

Form No.J(2)

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 537 of 2023

**Subhasis Bera
Versus**

The Oriental Insurance Company Ltd. & Ors.

For the Appellants : Mr. Amit Ranjan Roy

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

Heard on & Judgment on : 12th June, 2025.

Ananya Bandyopadhyay, J:

1. The Learned Advocates representing the respective parties are present in Court.
2. The instant appeal had been filed against the judgment and award dated 1st May, 2018 passed by the learned Judge cum Additional District and Sessions Judge, 3rd Court, Motor Accident Claims Tribunal, Tamluk, Purba Medinipur in M.A.C. Case No. 245 of 2014.

3. An application under Section 166 of the Motor Vehicles Act had been filed by the victim on account of an accident incurred by him on 20.12.2012 at about 11.30. p.m. near Panshila on NH-6 within the jurisdiction of Kolaghat Police Station with the involvement of the offending vehicle being a Mini Truck bearing Registration No. WB33/7931. The victim was approaching towards Kolaghat from Panshila driving his own motor cycle bearing registration No. WB30J/0603 at a normal speed on his way to attend "Durga Puja Festival" along with his friend namely Debasish Bera. The victim halted at Panshila on the left side of NH-6 when the offending vehicle suddenly collided with the motor cycle proceeding at high speed, rashly and negligently. Consequently, the victim suffered severe injuries and was taken to Purba Medinipur District Hospital at Tamluk on 21.10.2012 wherefrom he was referred to NRS Medical Collage and Hospital or any other Government Hospital for admission. However, he was ultimately admitted at Sanjiban Hospital at Howrah where he was treated from 21.10.2012 till 31.10.2012. He was shifted to CMRI Kolkata on 31.10.2012 as his condition aggravated medically. Initially, he was treated at CMRI Hospital Kolkata from 31.10.2012 till 14.01.2013. He was further

admitted at the aforesaid hospital on 15.01.2013 and was discharged on 21.01.2013.

4. Learned Advocate representing the appellant/victim submitted the learned Tribunal did not consider the multiplier method emphasizing the contributory negligence on the part of the victim who was driving motor cycle to have attributed to the occurrence of the accident through his own negligent act of sudden halt at the NH-6 where the vehicles commute at a certain speed continuously without any abrupt halt. It was further submitted by the Learned Advocate representing the appellant/claimant that the victim was entitled to pecuniary as well as non-pecuniary damages since the victim had suffered physical disability to the extent of 96% and confined to bed urinating continuously without control over his organs as well as sense. The learned Tribunal however granted the entire amount of medical expenses incurred by the victim. It was further argued that the learned Tribunal did not diligently or judiciously consider that the victim was not responsible in any way to have contributed to the occurrence of the accident and was entitled to be compensated through the "multiplier method" considering the evidence of the mother of the victim, the eye witness as well as doctor who deposed before the

Court corroborating the disability certificate issued by a Medical Board of a Government hospital. It was further submitted by the learned Advocate representing the appellant/claimant that the mother of the victim had deposed before the Court the amount of Rs. 11000/- being earned by the victim per month working at an organization "Joy Guru Engineering Company". The appellant were further entitled to be compensated through the component of future prospect.

5. The learned Advocate representing the respondent No.1/Insurance Company submitted that the learned Tribunal after reasonably assessing the occurrence of the accident describing the role of the victim to have exposed himself to be negligent at a high way to the prejudice not only to himself but also other vehicles running at a continuous speed occasioned the accident whereby the liability fixed upon the victim was justified. More-over, the learned Tribunal had been lenient enough to grant the sum of expenditure towards medical treatment which ought not to have been granted in entirety with a thrust on the respondent No.1/insurance company to pay the same in its totality. It was further submitted that in the darkness of night the presence of the victim on his motor cycle could not have been

gauged by the driver of the offending vehicle approaching at a speed which prevented the same from applying brakes prior to the accident. The Learned Advocate representing the respondent No.1/insurance company further submitted that the appellant/victim did not cite any other witness apart from P.W.5 who claimed to have witnessed the accident however, did not lodge the complaint and was not cited as a witness in the charge-sheet. However, P.W.5 had been requested by the mother of the victim to depose before the Court for the first time being a resident in the neighborhood residing about 5 to 6 house adjacent to the house of the victim. The locale of the accident was at a distance of 25 kilometer from the residence of the eye witness and his presence at the spot of the accident on the particular date and time was suspicious which rendered his evidence to be unbelievable and the same had been rightly refused to be considered by the learned tribunal while pronouncing the impugned judgment and award.

6. Considered the rival contentions of the Learned Advocate representing both the parties.
7. Since, the occurrence of the accident, involvement of the offending vehicle, driving licence, route permit and insurance

policy etc. have not been disputed by the Learned Advocate representing the respondent No.1/insurance company, this Court restricts itself only to the extent of issues raised by the respective parties.

8. The pivotal issue which prompted the learned tribunal to conclude the liability of the victim adjudicating his role constituting contributory negligence is based on the evidence of the eye witness being P.W.5. The charge-sheet marked as Ext.2 evidently did not cite P.W.5 to be the witness. The P.W.5 the eye witness was not the complainant. The brief facts of the case enumerated in the charge-sheet as revealed from the investigation did not categorically mention the motor cycle to have abruptly controlled its motion on the National High Way. The seizure of the offending vehicle as well as the motor cycle did not reveal damages on its part which was embarked on by the learned Tribunal to exonerate the offending vehicle from its entire liability from head on collision. It is imminent to re-visit the evidence of P.W.5 in his examination-in-chief. The P.W.5 in his evidence recorded on 20.10.2012 stated at about 11.30 while he was on his way to attend "Durga Utsab" accompanied by friends and relatives from Deulia Bazar to Kolaghat NH-6 road, the witness saw one motor

cyclist along with pillion rider proceeding before him at normal speed near Panshila fish market. He further saw the motor cycle to suddenly stop on the left side on NH-6 near Panshila fish market in front of him. Thereafter, one mini truck bearing registration No. WB-33/7931 proceeding from fish market linked road to NH-6 road at a high speed collided with the motor cycle along with pillion rider and in the impact resulted in the fall of the driver as well as pillion rider on the ground resulting in severe injuries to have been sustained by them. The P.W.5 had mentioned the specific spot of the accident to be Panshila fish market where the motor cycle applied sudden brakes and subsequently was hit by the offending truck approaching from fish market linked road to NH-6 road. The description of the locale did not cater to the accident to have occurred on the NH-6 which being a busy high way otherwise could not have been occupied for being utilized as a market. Therefore, the contention and the reasoning by the Learned Tribunal that the accident occurred on the NH6 is obliterated. It was further deposed by the P.W.5 that the motor cycle stopped for a certain period and thereafter the offending vehicle had collided with the same which improbabilised the role of the motor cycle to have contributed negligently to the

occurrence of the accident. The proceedings under Motor Vehicles Act exclusively meant for exercise of beneficial intent cannot be adjudicated in the light of a criminal trial. The Learned Tribunal exceeded its jurisdiction to have considered and expected the victim to prove his own innocence as if it was a criminal trial. It is incumbent upon the prosecution to prove the case which will be adequately addressed in the criminal proceedings instituted vide Kolaghat Police Station Case No. 370/12 dated 02.01.2012 under Section 279/338/427 IPC. In the above premises the victim is, therefore, entitled to the compensation through proper assessment. Since the mother of the victim claimed the monthly income to be Rs. 11000/- without any corroborative evidence the notional income of the victim is considered to be Rs. 4000/- per month considering the fiscal index prevalent at the time of the occurrence of the accident in the year 2012. The document marked as Ext.7 being disability certificate issued by the District Hospital, Tamluk, Paschim Medinipur the physical disability to the extent of 96% which was to be refuted after every three years. The age of the victim at the time of the accident was about 24 years. According to the document marked as Ext.5 and the multiplier accordingly should be 18.

9. 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. 7,00,000/- is modified as follows:

Monthly Income	Rs. 4000/-
Annual income	x 12
	Rs. 48,000/-
96% disability	Rs. 46,080/-
Future Prospect to be added(40%)	Rs. 44,237/-
Multiplier to be "18"	X 18
	Rs. 7,96,266/--
Medical Expenses as granted by tribunal	Rs. 7,00,000/-
Less	Rs. 14,96,266/-
Entitlement	Rs. 7,00,000/-
	Rs 7,96,266/-

10. The Learned Advocate for the appellant/claimant submitted that the appellant/claimant has withdrawn a sum of Rs. 7,00,000/- The appellant/claimant is entitled to a sum of Rs. 7,96,266/- along with interest at the rate of 6%per annum to be paid from the date of filing of the claim application i.e. 26.02.2013 till the date of realization. In view of the observation of the Hon'ble Supreme Court in **Parminder Singh Vs. Honey Goyal & Ors.**³ the appellant/claimant is to provide the details of Bank Accounts held

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

² (2009) 6 SC 121

³ 2025 INSC 361

in the name of the appellant/claimant at the office of the learned Registrar General, High Court at Calcutta for disbursal of the compensation amount.

11. The Learned Advocate for the respondent No.1/insurance company is to deposit the balance sum of Rs. 7,96,266/- along with interest before the office of the learned Registrar General High Court at Calcutta within two months from the date of passing of this order.
12. The office of the Registrar General, High Court, Calcutta shall encash the said cheque and, thereafter, disburse directly to the bank accounts of the the present appellant/claimant learned Judge cum Additional District and Sessions Judge, 3rd Court, Motor Accident Claims Tribunal, Tamluk, Purba Medinipur in M.A.C. Case No. 245 of 2014 on proof of proper identification of the appellant/claimant subject to payment of ad valorem Court's fees within four weeks.
13. The instant appeal is disposed of accordingly.
14. The pending applications, if any, stands disposed of.
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. AR. Ct.