

Form No. J(2)

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

**IA No.:CAN/1/2017(Old No.:CAN/3240/2017),
CAN/2/2021**

**in
FMA 40 of 2019**

**Bajaj Allianz General Insurance Company Limited
Versus
Sumita Sanyal & Ors.**

With

COT/71/2017

**Sumita Sanyal & Anr.
Versus**

Bajaj Allianz General Insurance Company Limited & Ors.

For the Appellant/Insurance
Company

: Mr. Rajesh Singh

For the Respondents/Claimants

: Mr. Jayanta Kumar Mandal,
Mr. Sayantan Rakshit

Heard & Judgment on

: 2nd September, 2025.

Ananya Bandyopadhyay, J:

1. The Learned Advocates representing the respective parties are present in Court today.
2. The instant appeal had been preferred against the impugned judgment and order dated 28.11.2016 passed by the Learned

Judge, Motor Accident Claims Tribunal, Fast Track Court – I, Barrackpore, North 24-Parganas in M.A.C. Case No. 10 of 2015.

3. An application under Section 166 of the Motor Vehicles Act had been filed by the claimants on account of the death of the victim in an accident which occurred on 7th April, 2013 at about 10:45 P.M. on P.W.D. Road near Sabeda Bagan More within the jurisdiction of Barrackpore Police Station with the involvement of the offending vehicle being a motorcycle bearing registration no. WB-01AB//6998 which approaching at an excessive speed rashly and negligently clashed the victim and smashed him over resulting on his fall receiving severe injuries and was admitted at N.R.S. Medical College and Hospital wherein he succumbed to the injuries on 15th April, 2013.
4. The Learned advocate representing the appellant/Insurance Company submitted of the non-involvement of the offending vehicle as aforesaid in the accident since the complaint lodged by the wife of the victim two days after the occurrence of the accident mentioned the number of the motorcycle to be WB-01AB/0998. According to the Learned Advocate representing the appellant/Insurance Company, the subsequent charge-sheet on completion of the investigation mentioned the number of the offending vehicle to be WB-01AB/6998 which had been a false implication of the offending vehicle since at the first instance the

complaint lodged by the wife of the victim mentioned the number inclusive of '0' which weirdly got replaced by the number '6' without any plausible reason which evinced the fact that the offending vehicle as mentioned in the charge-sheet had been an afterthought to have been inculpated. It was further submitted that the eye-witness who had deposed as P.W. 2 to have witnessed the accident, during his cross-examination stated to have verbally informed the Police about the number of the offending motorcycle. He further stated to have visited the Hospital and thereafter met the Police for the second time. It was clear that the Police did not note the number of the offending vehicle since the eye-witness had mentioned the same to the Police.

5. The Learned Advocate representing the respondents/claimants submitted to have filed a cross-objection being COT/71/2017, inter alia, praying for an enhancement in the monthly income of the victim to be Rs.4,000/- instead of Rs.3,000/- as well as the compensation towards future prospect.
6. Since the occurrence of the accident, insurance policy, the driving licence, route permit etc and other ancillary issues are not disputed by the learned advocate representing the appellant/Insurance Company, this Court restrict itself only to the extent of determine the above-mentioned issues.

7. Considered the rival contentions of the Learned Advocates representing the respective parties.
8. The eye-witness, P.W. 2 in examination-in-chief as well as cross-examination mentioned the number of the offending vehicle to be WB-01AB/6988 which in reckless and negligent manner hit the victim resulting in his death. The Learned Advocate representing the appellant/Insurance Company stated the complaint lodged by the wife of the victim mentioned a different number of the offending vehicle with a number '6' instead of '0' in the same. The accident occurred on 7th April, 2013 and the complaint was lodged on 9th April, 2013 within a span of two days the number of the offending vehicle which was mentioned by P.W. 2, the eye-witness to the Police verbally was not taken into consideration. The Police filed the charge-sheet marked as Exhibit 2 revealing the number of the offending vehicle to be WB-01AB//6998 which corroborated the number of the vehicle as mentioned by the eye-witness, P.W. 2 in his deposition. The complaint marked as Exhibit 1 did not mention the source of information received by the complainant/wife with regard to the number of the motorcycle. There was no occasion for the wife being the complainant to have been in contact with the eye-witness as it did not appear on record that the eye-witness had got the chance to meet the wife of the victim to express the number of the

offending vehicle who had otherwise mentioned the same to the Police. On completion of the investigation and corroborative deposition of the eye-witness the number of the offending vehicle appeared to be WB-01AB/6998 which was seized and the driver of the offending vehicle had been cited as an accused in the charge-sheet. The evidence of the Investigating Officer is on record which reveals that the offending vehicle bearing registration no. WB-01AB/6998 has been involved in the accident, as aforesaid.

9. Under such circumstances the contention of the Learned Advocate representing the appellant/Insurance Company is not accepted. Considering the fiscal index prevalent in the year 2013 the monthly income of the victim to be Rs.4,000/- might not be improbable.
10. Considering the observations of the Hon'ble Apex Court in National insurance company Ltd. Vs. Pranay Shetty & Anr¹ and Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr.² the impugned award of Rs. 3,21,500/- is modified as follows:

Annual Income	Rs. 48,000/-
Less : 1/3 rd Personal Expenses	Rs. 16,000/-
	Rs. 32,000/-
Add : 25% Future Prospect	Rs. 8,000/-

¹ 2017(4)TAC 673(S.C)

² (2009) 6 SC 121

Multiplier to be "13"	Rs. 40,000/- X 13
	Rs. 5,20,000/-
Add : General Damages	Rs. 84,000/-
Total	Rs. 6,04,000/-

11. The Learned Advocate representing the appellant/Insurance Company submitted to have deposited a sum of Rs.3,96,627/- as per challan filed by the Learned advocate representing the appellant/insurance company.
12. The Learned Tribunal had awarded the compensation to the claimants of Rs. 3,21,500/- along with interest at the rate of 6% per annum from the date of filing of the application till the date of realization. The respondents/claimants are entitled to a sum of Rs. 6,04,000/- along with 6% interest per annum to be paid from the date of filing of the application till the date of its actual realization.
13. The Learned Advocate for the appellant/insurance company is to deposit the balance sum of Rs. 2,82,500/- along with 6 % per cent interest per annum from the date of filing of the claim application before the office of the Learned Registrar General, High Court Calcutta within eight weeks from the date of passing of this order.

14. The office of the Learned Registrar General High Court at Calcutta, shall encash the cheques and thereafter disburse the entire awarded amount so deposited with accrued interest to the Bank accounts of the respondents/claimants as mentioned in the impugned judgment of the Learned District Judge, Motor Accident Claims Tribunal, Fast Track Court – I, Barrackpore, North 24-Parganas in M.A.C. Case No. 10 of 2015 on proof of proper identification of the respondents/claimants subject to payment of ad valorem Court fees. The office of the Learned Registrar General, High Court at Calcutta will instruct the claimants to provide details of their Bank accounts with relevant documentary proof, prior to such disbursal as aforesaid.
15. The instant appeal is disposed of accordingly.
16. The pending applications, if any, stands disposed of.
17. The TCR be sent down to the concerned Tribunal forthwith.
18. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)

Srimanta, A.R.(Ct.)