Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice Ananya Bandyopadhyay

FMA 690 of 2024
CAN 2 of 2024

The New India Assurance Company Limited
Versus
Biswajit Das & Anr.

With

COT/119/2024

Biswajit Das
-Vs.-
The New India Assurance Company Limited & Anr.

For the Appellant	:	Ms. Sucharita Paul
For the Respondent No.1	:	Mr. Amit Ranjan Roy
Heard & Judgment on	:	28th August, 2025.

Ananya Bandyopadhyay, J:

1. Both the Learned Advocates representing the appellant/Insurance Company and the respondent No.1/ claimant are present in Court.

2. The instant appeal had been filed against the judgment and award dated 10th January, 2024 passed by the Learned Additional District & Sessions Judge, 3rd Court, Krishnagar, Nadia in M.A.C. Case No. 131 of 2017.

3. An application under Section 166 of the Motor Vehicles Act had been filed by the injured victim on account of an accident sustained by him on 04.02.2017 at about 8 clock resulting in 80% disablement through amputation of his left hand above elbow with the involvement of the offending vehicle being a Lorry bearing Registration No. WB-45/2693 which approaching at an high speed, rashly and negligently clashed with the victim.

4. The learned Advocate representing the appellant/Insurance Company submitted that the insurance policy issued against the offending vehicle in favour of the owner of the same become invalid since at the relevant point of time the insurance policy lapsed its effectivity as the premium amount deposited by the owner of the offending vehicle through a cheque had been dishonored. The Learned Advocate representing the appellant/insurance company further submitted that the Learned Tribunal had erroneously considered the observation that the insurance policy had been validly issued in favour of the owner of the offending vehicle.

5. The Learned Advocate representing the respondent No.1 /claimant submitted to have filed a cross objection being COT 119 of 2024 claiming that the accident which occurred in the year 2017 resulting in the victim to sustain 80% disability whereby the Learned Tribunal discarding the evidence of P.W.6 to have been an employer of the victim had granted a notional income of Rs. 5000/- per month. More-over, the compensation with regard to the element of future prospect was not granted.

6. Since the occurrence of the accident, the driving license, the route permit etc. and other ancillary issues 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 agitated by the Learned Advocates representing the respective parties. The Learned Tribunal in the impugned judgment and order had mentioned that the cheque in favour of the claimant to have been issued against the premium for the insurance policy marked as Ext. A bearing signature of one Ashoke Bhakat and not owner of the offending vehicle. It was further opinioned that the document marked as Ext. A was issued in the name of the appellant/insurance company to the tune of Rs. 47,850/- which had been an amount for renewal of the policy coverage against the insurance policy issued conclusively. The Learned Tribunal opined as follows:

"The fact regarding the payment of Rs. 47,850/- for the renewal of Insurance Policy has not been disputed by the claimant/petitioner. Further, it appears from the Ext. B (return memo) dated 11.09.2016 that the payment was unable to obtain due the reason Exceeds arrangement. The Ex. C and Ex. D, i.e. letters dated 28.11.2016 indicates the matter was intimated to the RTO as well that owner of the offending vehicle namely Munshi Asraf Hossain informing them about the cancellation of that Policy being no. 512900311160100035502 (policy cover) for the vehicle bearing no. WB-45/2693 from the date of 31.10.2016. It was further opined that the documents being Ext. A the cheque amounting to Rs. 47,850/- that it was issued on 31.10.2016 by one Ashoke Bhakat for Bhakat Enterprise, Rajram, Birbhum. It further appears from Ext. B i.e. return memo (after cheque could not be enchased) that return date to be 11.09.2016 in connection with cheque dated 11.08.2016 but the same does not seem to be related with cheque dated 31.12.2016. More-over, the letters intimating about the cancellation of policy no. 512900311160100035502 for the vehicle WB-45/2693 (i.e. Ex. C & D) appears to be sent to the RTO and owner of the vehicle on 28.11.2016 i.e. almost one month before issuing of cheque (Ext. A). So, if the Ex. A and Ex. C and D are to be taken together for chain of event for cancellation of Insurance Policy of the vehicle no. WB-45/2693 then Ex. C and D do not seem to be related with Ex. A (i.e. cheque amounting to dated 31.12.2016). if the cheque for renewal of the Insurance Policy was issued on 31.12.2016 then how the letters (Ex- C and D) can be sent for intimating about the cancellation of the Policy much before the issuing of the said cheque i.e. 28.11.2016. Further, Ex-B also seems to have been issued in connection with cheque dated 11.08.2016 but not related with cheque dated 31.12.2016 as claimed by OP Insurance Co. More-over, Ex.-3 i.e. Insurance Policy in connection with vehicle bearing no. WB-45/2693 was issued for policy cover for the period between 31.10.2016 and 30.10.2017. Therefore, from all these factors it will be very difficult to hold that Ex.-B, Ex.-C and Ex. D were issued in connection with Ex. -A (i.e. cheque dated 31.12.2016). More-over, OP Insurance Co. have not come with other substantial evidence or proof that policy which was issued in respect of vehicle no. WB-45/2693 was not in effect

on the date of the accident other than Ex. C and Ex. D. Therefore, in view of such attending facts and circumstances, this Court is not in a position to hold that vehicle bearing no. WB-45/2693 was not insured with the New India Assurance Co. Ltd. at the time of the accident".

7. The aforesaid observation of the Learned Tribunal has been evident on record which cannot be interfered with. Though the evidence of P.W.6 could not relate to the exact amount of salary disbursed in favour of the victim and on the date of accident. However, the Learned Tribunal granted the notional income to the extent of Rs. 5000/- per month and the same is not interfered with. The Learned Tribunal, however, did not grant compensation to the extent of future prospect.

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. 10,12,449/- is modified as follows:

Monthly Income	Rs. 5000/-
Future Prospect to be added(40%)	Rs. 2000/-
Annual Income	Rs. 7000/-
	X 12
	Rs. 84,000/-
80% functional disability	x 80
	Rs. 67,200/
Multiplier to be "16"	X 16
	Rs.10,75,200/

1 2017(4)TAC 673(S.C)
[2] (2009) 6 SC 121

Add Rs. 30,000/- for loss of income during treatment granted by ld. Tribunal	Rs.10,75,200/ Rs. 30,000 Rs.11,05,200/ Rs. 1,94,449/-
Medical Expenses Rs. 1,94,449 as granted by Ld. Tribunal	Rs.12,99,649/
Pain & Suffering	Rs. 5,00,000/ Rs.17,99,649/

9. The learned Advocate representing the appellant/Insurance Company submits to have deposited a sum of Rs. 14,39,000/=(Rs. 25,000 + 14,14,009) 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 deposit the remaining balance amount before the office of the Learned Registrar General, High Court at Calcutta.

10. The Learned Advocate representing the respondent Nos. 1/claimant is entitled to receive the amount of Rs. 17,99,649/- along with interest at the rate of 6% per cent per annum from the date of filing of the claim application till the date of actual realization.

11. 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 Additional District & Sessions Judge, 3rd Court, Krishnagar, Nadia in M.A.C. Case No. 131 of 2017 on proof of proper identification of the respondent No.1/claimant subject to payment of ad valorem Court fees within four weeks 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 detail of his bank account with relevant documentary proof, prior to such disbursal as aforesaid.

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

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

14. The interim order if any stand vacated.

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.)

C.M. A.R.