contested by the insurer of the Maruti Dzire by filing written objection denying all material averments of the claim petition, contending, *inter alia*, that the insurance company is not liable to pay any compensation.
6. In course of trial, three witnesses were examined namely Aloka Mondal, wife of the deceased, as PW1, Amit Roy, eye witness to the accident, as PW2 & one Mritunjoy Das, teacher attached to Sannyasikata High School as PW3. In course of their evidence a good number of documents were admitted in evidence including copy of FIR, Written complaint, General Diary, Seizure list, charge sheet, PM Report, Insurance Policy, driving license, salary certificate as exhibit 1 to 9.

7. Ld. Tribunal relying on the evidence of witnesses together with the admitted documents returned his findings in favour of accidental death of Ajit Kumar Mandal due to rash and negligent driving of a vehicle, Maruti Dzire, bearing no. WB-72-R-1064. Accordingly, Ld. Tribunal assessed the compensation in terms of age of the deceased and salary of the deceased after deducting house rent allowance, medical allowance, income tax and professional tax totaling Rs. 7,180/- out of gross salary of Rs. 62,600/-. Thereby, Ld. Tribunal awarded compensation in terms of net salary of Rs. 55,420/-.

In re: FMAT (MV) 29 of 2022

8. The instant appeal has been preferred at the instance of United India Assurance Company Limited challenging the award passed by the Ld. Tribunal on the ground of implantation of the vehicle collusively after the accident alleged in the case.
9. Ld. Advocate, Mr. Pasupati Nath, appearing on behalf of the appellants/United Insurance Company Limited has referred to two documents i.e. written complaint (exhibit 2) and GD entry (exhibit 3) and contended that on the alleged date of accident brother of the deceased lodged complaint against unknown vehicle on 21.06.2021 but again on 1.07.2021 said Ranjit

Kumar Mandal (brother of the deceased) lodged a general diary before the Inspector-in-charge of Rajganj Police Station disclosing the number of the offending vehicle. Thereby, Mr. Nath tried to draw a conclusion that the vehicle bearing Reg. No. WB-72-R-1064 was implanted collusively.

10. Ld. Advocate Mr. Gobinda Saha, appearing on behalf of the claimants/respondents has argued that subsequent disclosure of name of the vehicle cannot lead to any conclusive presumption that the number of offending vehicles was implanted. In support of his contention he referred to the following cases:-

- ***Ashalata Suryakant Patil and others Vs. New India Assurance Company Ltd.*** reported in **2023 (2) T.A.C. 725 (S.C)**
- ***National Insurance Co. Ltd. Vs. Pratima Barick and another*** reported in **2018 ACJ 77**
- ***New India Assurance Co. Ltd Vs Mita Samanta and others*** reported in **2010 (1) T.A.C. 343 (Cal.)**

11. *Ashalata* (supra) ruled as follows:-

“ 4. Having heard learned Counsel for the appellants as also learned Counsel for the respondents, we have at the outset, adverted to the consideration made by the MACT. Insofar as

involvement of the vehicle and also the rash and negligent driving by the driver of the vehicle, the issue was considered while answering issue No. 1, which has been raised for consideration in that regard. With regard to the involvement of the vehicle, the claimants apart from tendering their evidence had also examined PW-3, the investigating officer who filed the charge-sheet. This is for the reason that initially the details of the vehicle was not mentioned in the FIR and it was during the course of investigation the vehicle had been identified and charge-sheet had been filed.

5. The MACT having taken note of this aspect and also having taken into consideration that the respondent No. 3 who was the driver of the vehicle in question, though was notified had not appeared. Further the Insurance Company also did not take any steps to secure and examine the said driver with regard to the accident since his evidence could have clinched the issue.

6. Therefore, taking all these aspects into consideration and in a matter where the claimants had discharged their initial burden, the MACT had held the accident to have occurred due to negligence of the driver and the vehicle in question to be involved. The High Court however, without considering these aspects of the matter had only discarded the evidence of PW-3 since he was not the person who had conducted the investigation, though he had filed the charge sheet. Such consideration by the High Court is not justified in the facts and circumstances since the investigation and filing the charge-sheet is a continuing process. Therefore, the judgement dated 4.10.2018 passed by the High Court is set aside and the Award dated 11.11.2014 passed by the MACT is restored. The respondent insurance company shall deposit the compensation amount with interest @90% per annum within a period of six weeks from the date of receipt of a copy of this judgement, before the MACT, whereupon the compensation amount shall be disbursed to the claimants. The appeal is, accordingly, disposed of."

12. In *Pratima Barick* (supra) Hon'ble Division Bench of this

High Court observed as follows:-

"22. We take judicial notice of a well-known fact of public life, albeit of not too distant an origin, at this stage. Premier Padmini cars, which were used on Indian roads during the fifties to the eighties of the last century quite extensively, were commonly known as Fiats. Fiats were second only to AMBASSADOR cars, which ruled the Indian roads. In West Bengal, numbers of Premier

Padmini cars (Fiats) were few and far between in comparison to AMBASSADOR cars. With the advent of cars manufactured by Maruti Suzuki in the early eighties of the last century and cars manufactured by other companies, manufacture of Premier Padmini cars took a downslide and were actually stopped resulting in the same being phased out. In the late nineties of the last century and in the early part of this century, very few Premier Padmini cars were on view on the city roads of West Bengal, and in the suburbs it could hardly be seen.

23. It is quite but natural that there may not have been too many Premier Padmini cars plying on roads in the suburbs at or about the time the unfortunate accident occurred. It is noteworthy that instead of identifying the offending vehicle as Premier Padmini in the FIR, the complainant identified it as a "Fiat Car". Not only that, PW-3 (the eye-witness) also testified that the offending vehicle bore registration no. WB- 42B/0859, and in cross-examination it was his clear version that the accident was caused by a "Fiat Car". In view of such unimpeachable evidence, the plea taken by the appellant that the offending vehicle has been planted by the claimant subsequently to extract compensation is unsound and does not commend acceptance at all.

24. The other submission of Mr. Singh that there was no information lodged with the appellant as required by [section 134](#) of the Act and, therefore, one ought to proceed on the premise that the vehicle was not involved in the accident, has been urged to be rejected. We can again take judicial notice of the fact that once a vehicle is involved in an accident causing fatal injury, the tendency of the driver of the offending vehicle and/or its owner is to suppress and withhold information of involvement of such vehicle in an accident, as far as possible. Merely because information under [section 134](#) of the Act was not furnished, either by the driver or the owner of the offending vehicle, would not be sufficient to persuade us to hold that since no information was furnished, no accident took place involving the "Fiat Car" or to defeat the claim of the claimant only on such ground."

13. Ratio of *Mita Samant* (supra) as follows:-

16. The aforesaid principle applies with greater force when a party even does not dispute the statement made in the pleading of the other side and decides to remain ex parte. We are quite conscious that in the proceedings for compensation under the [Motor Vehicles Act](#), when the offending vehicle is insured, the owner of the vehicle

may not be interested to appear at the witness box in spite of the fact that he is a party to the proceedings. For that reason, the legislature has incorporated the provision contained in [Section 170](#) of the Act permitting the Insurance Company to contest the proceedings on all points. Once such leave is granted, it is the duty of the Insurance Company to summon the owner of the vehicle to appear as a witness for disputing the allegation of the claimants. If the Insurance Company after taking leave of the Tribunal under [Section 170](#) of the Act, decides not to lead any evidence by summoning the relevant witnesses including the party whose liability it has undertaken, its position in law will be just like the party who is afraid of appearing in the witness box to face the cross-examination of the claimants. It is preposterous to suggest that the Court will hold against the claimants notwithstanding the fact that in spite of the allegation of rashness or negligence against the driver, the driver or the owner of the vehicle is deliberately avoiding the Court and the claimants are unable to cross-examine the owner against whom the compensation is claimed or the errant driver whose identity has been disclosed in a civil proceeding.

17. Therefore, the Insurance Company in spite of taking leave under [Section 170](#) of the Act having failed to summon the owner or the driver of the vehicle to disprove the allegation of the claimants of the involvement of the vehicle concerned or the rash and negligent driving, the Court is left with no other alternative but to accept the allegation of the claimants unless there is either admission of the claimants or their witness about non-involvement of the vehicle or about the contributory negligence of the victim in the accident or there exists other evidence of unimpeachable nature given by uninterested witness showing falsity of the allegation of the claimants. In this case, there is no such admission or evidence of that nature. In this case, the driver has been charge sheeted and thus, there is no reason why the Insurance Company in spite of taking leave under [Section 170](#) of the Act should not summon the said driver to give evidence for disclosing the truth. We are unable to presume collusion between the driver and the claimants when the driver has been indicted in the criminal proceedings. It will be a travesty of justice in the facts of the present case to disbelieve the eyewitness of the claimants when the owner and the driver are neither appearing nor are they even summoned by the Insurance Company even after taking leave under [Section 170](#) of the Act to face cross-examination at the instance of the claimants.

21. In our opinion the report submitted by the investigator and his evidence regarding cause of accident are worst piece of hearsay

evidence because he investigated long after the accident and according to his claim, he based his report on the information he gathered from various persons whose identity was not disclosed in the report. Unless the persons who informed to the investigator about the details of the accident are examined in Court and the claimant gets opportunity of cross-examining those witnesses, the contents of the report cannot be admissible in evidence.

24. We, thus, find that the claimants have proved the involvement of the truck in the accident.”

14. Considering the ratio of the above mentioned cases I, by no stretch of imagination, cannot come to a conclusion that disclosure of number of the offending vehicle after the accident in terms of General Diary (exhibit 3) or revelation of the number of the offending vehicle during investigation, is an outcome of collusion. Therefore, grounds taken in this appeal are not liable to be taken into account.

In Re: FMAT (MV) 13 of 2022

15. By preferring this appeal the amount of compensation has been assailed on the ground that Ld. Tribunal computed the compensation on the basis of net income of the deceased who was admittedly an Assistant Teacher of a High Secondary School. In this appeal claimants also assailed the judgment and award on the ground that Ld. Tribunal did not consider future prospect and general damages in terms of settled principle laid

down by the Hon'ble Apex Court and also not awarding the interest under Section 171 of the Motor Vehicles Act.

16. So far as the alleged accident is concerned, it has been proved by the evidence of eye-witness (PW2) who saw the accident by the rash and negligent driving of the vehicle bearing Reg. No. WB 72R 1064 and nothing substantive came out of his cross examination. That apart, the factum of accident alleged in this case was further ratified by seizure list (exhibit 4), charge sheet, (exhibit 5) and PM report (exhibit 6). Therefore, I find no reason to discuss further on this issue.

17. With regard to deduction of the amount from the salary it is now settled law that deduction can only be made in respect of professional tax. Therefore, Ld. Tribunal committed mistake in taking the net amount for computation of compensation.

18. In terms of ratio of the case of ***National Insurance Company Limited Vs. Pranay Sethi and other 2017 (4) T.A.C 673 (SC)*** claimants are entitled to future prospect as well as General Damages. Claimants are also entitled to interest on the amount of compensation from the date of filing of the claim petition under the mandatory provision of Section 171 of the Motor Vehicles Act, 1988.

19. In the aforesaid view of the matter, I propose to compute the compensation in terms of monthly income of the deceased afresh, as follows:-

Monthly Income	:Rs. 62,600/-
Annual income	:Rs. 7,51,200/-
Add:- Future Prospects (30%)	: Rs. 2,25,360/-
Total income	: Rs. 9,76,560/-
Less: Deduction 1/3 rd	
For personal expenses	: Rs. 3,25,520/-
	Rs. 6,51,040/-
Multiplier by 13	: x 13
	Rs. 84,63,520/-
Add:- General Damages	: Rs. 70,000/-
Total	Rs. 85,33,520/-

20. For the reason, it is seen that appellants/ claimants are entitled to the compensation of Rs. 85,33,520/- along with the interest @ 6% per annum from the date (27.8.2021) of filing of the claim petition till the deposit of the amount before the Ld. Tribunal.

21. In the aforesaid view of the matter, the respondent/ United India Assurance Company is directed to deposit the entire

aforementioned compensation amount after deducting the statutory deposit of amount of Rs. 25,000/- along with interest @ 6% per annum from the date of filing of the claim petition till the date of deposit of amount before the Ld. Tribunal within 6 weeks from date by depositing account payee cheques before the Ld. Tribunal in the ratio prescribed in the judgement passed by Ld. Tribunal.

- 22.** The appellants/claimants will be entitled to withdraw the amount with interest.
- 23.** With the above observation, the appeal being FMAT 13 of 2022 along with FMAT (MV) 29 of 2022 stand disposed of.
- 24.** Let the records of the Tribunal be sent back along with copy of this order immediately.
- 25.** All pending applications, if any, stand disposed of accordingly.
- 26.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.