

Form No.J(2)

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 533 of 2023

CAN 2/2018 (Old No. CAN 7754/2018)

**Magma HDI General Insurance Co. Ltd.
Versus
Mahanura Bibi & Ors.**

For the Appellant : Mr. Rajesh Singh

For the Respondent No.1 to 4/
claimants : Mr. Saidur Rahaman

Heard & Judgment on : 25th August, 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 30.07.2017 passed by the Learned Judge, Motor Accident Claims Tribunal, Additional District Judge, 5th Court, Malda in M.A.C. Case No. 79 of 2016.
3. Learned Advocate representing the appellant/insurance company submitted to have filed the instant appeal solely on the ground that the deceased victim did not incur any accident whereby his

death was caused. However, he died at his home after two months eight days of the accident.

4. The Learned Advocate representing the respondent Nos. 1 to 4/claimants submitted that the victim had been subsequently hospitalized in four hospitals/Nursing Home from time to time from the date of the occurrence of the accident for a period of two months (approximately).
5. Considered the rival contentions of the Learned Advocates representing the respective parties.
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 respondent No.1/insurance company, this Court restricts itself only to consider the point agitated by both the parties. The Learned Tribunal in the impugned judgment and order had observed *inter alia* as follows:

"On perusal of Ext.8 and 9 I find that said victim was admitted at Institute of Neuro-Science Kolkata on 16.09.2013 and he was discharged therefrom 21.09.13. As per record said victim died on 22.09.13 at his residential house.

From the aforesaid discussion it is clear before this court that immediately after the aforesaid accident treatment of the victim was stated and same was continued till the previous date of death of victim. I also find from the aforesaid treatment papers that it has noted therein that victim sustained road traffic accident on his person.

On careful perusal of record I find that name of the victim has not mentioned in the FIR. In the FIR it has mentioned that 2 persons were died in the said accident and their names have mentioned. In the FIR it has mentioned that some other persons were injured. So, it is clear before the court that some other persons were injured in the said case. It is settled principles of Law that FIR and CS are not substantive piece of evidence. In this case I have carefully gone through the evidence of eye witness (PW5) who clearly stated before this Court that victim of this case namely Juel @ Jiaul Hoque sustained injury in the aforesaid accident. He was thoroughly cross examined by the OP no.2 but no contradiction has come out so that this court can disbelieved his evidence. Moreover, on perusal of record I find that just after the aforesaid accident treatment of victim was started. Those treatment papers should not be disbelieved. Accordingly, I do not find any reason to disbelieve the evidence of PW5 and placing reliance upon his evidence I am of the opinion that victim sustained injury in the aforesaid accident and absence of his name in the FIR and charge sheet is no bar to get compensation relating to aforesaid accident.

On perusal of record I find that the death of victim took place after prolong treatment and when the victim was brought to the house from Nursing home immediately after the said date death of the victim took place. Due to ignorance of family members of the victim arrangement of post mortem examination over the dead body was not done. Moreover, it is known to everybody that morgue authority do not take the dead body of the such type of victim when he died at his house after release of hospital or Nursing home.

Considering the above submissions as well as the evidence of PW-1 regarding the factum of accident and on the basis of materials on record it appears that victim was going towards Sujapur Side from Malda side with Magic car vide no. WB 66N-9577, on that time one Truck bearing no. WB 65B2442 (Truck) was coming from opposite direction with a terrific high speed and in a most rash and negligent manner could not control it's speed and dashed the aforesaid magic car. Due to the aforesaid accident said victim sustained grievous injuries on his person and he was shifted to Malda

Medical Collage and Hospital where from he was referred to Malda Nursing Home, Malda and thereafter he was released there from on 19.07.13, thereafter he also treated at ROYD Nursing home, Kolkata as indoor patient for the period of 20.07.13 to 12.08.13. He was also treated there for the period from 31.08.13 to 16.09.13 during the continuation of his treatment he died on 22.09.13.

Therefore, on the assessment of the totality of the facts in the light of documentary and oral evidence placed before me as well as the submission made by the Ld. Advocate of the respective sides, I find and hold that the death of Juel @ Jiyaul Haque resulted from the accident occurred on 14.07.2013 due to rash and negligent driving of the offending vehicle bearing no. WB-65B/2442".

7. More-over, the document marked as Ext. 14 being the injury report addressed to the Officer-in-Charge of the English Bazar Police Station by the Sonoscan Hospitals Private Limited wherein the victim admitted on the date of the accident as referred to by the Malda Medical College and Hospital which is marked as Ext. 6. More-over, the document marked as Ext. 7 i.e. Institute of Neurosciences, Kolkata and also endorsed that the victim who had been suffering from the injuries as a result of the road traffic accident. Under such circumstances, this Court is not inclined to interfere with the impugned judgment and order.
8. The learned Advocate representing the appellant/Insurance Company submits to have deposited a sum of Rs. 7,98,472/=(Rs. 25,000 + 7,73,472/-) through two separate cheques as per challan filed by the Learned advocate representing the appellant/insurance company.

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 with accrued interest directly to the bank accounts of the respondent Nos. 1 to 4/claimants as mentioned in the impugned judgment and award passed by the Learned Judge, Motor Accident Claims Tribunal, Additional District Judge, 5th Court, Malda in M.A.C. Case No. 79 of 2016 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 his bank accounts with relevant documentary proof, prior to such disbursal as aforesaid.
10. The instant appeal is dismissed accordingly.
11. The pending applications, if any, stands disposed of.
12. The interim order if any stand vacated.
13. The TCR be sent down to the concerned tribunal forthwith.
14. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)