

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

F.M.A. 721 of 2022

New India Assurance Co. Ltd.

-Vs-

Promila Das & Anr.

For the Appellant/
Insurance Company : Mr. Sanjay Paul
Ms. Jaita Ghosh

For the Respondent No.1/
Claimants : Mr. Saswata Bhattacharya
Ms. Swarnali Biswas
Mr. Kaushik Deay

Heard on : 20.06.2024, 09.07.2024, 14.08.2024

Judgment on : 1st August, 2025

Ananya Bandyopadhyay, J.:-

1. The claimant had filed an application under Section 166 of the M.V. Act in the Court of Motor Accident Claims Tribunal, 6th Court, Alipore being MAC Case No.33/2009, claiming an award of Rs. 4,00,000/- with cost and interest from the date of filing the application whereby the aforesaid deceased expired due to a road traffic accident on 15/01/2008 at about 23:10 hours. The offending vehicle, an ambassador car bearing Registration No. WMA-2462 hit the victim rashly and negligently while the victim was crossing the road. The victim expired on the way to MR Bangur Hospital and post mortem of the dead body was held there.

2. Subsequently, based on a complaint, Regent Park P.S. Case No. 14/2008 dated 15/01/2008 was instituted against the driver of the offending vehicle as aforesaid and after the conclusion of the investigation, chargesheet was filed vide CS No. 35/08 dated 31/08/08 under section 279/304A of the IPC.
3. The owner of the offending vehicle despite receiving summons failed to appear and the case proceeded ex parte against him. The respondent, the New India Assurance Co. Ltd. contested the aforesaid MAC case.
4. Considered the rival contentions of the respective parties.
5. 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 appellant/insurance company, this Court restricts itself only to the points agitated by the Learned Advocate representing the appellant/insurance company as well as respondent /claimants.
6. The document marked as Ext. 2 being the complaint filed on the date of the accident mentioned the name of the deceased victim to have expired as the consequence of the accident which took place on 15th January, 2008 at about 23.00 hours with the involvement of the offending vehicle is the same has been endorsed the charge-sheet marked as Ext. 4. The Learned Advocate representing the appellant/insurance company emphasised that the name of the victim did not transpire in the complaint marked as Ext. 2 FIR as

well as charge-sheet. The complaint was filed by the Paresh Majumder who had been a passerby claiming to have witnessed the occurrence of the accident. The complainant as aforesaid could not mention the name of the victim due to lack of identification being unacquainted the FIR as well as the subsequent charge-sheet. Based on the complaint, therefore, did not mention the name of the victim and the subsequent charge-sheet narrating the number of facts of the cases based on the statement in the complaint stated the unknown person to have suffered an accident. The document marked as Ext. 11 being the post mortem report mentioned the name of the victim. The document marked as Ext. 10 being the certificate issued by the M.R. Bangur Hospital in favour of the police stating that an unknown person brought dead on 15.10.2008 at about 11.10 p.m at a distance of 22 to 25 mt. away of the M.R. Bangur hospital. It could be concluded that on the information received from the police the identification of the victim so deceased could have been traced out and his name, therefore, had been mentioned in the post mortem marked as Ext. 11. The persons injured out of the same accident had also been cited as witness in the charge-sheet. The accident to have resulted due to the rush and negligent act of the offending vehicle, therefore, could not be denied. The absence of corroborative oral and documentary evidence is to sufficient the monthly income of the victim to be Rs. 6000/- in the year 2008. The same appeared to be inflated since

the victim worked as daily labourer. Considering the fiscal index prevalent at the relevant time of the accident the monthly income of the victim is reduced to Rs. 3000/-.

7. The impugned award is modified as follows:

Monthly Income	Rs. 3000/-
Annual Income (Rs. 3000 x 12)	Rs. 36,000/-
Future Prospect to be added(25%)	Rs. 9000/-
	Rs. 45000/-
	Rs. 45000/-
Personal Expenses (1/3)	Rs. 15000/-
	Rs. 30,000/-
	X 14
Multiplier to be "14"	
	Rs.4,20,000/-
	Rs. 70,000/-
General Damages	
Entitlement	Rs.4,90,000/-

8. The Learned Advocate representing the appellant/Insurance Company submits to have deposited a sum of Rs. 20,17,650/=(Rs. 25,000 + 1992650) through two separate cheques as per challan filed by the learned advocate representing the appellant/insurance company.

9. The Learned Advocate representing the respondent Nos. 1/claimant is entitled to receive the amount of Rs. 4,90,000/- at the rate of 6% per cent per annum from the date of filing of the claim application till the date of actual realization.

10. 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 account of the present respondent Nos. 1/claimant as mentioned by Learned Judge, Motor Accident Claims Tribunal cum 6th Court, Alipore in M.A.C. Case No. 33 of 2009 on proof of proper identification of the respondent No.1 /claimant 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 claimant to provide details of his bank account with relevant documentary proof, prior to such disbursal as aforesaid.
11. The instant appeal and cross objection are disposed of accordingly.
12. The pending application, if any, stands disposed of.
13. The interim order if any stand vacated.
14. The TCR be sent down to the concerned tribunal forthwith.
15. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)

