Form No. J(2)

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

Present:
**The Hon'ble Justice Ananya Bandyopadhyay**

**FMA 872 of 2022**
CAN 2 of 2025

**The New India Assurance Co. Ltd. & Anr.**
**Versus**
**Uma Chatterjee & Ors.**

**With**

**COT/53/2024**

**Uma Chatterjee & Ors.**
**-Vs.-**
**The New India Assurance Co. Ltd. & Anr.**

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|---|---|---|
| For the Appellant | : | Mr. Rajdeep Bhattacharya |
| For the Respondents/claimants | : | Mr. Ashique Mondal. |
| Heard & Judgment on | : | 9th June, 2025. |

**Ananya Bandyopadhyay, J:**

1. Both the Learned Advocates representing the appellant/Insurance Company and the respondents/claimants are present.
2. The instant appeal had been filed against the judgment and award dated 5th May, 2022 passed by the Learned Judge, Motor Accident Claims Tribunal cum Additional District Judge, Fast Track

Court, 1st Court, Diamond Harbour, South 24 Parganas in M.A.C. Case No. 355 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 October, 2015 at about 10.00 hours at Haridevpur near Parulia Coast Police Station within the District of South 24 Parganas with the involvement of the offending vehicle being a bus bearing registration No. WB-19G-2220 plying on route No. SD-9 which rashly and negligently hit the victim stationed near Haridevpur on the way towards Nurpur approached from Kolkata. The victim sustained severe injuries and was admitted at Diamond Harbour Hospital wherefrom he was shifted to Bangur Hospital and thereafter to Netaji Subhash Nursing Home and Diagonestic Centre respectively and finally expired at SSKM hospital on 18.10.2015.

4. The learned Advocate representing the appellant/Insurance Company submitted the cheque was deposited by the owner of the offending vehicle with regard to the insurance policy with the coverage period from 01.08.2015 till 31st July, 2016 was dishonoured and the same was dispatched to office of RTO Alipore as also the owner of the offending vehicle on 28.08.2015. Accordingly, the insurance company should be absolved from the liability of paying the compensation since at the relevant point of

time of the occurrence of the accident the offending vehicle was not legally covered under a valid insurance policy. The Learned Advocate representing the appellant/insurance company further stated that the learned Tribunal had erroneously in absence of any documentary as well as corroborative oral evidence granted a sum of Rs. 6500/- as monthly income which was exorbitant. It was further submitted by the Learned Advocate representing the appellant/insurance company that the learned Tribunal had erroneously granted a sum of Rs. 1,60,000/- towards loss of consortium which otherwise should be Rs. 84,000/- in accordance with the principles enumerated in National insurance company Ltd. Vs. Pranay Shetty & Anr[1].

5. The Learned Advocate representing the respondents/claimants submitted the dispute regarding monthly income of the victim was not raised or confronted by the appellant/insurance company before the Learned Tribunal and with valid reasons, the Learned Tribunal had assessed the compensation considering the monthly income of the victim to be Rs. 6500/-

6. 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

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[1] **2017(4)TAC 673(S.C)**

appellant/insurance company, this Court restricts itself exclusively to the extent of issues raised by the Learned Advocate representing the appellant/insurance company. The document marked as Ext. B, Ext. 6, Ext. C, Ext. D, Ext. E, Ext. E/1, Ext. F and Ext. G did not accurately reveal the acknowledgment of the notice to have been served upon the owner of the offending vehicle that the cheque bearing No. 446264 dated 30.07.2015 which was issued by the Sudarshan Mondal the owner of the offending vehicle in favour of the appellant/insurance company i.e. New India Assurance Co. Ltd. was dishonored and he had deliberately neglected or ignored or had flouted the conditions of the insurance policy with regard to the payment of the premium for renewal. The learned Tribunal in absence of documents and also the oral evidence considering the fiscal index prevalent at the relevant point of time assessed the monthly income to be Rs. 6500/-. Considering the facts and circumstances of the cases, the documents marked as Exts., oral evidence and the submission of the Learned Advocates representing both the parties, this Court is not inclined to interfere with the amount of compensation awarded by the learned Tribunal. However, the Learned Tribunal had granted the liberty to the appellant/insurance company to recover the paid compensation to the victim from the owner of the offending vehicle as well as the driver which should be recovered only from the owner of the offending vehicle on strict proof and not the driver. This Court modifies to the impugned judgment to the following extent as follows:

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| Monthly Income | Rs. 6500/- |
| Annual Income(6500x 12) | Rs. 78,000/- |
| Personal Expenses (1/4) | Rs. 19,500/- |
| | Rs. 58,500/- |
| Future Prospect to be added( 40%) | Rs. 23,400/- |
| | Rs. 81,900/- |
| | x 15 |
| Multiplier to be “15” | Rs. 12,28,500/- |
| Medical Bill | Rs. 1,40,111/- |
| Non-Pecuniary Damages | Rs. 84,000/- |
| Entitlement | Rs. 14,52,611/- |

7. The learned Advocate representing the appellant/Insurance Company submits to have deposited a sum of Rs. 23,33,796/=(Rs. 25,000 + 23,08,796) through two separate cheques as per challan filed by the learned advocate representing the appellant/insurance company.

8. The Respondents/claimants are entitled to receive the amount of Rs. 14,52,611/- at the rate of 6% per cent per annum from the date of filing of the claim application i.e. 5th December, 2015 till the date of actual realization.

9. The office of the learned Registrar General High Court at Calcutta, shall encash the cheques and thereafter disburse the entire awarded amount so deposited to the respondents/claimants as

mentioned by the Learned Judge, Motor Accident Claims Tribunal, Additional District Judge, Fast Track 1st Court, South 24 Parganas in M.A.C.C. No. 355 of 2015 on proof of proper identification of the respondents/claimants subject to payment of ad valorem Court fees and refund the balance amount, if any, through a cheque to the Learned Advocate for the Appellant/Insurance Company for the accounts of the insurance company.

10. The interest generated on the sum of money deposited by the appellant/insurance company at the office of the learned Registrar General, High Court at Calcutta which has been further deposited in the nationalized bank by the office of the learned Registrar General, High Court at Calcutta is to be apportioned and the sum of interest accrued on the aforesaid amount is to be disbursed in favour of the appellant/insurance company through a cheque to be deposited at the office of the appellant/insurance company.

11. The instant appeal and cross objection are disposed of accordingly.

12. The pending applications, 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.)**

**C.M. A.R.**