

In The High Court At Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present:-

The Hon'ble Justice Ananya Bandyopadhyay

**FMA 314 of 2023
The National Insurance Co. Ltd.**

v.

Anjana Muchi & Ors.

With

COT 25 of 2023

Anjana Muchi & Ors.

vs.

The National Insurance Co. Ltd. & Anr.

Mr. Rajesh Singh ... for the appellant/insurance company.

Mr. Amit Ranjan Roy
... for the respondents/claimants.

Heard on : 05.07.2024, 23.08.2024, 2.12.2024, 24.06.2025

Judgment on: 24th October, 2025.

Ananya Bandyopadhyay, J:-

1. The Learned Advocates representing the respective parties are present in Court.
2. The instant appeal had been preferred against the impugned judgment and award dated 31st August, 2022 passed by the Learned Judge, Motor Accident Claims Tribunal, cum Additional District Judge, 2nd Court, Asansol, Paschim Bardhaman in MAC Case No.97 of 2016/24 of 2015.

3. An application under Section 166 of the Motor Vehicles Act had been filed by the respondents/claimants claiming compensation for the death of the victim in an accident which occurred on 25.09.2014 at about 2.30 P.M. at Domahni Asansol road near Kalla Hospital More within the jurisdiction of Asansol(N) Police Station whereby the respondent-claimant No.3 was driving a motorcycle bearing registration no. WB-38AC/3005 along with the victim being a pillion rider were proceeding towards their house at Old Egra from Kalla Hospital Road. Suddenly a cow came in front the aforesaid motorcycle which compelled respondent no.3 to forcibly apply brake and thereafter was dashed by one Indica car bearing registration no. WB-38V/3607 driven by its driver rashly and negligently from behind. The victim as well as the respondent no.3 sustained injuries and were shifted to Kalla Hospital. The victim being the father deteriorated in his health and was thereby shifted to Gouri Devi Hospital, Durgapur wherein he succumbed to his injuries on 03.10.2014.
4. The Learned Advocate representing the appellant/insurance company submitted, a complaint was lodged on 08.11.2014 after 45 days of the occurrence of the accident. It was further submitted that Indica car had been falsely implicated after lapse of 45 days as aforesaid extorting compensation from the appellant-insurance company. It was further submitted that the offending vehicle as

alleged was not solely responsible to cause the accident as brake was applied on the motorcycle which abruptly halted in its motion contributing to the accident. Moreover, if the alleged Indica car was at all involved the percentage of composite negligence on the part of the motorcycle should have been decided and the insurer of the other vehicle should have been cast with the liability for paying such percentage of compensation. It was further emphasized that the complainant to have been the driver of the motorcycle had incidentally shifted his father to the hospital. However, did not inform the number of offending vehicle either at the hospital or to the police immediately. The eye witness being PW-4 who claimed to have been present at the spot and accompanied to the hospital did not inform the same either to the hospital or the police. The identity of the offending vehicle was disclosed for the first time appearing before the Learned Tribunal as a witness which improbabilised the entity of his knowledge regarding the offending vehicle which was deliberately not revealed or informed to any of the authorities. The Learned Advocate representing the appellant-insurance company further relied on the decisions cited in **AIR 2018 SC 612 – Anil & Ors. Vs. New India Assu. Co. Ltd & Ors. and 2021 (4) TAC 341 – K. Anusha & Ors. Vs. Regional Manager, Shriram Gen. Ins. Co. Ltd.**

5. The Learned Advocate representing the respondents/claimants submitted the Learned Tribunal to have declined to grant the compensation towards the element of future prospect which should have been to the extent of 15% considering the age of the victim to be 55 years on the date of his death. It was further submitted that the Learned Tribunal in absence of cogent evidence concluded that the victim did not contribute to the extent and held the appellant/insurance company to be liable beyond all reasonable doubts since the same failed to establish the fact that the victim had any negligence. More-over, the offending vehicle possessed of the valid documents. The Learned Advocate representing the respondents/claimants relied on the decisions cited in **AIR 1991 SC 487 Basthi Kasim Saheb Vs. Mysore S.R.T. Corpn , 2010 (1) TAC 343 343 New India Assurance Co. Ltd. Vs. Mita Samanta, 2011 AIR SCW 1530 Ravi Vs. Badrinarayan & Ors., 2009 AIR SCW 1576 (SC) Usha Rajkhowa Vs. M/S Paramount Indars and FMA No. 3865 of 2016 National Insurance Co. Ltd. Vs. Sandhya Devi.**
6. Considered the rival contentions of the Learned Advocates representing the respective parties.
7. Since the occurrence of the accident, the driving license, the Insurance policy, the route permit etc. and other ancillary issues have not been disputed by the Learned advocate representing the respondent No.1/insurance company, this Court restricts itself only

to consider the point agitated by both the parties. The complaint marked as Ext. 2 mentioned UD case to have been registered at Kalla police station being No. 77 of 2014 dated 03.10.2014 relating to the accident in question which occurred on 25.09.2014, incidentally, the date on which the victim expired. The complaint dated 08.11.2014 further stated the reason for delay in filing the complaint being over stricken by trauma, mentally weakening and distressing on the sudden death of the victim in the accident. The delay in filing the complaint accordingly had been reasonably related and acceptable. The P.W.1 the driver of the motor cycle bearing registration No. WB-38AC 3005 in paragraph 3 of the examination-in-chief stated as follows:

'The accident occurred on 25.09.2014 at about 2.30 PM(Noon), I was returning to our residence after visiting Doctor of Kalla Hospital in a Motorcycle no. WB-38AC-3005 through Domahni Asansol road with my pillion rider father. When I reached near Leprosy Hospital, under P.S Asansol(N), all of a sudden one cow came in front of my bike and I had to press break. At that time, one indica car being Reg. No. WB-38V-3607 dashed my motorcycle from behind in a reckless manner and with high speed. AS a result of such accident, I and my pillion rider father fell down extreme left side of the road with the motorcycle. I got little bit injured but my father sustained severe bleeding injuries. Immediately, Tileshwar Choudhury, Deepak Das and some local people shifted us to the Kalla Hospital and admitted there. But my father's condition was deteriorating, so he was referred to Gouri Devi Hospital & Research Institute, Durgapur on 26.09.2014 but he succumbed to his injuries on 03.10.2014 at the said Gouri Devi Hospital & Research Institute'.

8. The P.W.1 categorically stated to have applied breaks on the side of a cow appearing in front of Bike. The motor bike was dashed by the

indica car as aforesaid. During cross examination by the respondent/insurance company P.W.1 controverted his statements in the examination-in-chief stated "it is not a fact that when I was riding his motor cycle one cow in front of us and my motor cycle slapt and after fall down and sustained injury on his head". P.W.1 could not state the colour of the offending vehicle though the respondent/Insurance company did not cross examine the P.W.1 on the ground that the motor cycle was not hit by the offending indica car and that the same had been falsely implicated. The fact of application of brake by P.W.1 sustained of the motor cycle to have been slipped on the ground or not the application of brake on the motor cycle was established. A vehicle approached from behind at certain speed would be jolted if any object in front of the said vehicle motioned abnormally. The sudden application of brake on the motor cycle must have affected inertia and the impact of the motion of the indica car to have collided with the same at a sudden speed which could not have been perceived or discerned by P.W.1 since the vehicle approached from behind beyond his eye sight as to whether it was solely responsible to cause the accident. The eye witness being P.W.4 could not enlighten on the actual role of the offending indica car being exclusively liable to cause the accident there are contradictions in the evidence of P.W.1 as well as P.W.4. The P.W.4 if at all was present at the spot could have with the deposition of

P.W.1 regarding certain presence of the cow in front of the motor cycle. The charge-sheet marked as Ext. 3 reiterated the presence of the cow in front of the motor bike belonging the driver of the motor bike but applied sudden brake. The admission on the part of P.W.1 being the driver of the motor bike to have applied brake on the same itself on persuasive value of contributing to the accident to a certain accident. In the instant case, therefore, the appellant/insurance company is liable to pay 70% of the compensation with regard to its contribution in occurrence of the accident.

9. The Learned Advocate representing the respondents/claimants submitted the number of claimants to be 4. However, and the same had been considered by the Learned Tribunal which accordingly should have deducted 1/4th towards personal expenses.
10. The judgment and order passed by the learned Tribunal required to be modified to the following extent:

Annual Income	Rs. 5,13,600/-
Personal expenses (1/3 rd)	Rs. 3,42,400/-
	X 11
Multiplier to be "11"	Rs. 37,66,400/-
Funeral Expenses	Rs. 15,000/-
Loss of estate	Rs. 15,000/-
Entitlement	Rs. 37,96,400/-

11. The learned Advocate representing the appellant/Insurance Company submits to have deposited a sum of Rs. 56,63,264/=(Rs. 25,000 + 56,38,264) through two separate cheques as per challan

filed by the Learned Advocate representing the appellant/insurance company.

12. The Learned Advocate for the respondents/claimants are entitled to a sum of Rs.26,57,480/- along with interest at the rate of 6% per annum to be paid from the date of filing of the claim application till the date of realization.
13. 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 directly to the Bank accounts of the present respondents/claimants as mentioned impugned judgment and award passed by Learned Judge, Motor Accident Claims Tribunal, cum Additional District Judge, 2nd Court, Asansol, Paschim Bardhaman in MAC Case No.97 of 2016/24 of 2015 on proof of proper identification of the respondents/claimants subject to payment of ad valorem Court fees and refund the differential amount, if any, through a cheque to the Learned Advocate for the insurance company for the accounts of the insurance company. 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.
14. The instant appeal and cross objection are disposed of accordingly.

15. The pending application, if any, stands disposed of.
16. The interim order if any stand vacated.
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.)

c.m.