

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

F.M.A.T 525 of 2019

Bajaj Allianz General Insurance Co. Ltd.

-Vs-

Esamatara Bibi & Ors.

With

COT 74 of 2022

Esamatara Bibi & Ors.

-Vs-

Bajaj Allianz General Insurance Co. Ltd.

For the Appellants/
Insurance Co. in FMAT. 525 of 2019 : Mr. Rajesh Singh

For the Respondents/
Claimants in FMAT 525 of 2019 : Mr Jayanta Kumar Mandal

For the Appellants/
Claimants in COT 74 of 2022 : Mr Jayanta Kumar Mandal

For the Respondent No.1/
Insurance Company : Mr. Rajesh Singh

Heard on & Judgment on : 4th April, 2025

Ananya Bandyopadhyay, J.:-

1. Four legal heirs of deceased Ajmat Ali Sekhfiled filed an application under Section 166 of the M.V. Act in the Court of Motor Accident Claims Tribunal, judge cum Additional District Judge, Durgapur, Burdwan being MAC Case No.30 of 2017/152 of 2014, claiming an award of Rs.29,00,000/- as well as an interest of 50% added towards future

prospects with an interest payable at 10% interest from the date of filing to till its realization due to a road traffic accident on 07/08/2014 at about 01:45 PM.

2. The victim being a goods owner was returning to Kalna by a TATA ACE pickup truck bearing registration no. WB-39A/0445 which was insured by United India Insurance Co. Ltd when he was suddenly crashed into a pickup van from behind that took a sharp right turn bearing registration no. WB-41C-0727 and was insured by Bajaj Allianz General Insurance Co. Ltd. The victim expired on the spot and his post mortem was held at Burdwan Medical College and Hospital.
3. Based on a complaint, Galsi P.S. Case No. 286/2014 dated 07/08/2014 was instituted. United India Insurance Co. Ltd and Bajaj Allianz General Insurance Co. Ltd. contested the aforesaid MAC case.
4. The Learned Tribunal as aforesaid disposed of the issues framed considering the oral as well as documentary evidences and awarded a sum of Rs. 29,00,000/- as compensation and the claimants were entitled to an interest at the rate of 8% per annum from the date of filing of the case being 18/09/2014 till the date of realization from Bajaj Allianz General Insurance Co. Ltd.
5. The Learned Advocate representing the Appellant submitted as follows:-
 - a. Awarding total compensation against the insurer of the pickup van bearing registration number WB-41C/0727 involved in the accident, was erroneous as the accident which took place between the aforesaid pick up van and

another 'TATA ACE' bearing registration no. WB-39A/0445 insured with 'United India Insurance Company Limited' was caused due to the fact the TATA ACE hit the pickup van from behind which was corroborated by the claim petition, FIR and charge sheet, thus there was no negligent and rash driving on the part of the pickup van.

- b. The claimants did not even allege that the pickup van turned to its right 'without any signal' or that the vehicle was speeding and failed to prove its negligence with cogent evidence. In such a situation, it was apparent that the TATA ACE was driving at a high speed without maintaining reasonable distance and it crashed into the pickup van from behind.
- c. The charge sheet (Exbt. 3) prepared by the police authorities, in relation to the accident was filed against the drivers of both the vehicles, holding them equally responsible for the accident.
- d. PW 2, Hafijil Sekh, who claimed to be an eye-witness, was not a charge sheeted eye-witness and he falsely deposed that the pick-up van crashed into the TATA Ace which was in contradiction to all the police papers. Even the claim petition itself stated that the TATA ACE crashed into the Pick Up van from behind.

- e. There were two vehicles involved in the accident and the police authorities after proper investigation filed their charge sheet against drivers of both the vehicles ascribing equally responsible for the accident.
- f. The compensation amount directed to be paid by the owner/insurer of the pickup van should have been fixed at 50% only or lesser share of the total awarded amount if any towards negligence was to be considered at all on the part of its driver.
- g. When two or more vehicles were involved in an accident and it was found that they have all contributed towards the accident, in that event the award should be equally proportioned and the owners/insurers of all the offending vehicles should be made liable to pay the said compensation.
- h. In a proceeding under section 166 of the Motor Vehicles Act, 1988 it was imperative that the rash and negligent driving of the driver(s) of the vehicle(s) involved in the accident should be fixed and only then the award should be decided in proportion to the percentage of negligence of the said vehicle(s).
- i. Considering Rs. 2,11,484/- as annual income of deceased was erroneous as it was fixed without giving any calculation for the same and without deduction of the payable tax as per income tax slab for the applicable years.

- j. Error was committed in granting a collective sum of Rs. 1,90,000/- under different heads of 'non pecuniary compensation', whereas, according to law, the said sum should never exceed Rs.70,000/- in total.
- k. The claim case was filed under section 166 of the Motor Vehicle's Act, 1988, where compensation granted under the collective heads of 'general damages' was limited to Rs. 70,000/- only, therefore the extra amount of Rs. 1,20,000/- awarded as loss of love, affection, care and comfort', over and above Rs. 70,000/-, was not permissible in law.
- l. In view of the recent judgment passed by Hon'ble Supreme Court, the total award under the head of collective 'general damages' had been limited to Rs. 70,000/- and the learned judge of the tribunal had wrongfully directed the appellant insurance company to pay a sum of Rs. 1,20,000/- extra under the head(s) of 'non-pecuniary compensation/general damages", over and above Rs. 70,000/- already granted under the said head.
- m. It was erroneous to apply the multiplier of '16' in spite of the admitted fact that the deceased was 39 years old at the time of his death for which the appropriate multiplier of '15' should have been used.

- n. By way of a default clause, the direction for payment of interest @ 10% per annum on the awarded amount is not in accordance with law.
 - o. The appellant did not dispute the entitlement of claimants to receive the compensation, however the above accident was a case of 'composite negligence' and they prayed for liberty to sue the other joint tort-feasor (United India Insurance Company Limited) in an independent proceeding, for the purpose of fixing their inter se liability **(Ref: Khenyei -Vs- New India Assurance Co. Ltd. and Ors) - Para 18.**
6. The Learned Advocate representing the respondent no. 6 being United India Insurance Co. Ltd argued as follows:-
- a. The written complaint annexed to the First Information Report (Exhibit 1), lodged by before the police authorities stated that the pickup van insured with the appellant Insurance Company, i.e. Bajaj Allianz, "suddenly turned right" and as a result the accident took place. It was the specific case of the claimants in their claim application that the accident took place due to the "fault, rash and negligent driving" by the driver of the pickup van. Such fact was further confirmed by PW2 who was an eye-witness to the accident. It was proved by PW2 that the accident took place due to the fault on the part of the driver of Pick Up Van No. WB-41C/0727 which was insured with the appellant herein,

being Bajaj Allianz. Most importantly, no evidence was adduced on behalf of the appellant insurance company (Bajaj) to prove its point that the Pick Up Van No. WB-39A/0445, which was insured with United India Insurance Company Limited, was responsible for the accident or was 'rash and negligent' while driving.

- b. Therefore, in view of the above discussion and in absence of any specific evidence by the appellant (Bajaj Allianz), the learned judge of the tribunal did not commit any error in holding the driver of the offending Pick Up Van No. WB-41C/0727 (insured with the appellant being Bajaj Allianz) responsible for the above accident and accordingly, directing its insurer, being 'Bajaj Allianz' (appellant) to pay the quantum of compensation. Therefore, "United India Insurance Company Limited", being respondent no. 6 in the instant appeal, should not be made liable to pay any compensation to the claimants as there was no fault on the part of its driver.
- c. The respondent no. 6 supported the case of the appellant that 'just' and 'correct' compensation should be assessed.

In (2021) 18 SCC 596 National Insurance Company Limited - Vs. Chamundeswari& Ors. paragraph 8:- the Hon'ble Supreme Court *inter alia* as follows:

".....If any evidence before the Tribunal runs contrary to the contents in the First Information Report, the evidence which is recorded before the Tribunal has to be given weightage over the contents of the First Information Report..... Whether driver of the vehicle was negligent or not, there cannot be any straitjacket formula. Each case is judged having regard to facts of the case and evidence on record..."

7. The Learned Advocate representing the respondents relied upon the following judgments

i) (2009)6 SCC 121 [Sarla Verma (Smt.) VS. Delhi transport Corporation and another) Para-30

ii) 2017 (4) T.A.C. 673 (S.C.) [National Insurance Co. Ltd. Vs. Pranay Sethi and others; Para -61

i) 2020SAR (Civ) 905 [Smt. Sangita arya and Ors. Vs. Oriental Insurance Co. Ltd. & Ors. Para -7;

ii) 2015 SAR (Civil) 560 [Shashikala & Ors. Vs. Gangalakshamma&Anr.] para-10

i) 2022 SAR (Civ) 238 [Rasmita Biswal & Ors. VS. Divisional Managwer, National Insurance Company Ltd. and Anr.]; para- 16

ii) 2023 (3) T.A.C. 740 (Cal) | New India Assurance Co. Ltd. VS. Sima Singh & Ors.]-

i) 2021 Supp: SAR (Civ) 602 [National Insurance Company Ltd.VS. Chamundeswari& Ors.] -para-8 to 10

ii) 2015 (2) T.A.C. 677 (S.C.) (Khenyei Vs. New India Assurance Co. Ltd. and others)-para-18

i) MANU/SC/0009/2004 (National Insurance Co. Ltd. Vs. Baljit Kaur and Ors.)-para-21

The learned Tribunal should have considered the last income tax return of the year 2013-14 marked as Ext. 18 in assessing the award for compensation as far as the number of dependence concerned instead of 1/3 which should have been 1/4th deducted towards personal expenses.

The charge-sheet marked as Ext.3 being C.S. No. 313/2014 *inter alia* stated as follows:

“ The fact of the case in brief is that on 07/8/2014 around 15.30 hrs. complt. Received information that his brother Ajmal Ali Sk. 42 years son of late Akbar Sk. Died. Driver of the Pickup Van No. WB-39A/0445 namely Bapi @ Uttam Adhikary, 38 years son of Sasti Adhikari of Krishnandpur, Bi-pass, P.S. Kalna, District Burdwan admitted at Burdwan hospital. On getting information the complainant attended hospital he came to know from driver Bapi that while they returning from Durgapur side through NH-2 on the way near Kulgoria area under P.S. Galsi one Pickup Van bearing registration no. WB-41C/0727 suddenly right turn towards cutting. As result Tata AC No. WB-39A/0445 dash behind the vehicle No. WB-41c/0727. As result both the vehicle damaged and Animul Ali Sk. Died on the vehicle. Injured driver Bapi @ Uttam Adhikary got injury and shifted to Burdwan Hospital. Over which instance case and a parallel U.D. Case vide Galsi P.S. U/D Case No. 32/2014 dated 7/8/14 has been registered.

During investigation of the case dead body of deceased Ajmat Ali Sk. Remove from driver cabin of vehicle number Wb-37A/0445. In presence of witnesses and identified by them prepared investigation report u/s 174 Cr. P.C. also prepared dead body challan and sent the dead body to Burdwan police Morgue under F.S.M. for P.M. examination and to ascertain the actual causes of death. Visited P.O.rawn rough sketch map with index. Seized both the involved vehicle from P.O. and

also seized the documents of vehicle no. WB-39A/0445 and Wb-41C/0727 including D.L. of driver of both the vehicle. The seized vehicle examined by mechanical expert. Collected P.M. report of deceased. Seized vehicle no. WB-41C/0727 with paper returned to register owner on bond as per court order. Driver of vehicle no. WB-41C/0727 surrender court and granted bail. Driver of vehicle no. WB-39A/0445 not granted. The driver Bapi@ Uttam Adhikary treated out door of hospital forwarded injury report”.

It is, therefore, incumbent that the present appellant/insurance company is to compensate the awarded sum on the basis of the aforesaid statements in the charge-sheet. It has been prima facie established that one Tata Ace WB-39A/0445 dashed with other vehicle bearing registration No. WB-41C/0727.

8. 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. 29,00,000/- is modified as follows:

Annual Income (Gross)	Rs. 2,41,827/-
(as per Last I. Tax Return 2013-14	Rs. 4647.00/-
	Rs. 2,47,180/-
Future Prospect to be added(40%)	Rs. 98,872.00/-
	Rs. 3,46,052.00/-
Deduction 1/4 th towards personal expenses	Rs. 86,513.00/-
Multiplier to be “15”	Rs. 2,59,539.00/-
	x. 15/-
	Rs. 38,93,085/-

¹ 2017(4)TAC 673(S.C)

² (2009) 6 SC 121

General damages (Rs. 70,000 + 20%) Entitlement	Rs. 38,93,085/- Rs. 84,000/- Rs. 39,77,085/-
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9. The respondent Nos. 1 to 4/claimants are entitled to a sum of Rs. 39,77,085/- along with 6% interest per annum to be paid from the date of filing of the claim application till the date of its realization.
10. The learned Advocate representing the appellant/Insurance Company submits to have deposited a sum of Rs. 47,84,814/=(Rs. 25,000 + 47,59,814) 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 directed to deposit the balance enhanced amount along with interest before the office of the learned Registrar General, High Court at Calcutta within six weeks from the date of passing of this order.
11. The office of the Registrar General, High Court, Calcutta shall encash the said cheque and thereafter disburse the same to the present respondent Nos. 1 to 4/claimants as mentioned in the award passed by the learned Judge Special cum Additional District Judge, Motor Accident Claims Tribunal, Durgapur, Paschim Bardhaman in M.A.C. Case No. 30 of 2017 on proof of proper identification of the respondent Nos. 1 to 4/claimants subject to payment of ad valorem Court's fees.
12. The instant appeal is disposed of accordingly.

13. The interim order if any stand vacated.
14. The pending applications if any stands disposed of.
15. The TCR be sent down to the concerned tribunal forthwith.
16. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)