

District: Nadia

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

Appellate Side

Present :

The Hon'ble Justice Ananya Bandyopadhyay

FMA 1398 of 2024

CHOLAMANDALAM MS GEN. INS. CO. LTD.

VS

MINOR ISEKA BISWAS DAUGHTER OF THE
DECEASED MINTU BISWAS BEING REP. BY HER
MOTHER ITU BISWAS AND ORS.

Mr. Soumalya Ganguly

... for the appellants/Insurance Company

Mr. Amit Ranjan Roy

... for the respondents/claimants

Heard on & Judgment on : 03.09.2025

Ananya Bandyopadhyay J.

1. The Learned Advocates representing both the parties are present in court.
2. The instant appeal had been filed against the judgment and order dated 21.06.2024 passed by the Learned Judge, Additional District and Sessions Judge, 3rd Court, Krishnanagar, Nadia in MAC Case No.94 of 2017.
3. The Learned Advocates representing the appellant/insurance company submitted to have filed the instant appeal exclusively on the ground that the Learned Tribunal failed to consider the concept

of contributory negligence and cast liability on the appellant/Insurance Company under which the offending vehicle being pick up van, barring the other offending vehicle being Maruti Car. It was further stressed that the Maruti van should also have been made responsible for paying part of the compensation as awarded by the Learned Tribunal.

4. The Learned Tribunal representing the respondent Nos. 1 to 3/claimants submitted that charge sheet did not reflect the involvement of the Maruti Car and accordingly, the Learned Tribunal had cast the entire responsibility on the appellant/Insurance Company fixing liability to pay the compensation.

5. 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 appellant/insurance company, this Court restricts itself only to consider the point agitated by both the parties.

6. The contention of the Learned Advocate representing the appellant/Insurance Company had been vividly explained by the Learned Tribunal in the impugned judgment and order, inter alia, as follows :-

“ Learned lawyer for the OP no.2 during the course of argument submitted that the vehicle in question having registration no.WB-51B/8168 (Bolero vehicle) is not involvement in the alleged accident and evidence of PW-3 who was said to be with the victim and his family members at the time of accident was not made charge-sheet witness and as such his

evidence is not reliable. It is further argued by the learned Advocate for the OP Insurance Co. that there was contributory negligence on the part of the Maruti vehicle or standing Truck with which the said Maruti Vehicle dashed and as such the contesting Insurance Co. is not wholly liable to pay compensation to the claimants.

Refuting such contention of learned Advocate for the OP Insurance Co. it is submitted by the learned Lawyer for the claimants that the contributory negligence has to be proved by reliable evidence for which the OP no.2 has failed and the after investigation of the case charge-sheet was submitted against the driver of the Bolero Vehicle bearing registration no.WB-51/8186 after considering the statements of the several witnesses examined during the investigation and also other related aspects. It is also contended by the Learned Lawyer for the petitioner that from the version of PW-3 who is the eye witnesses of the accident it is clear that there was rash and negligence act on the part of the driver of the Bolero pick up van (vehicle) which has been supported by the charge-sheet submitted in the road traffic accident case. In support of his contention Learned Advocate for the petitioner referred decision reported in 2023(4) T.A.C 790 of Hon'ble Allahabad High Court in United India Insurance Co. Ltd. vs. Amar Singh & Ors.

Now, in respect of the contention raised by Learned Advocate for OP Insurance Company as regards the contributory negligence on the part of the vehicle allegedly by which the victim and his family were travelling or the Truck with which said Maruti Vehicle dashed. It is urged that PW-3 was also travelling in said Maruti Vehicle by which victim and his family members were travelling and so there is no point to get confused that he is the eye witnesses of the accident. It is clear from the evidence of PW-3 that he narrowly escaped from the accident and accident took place due to rash driving of the

opposite vehicle and there was no fault on the part of the driver of the Maruti van by which they were traveling. Further, The charge-sheet(Ext.-2) is also silent in connection with the involvement of other vehicle in the said accident. Moreover, it reveals from the Charge-sheet(Ex.-2) that offending vehicle was pick Up Van having registration no.WB-51/8168 and accordingly, the charge sheet was submitted against the driver of the vehicle bearing registration no.WB-51/8168 u/s279/337/338/304A IPC prima facie holding cause of the accident to be due to rash and negligent driving of the vehicle bearing no.WB-51/8166.

Moreover, as discussed above the oral testimonies of PW1 and PW 3 along with the documents such as Postmortem report (Ex.-5) certified copy of FIR(Ex-1) and Charge-sheet(Ex-2) clearly establishes the death of Mintu Biswas in the said accident. The oral evidence of these two PWs and documents proved from the side of the petitioners also do not create any dispute and confusion in regard to the involvement of vehicle bearing registration no.WB-51/8168 in the said accident.

The question as regards whether the vehicle bearing registration no.WB-51/81668 was insured with the Insurance Co. i.e. OP no.2 at relevant point of time or not. The copy of the Insurance policy (ex.4) of the vehicle bearing no.WB-51/8168 transpires that the vehicle was duly insured with the O.P No.2 i.e. Cholamandalam MS General Insurance Com. Ltd. at the time of the accident and it was valid on the date of accident i.e. on 12.01.2017 and this fact has not been disputed by the OP no.2 either. The contention as regards the fact the driver(rider) of the offending vehicle bearing registration no.WB-51/8168 was not having valid Driving license at the time of accident was not raised from the side of the OP No.2.”

7. The question raised by the appellant Insurance Company had been aptly answered by the Learned Tribunal and this court is not inclined to interfere with the same.

8. The learned Advocate representing the appellant/Insurance Company submits to have deposited a sum of Rs. 93,12,386/=(Rs. 25,000 + 92,87,386/-) 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 respondents/claimants as mentioned in the impugned judgment and award passed by the Learned Judge, Additional District and Sessions Judge, 3rd Court, Krishnanagar, Nadia in MAC Case No.94 of 2017 on proof of proper identification of the respondents/claimants subject to payment of ad valorem Court fees 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 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.)**