

Form No. J(2)

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 1268 of 2024

**Cholamandalam MS General Insurance Company Ltd.
Versus
Kumari Senaha & Ors.**

For the Appellant : Mr. Soumalya Ganguly

For the Respondent No.1 to 4/
claimants : Mr. Saheriyar Alam

Heard & Judgment on : 2nd September, 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 29th June, 2024 passed by the Learned Judge, Motor Accident Claims Tribunal, Fast Track 1st Court, Islampur, Uttar Dinajpur in M.A.C. Case No. 183 of 2022.
3. Learned Advocate representing the appellant/insurance company submitted that the Learned Tribunal did not consider the contributory negligence on the part of the offending vehicle being a truck which was not involved in the accident and the

motor cycle should have been equally cast with the liability to bear the compensation amount. It was further submitted in absence of corroborative oral and documentary evidence the Learned Tribunal had considered a sum of Rs. 7375/- to be the monthly income of the victim. The Learned Tribunal granted an interest to the extent of 7.5% per annum which according to the Learned Advocate representing the appellant/insurance company had been excessive.

4. The Learned Advocate representing respondent Nos. 1 to 4/claimants submitted that the Learned Tribunal after considering all the aspects had granted the compensation amount which was absolutely correct.
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 appellant/insurance company, this Court restricts itself only to consider the point agitated by both the parties. The Learned Tribunal in considering the role of the vehicles being the truck bearing Registration No. WB91-2522 and the motor cycle bearing Registration No. 37W/2785 had observed as follows:

“in course of argument the ld. Advocate of the Insurance company has pointed out that, in the claim petition the registration number of the offending vehicle is WB-91/2522 and it is a truck. But according to the charge-sheet (exhibit 2) the registration number WB91/2522 is motorcycle and the registration number of a truck is BR 37W/2785. From exhibit 3 and exhibit 3/1, both seizure list it appears that two vehicles bearing registration number WB 91/2522 and BR 37W/2785 were seized and WB 91/2522 is the registration number of a TATA LPT 1109 truck and BR 37W/2785 is the registration number of one blue colour Yamaha 125 Motorcycle, from which it may be concluded that in the charge-sheet the registration numbers have been mentioned wrongly vice versa and for such wrong entry the claimants cannot be held responsible.

It is not the case of Insurance company that the offending vehicle was not in running condition on the date of accident and it was in garage for repairing purpose or engaged otherwise at other places. Mere pleadings is not sufficient to establish a case. It is to be substantiate by producing cogent and reliable evidence. But, no such evidence is available on record.

In a case of claim petition under Motor Vehicles Act, the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person. The M.V. Act is a beneficial legislation; for the benefit of the victim and/or his family members and it is a summary procedure also. It is the settled position of law that in any claim for compensation it does not require strict proof of wrongful act or neglect of the driver of the offending vehicle”.

7. Moreover, the charge-sheet marked as Ext.2 mentioned the number of the vehicles and the facts of the cases and attributed the liability to the truck to have been the offending vehicle along with seizure of both the vehicles and charge-sheet to have been issued in the name of the driver of the offending

truck. Therefore, the concept of contributory negligence endorsed by the Learned Advocate representing the appellant/insurance company is not considered. In absence of documentary evidence the Learned Tribunal had explained the reason for considering the monthly income of the victim to be Rs. 7375/- on the basis of a notification issued by the Labour Commissioner, Government of West Bengal and the same is not interfered with. The impugned award of Rs. 13,08,497/- is modified as follows:

Monthly Income	Rs. 7375/- X 12
Annual Income	Rs. 88,500/-
Future Prospect to be added(25%)	Rs. 22,125/-
Personal Expenses (1/4)	Rs. 1,10,625/- Rs. 27,656/-
Multiplier to be "13"	Rs. 82,969/- x 13
	Rs.10,78,597/
General Damages	Rs. 77,000/-
Entitlement	Rs.11,55,597/

8. The Learned Advocate representing the appellant/Insurance Company submits to have deposited a sum of Rs. 15,75,215/=(Rs. 25,000 + 15,50,215) through two separate cheques as per challan filed by the Learned Advocate representing the appellant/insurance company.

9. The Learned Advocate representing the respondent Nos. 1 to 4/claimants are entitled to receive the amount of Rs. 11,55,597/- at the rate of 6% per cent per annum from the date of filing of the claim application till the date of actual realization.
10. 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 present respondent Nos. 1 to 4/claimants as mentioned in the impugned judgment and award passed by Learned Judge, Motor Accident Claims Tribunal, Fast Track 1st Court, Islampur, Uttar Dinajpur in M.A.C. Case No. 183 of 2022 on proof of proper identification of the respondent No.1 to 4/claimants 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 claimants to provide details of their bank accounts with relevant documentary proof, prior to such disbursal as aforesaid.
11. The instant appeal is disposed of accordingly.
12. The pending application, 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. Ar. Ct.