Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice Ananya Bandyopadhyay

FMA 1373 of 2024
CAN 2 of 2025
United India Insurance Company Limited
Versus
Rogina Bibi & Ors.

With
COT 51 of 2025
Rojina Bibi & Ors
Vs.
United India Insurance Company Limited & Anr.

For the Appellant/Insurance Company	:	Ms. Sucharita Paul
For the claimants/Respondents	:	Ms. Sima Ghosh
Heard & Judgment on	:	11th September, 2025.

Ananya Bandyopadhyay, J:

In re: CAN 2 of 2025

1. Learned Advocate representing the appellant/Insurance Company submitted to have filed an application being CAN 2 of 2025 wherein the name of the respondent/claimant No.1 had been wrongly typed as "Rogina Bibi" instead of "Rojina Bibi".

2. Department is directed to correct the cause title of the memorandum of appeal.
3. The Learned Advocates representing the respective parties are present in Court.
4. The instant appeal had been filed against the judgment and award dated 6th June, 2024 passed by the Learned Additional District and Session Judge, MACT, 3rd F.T. Court, Berhampur, Murshidabad in M.V. Case No.257 of 2022.
5. An application under Section 166 of the Motor Vehicle Act had been filed by the claimants on account of death of the victim in an accident which occurred on 2nd April, 2022 at about 3.30 hours near 22 Miles on Arambagh, Burdwan pacca road with the involvement of the offending vehicle being a truck bearing registration No.WB-33C/6743 which approaching at an excessive speed rashly and negligently dashed the victim's vehicle being another truck bearing registration No.WB-57D/4119 resulting in his death having suffered severe injuries at Arambagh S.D. Hospital.
6. The Learned Advocate representing the appellant/Insurance Company submitted that the vehicle belonging to the victim was equally responsible for the occurrence of the accident since there had been a head on collision and the concept of contributory negligence should be applied since the fault on the part of the

driver of the offending vehicle had also been established through the charge-sheet. Both the drivers of the aforesaid trucks had expired as a result of the accident. Moreover, the deduction to the extent of 1/3rd should be applicable in terms of the personal expenses since the victim died at an early age of 36 years and the father of the victim had not been mentioned to have been exclusively dependent on the income of the same.

7. The Learned Advocate representing the respondent Nos.1 to 4/claimants submitted to have filed a cross-objection being COT 51 of 2025 which, *inter alia,* stated that the Learned Tribunal had considered the monthly income of the victim to be Rs.9,000/- instead of Rs.12,000/- as deposed by P.W.3 and the documents marked as Exhibit.12. It was further submitted that the Learned Tribunal should have applied the multiplier of '16' instead of '15' since the age of the victim was 35 years 2 months. It was further submitted that the Learned Tribunal did not grant Rs.30,000/- towards general damages which was inadequate.
8. Considered the rival contentions of the respective parties.
9. 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 appellants/Insurance Company, this Court restrict itself only to the extent of determine the above-mentioned issues.

10. The averments in the complaint, the deposition of the eye witness being P.W.2 as well as the observation of the Investigating Officer in the charge-sheet marked as Exhibit.2, the fault on the part of the driver of the vehicle being the deceased/victim of the truck bearing registration No.WB-57D/4179 had not been mentioned in either of the documents on record. The offending vehicle bearing registration No.WB-33C/6743 had dashed the truck bearing registration No. WB-57D/4179 had been delineated instead of the aspect of head on collision as claimed by the Learned Advocate representing the appellant/Insurance Company. The appellant/Insurance Company despite stating the same in the written statement did not endeavour to prove to the contrary. Accordingly, the aspect of contributory negligence involving the deceased/victim to have been equally responsible for the occurrence of the accident is negated. Neither the claim application nor the deposition before the Learned Tribunal on behalf of the wife of the deceased/victim being P.W.1 in laconic term stated the father of the victim to have been solely dependent on the income of the same. The Learned Tribunal should have, therefore, considered 1/3rd deduction of the annual income towards personal expenses. The deposition of the P.W.3 as well as the documents marked as Exhibit 12 stated the monthly income of the victim to be Rs.12,000/- per month

inclusive of Rs.3,000/- per month towards khoraki charges. Learned Tribunal should have considered the documents marked as Exhibit 12 in computing the annual income of the victim. Moreover, the general damages were not adequately assessed in terms of the decision of the Hon'ble Supreme Court in National insurance company Ltd. Vs. Pranay Shetty & Anr. However, the Learned Tribunal was justified in considering the multiplier to be 15 with regard to the age of the victim to be 36 on the date of the accident in accordance with the documents marked as Exhibit.11.

11. 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 is modified as follows:

Monthly Income (Rs. 12,000)	Rs. 12,000/-
Add 40% future prospect	Rs. 4,800/
	Rs. 16,800/-
Annual Income	X 12
	Rs. 2,01,600/-
Less 1/3rd for personal expenses	Rs. 67,200/-
	Rs. 1,34,400/-
	X 15
Multiplier "15"	Rs.20,16,000/
Add General damages	Rs. 84,000/-
Total entitlement	Rs.21,00,000/

1 2017(4)TAC 673(S.C)

2 (2009) 6 SC 121

12. The learned Advocate representing the appellant/Insurance Company submits to have deposited a sum of Rs. 19,62,053/=(Rs. 25,000 + 19,37,053) through two separate cheques as per challan filed by the Learned Advocate representing the appellant/insurance company. The Learned Advocate representing the appellant/insurance company is to further deposit the remaining balance amount before the office of the Learned Registrar General, High Court at Calcutta within two months from the date of passing of this order.

13. The Learned Advocate representing the respondent Nos. 1 to 4/claimants are entitled to receive the amount of Rs. 21,00,000/- along with interest at the rate of 6% per cent per annum from the date of filing of the claim application i.e. 10.05.2022 till the date of actual realization.

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 directly to the bank accounts of the present respondent Nos. 1 to 4/claimants as mentioned in the impugned judgment and award passed by the Learned Additional District and Session Judge, MACT, 3rd F.T. Court, Berhampur, Murshidabad in M.V. Case No.257 of 2022 on proof of proper identification of the respondent

No.1 to 4/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 and cross objection are disposed of accordingly.

16. The pending application, if any, stands disposed of.

17. The interim order if any stand vacated.

18. The TCR be sent down to the concerned Tribunal forthwith.

19. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)