

District:

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

Appellate Side

Present :

The Hon'ble Justice Ananya Bandyopadhyay

FMA 173 of 2024

**NATIONAL INSURANCE COMPANY LTD.
VS
NAIMA KHATUN & ORS.**

Mr. Rajesh Singh

... for the appellants/Insurance Company

Mr. Jayanta Mondal

Mr. Sayantan Rakshit ... for the respondents/claimants

Heard on : 20.08.2025

Judgment on : 20.08.2025

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 23.06.2023 passed by the learned Judge, Motor Accident Claims Tribunal, Additional District Judge, 2nd Court, at Durgapur, District-Paschim Bardhaman in MAC Case No.56 of 2018.

3. An application under Section 166 of the Motor Vehicle Act, had been filed by the claimants on account of death of the victim in an accident which occurred on 24th February, 2018 at about 4:35 hours on Dirghangi More Chowmatha (Netaji More) at Delhi Road within jurisdiction of Serampore Police Station Hooghly with the involvement of the offending vehicle being Dumber bearing registration no.WB-53B 7246 which proceeding at an excessive speed rashly and negligently violated the signal being controlled by the victim as a Traffic Constable at the crossing of Tarakeshwar Road and Delhi Road. Consequently, the victim suffered severe injuries and was shifted to Walsh S.D Hospital, Hooghly wherein he was declared as “brought dead”.

4. The Learned Advocate representing the appellant/Insurance Company submitted that in an application under Section 166 of the M.V Act the honorary duty was to prove the rash and negligent driving on the part of the offending vehicle which was not cited as a charge under Section 279 of the Indian Penal Code in the charge sheet forwarded by the concerned Investigating Officer before the court of the Additional Chief Judicial Magistrate, Serampur, Hooghly since aforesaid sections describing the rash and negligent act on the part of the Driver of the offending vehicle constitute an offence thereto had been relevance of the offending vehicle could not have been considered to have been involved in the accident to the rash and negligent act on the part of the Driver of the offending vehicle since the same had been exonerated of the charge under

Section 279 of the Indian Penal Code which did not appear in the charge sheet No.313 of 1990 dated 31.07.2019 as aforesaid filed before the charge sheet which was filed under Section 186/353/304 of the Indian Penal Code before the court of the learned ACJM, Srerampore. Moreover, the claimants failed to adduce evidence that the father of the deceased victim was solely dependent on the income of the deceased of the son for his livelihood. Accordingly, the annual income of the victim assessed by the Learned Tribunal after deductions of 1/4th towards personal expenses should have been to the extent of one third.

5. The learned advocate representing the respondents/claimants submitted that the eye witness had categorically mentioned that the Driver of the offending vehicle had been rash and negligent which resulted in the accident to have occurred. Moreover, the claim application mentioned that the father of the victim along with the wife of the victim and his minor children were dependent on the income of the deceased victim. The mother of the victim had died prior to the death of the same. It was further mentioned that on an earlier occasion a separate claim application was filed initiating the MAC Case No.92 of 2018 before the court of the Judge, MAC Tribunal, 2nd Court, Suri, Birbhum which was dismissed for non-prosecution vide order dated 15.11.2019 wherein the father of the victim had appeared before the aforesaid Tribunal to adduce evidence for withdrawal of the said MAC Case No.92 of 2018.

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 appellant/insurance company, this Court restricts itself only to consider the point agitated by both the parties. A document marked as exhibit-13/3 as well as the exhibit-14 had been issued by the Respondent Insurance Company Income Tax Department beyond the control of either of the victim or the control the driver of the offending vehicle and such submission of the learned advocate representing the appellant/Insurance Company cannot be accepted. In view of the above observation the impugned judgment and order passed by the Learned Tribunal is not interfered with.

7. Heard the rival contention of the learned advocate representing all the parties. The Hon'ble Supreme Court in Reliance Life Insurance Company Ltd. & Anr. vs. Jaya Wadhwani and Branch Manager, Reliance Life Insurance Company Ltd. vs. Usha Soni had, inter alia, observed that:-

“ In the present appeals, we do not find any such issue of back dating but the date of issuance of the policy would be the relevant date for all purpose are and not the date of proposal or the date of issuance of the receipt. In view of the above, the stand taken by the appellant is approved. The impugned orders are thus liable to be set aside.”

8. The charge sheet No.313 of 2019 dated 31.07.2019 filed in the court of the learned ACJM at Serampore, Hooghly marked as Exhibit-2, inter alia, stated a narrative of the accident which occurred on 24th February, 2018 in the claim “brief fact of the case which mentioned : *at about 4.35 hours one stone chips loaded Dumper bearing no.WB53B-7246 with excessive was coming towards Dirghani From Tarakeswar side violating the lane and over taking the other vehicles which were resting in que for signal and dashed C-1343 Mir Dalim who [performing Traffic Duty was giving signal to stop the Dum as the same was coming by committing Lane Violation. The dumper smashed the constable and fled away towards Kolkata side.*”

9. The said charge sheet further mentioned as follows :-

“ During investigation, it has been learnt that on 24.02. 2018 when C/1343 Mir Dalim was performing his duty at Dirghangi More Chowmatha, Netaji More, Delhi Rd. Crossing, PS-Serampore, Dist-Hooghly then the accused driver Bishnupada Mondal was driving the offending vehicle bearing Reg. No.WB53B-7246 and also breaking the traffic rules and due to rush and negligent driving by the accused driver lost control and dashed him over there and C/1343 Mir Dalim was expire. The accused driver is directly involved in this case. Sufficient evidence has been collected against him.”

10. The Charge sheet as aforesaid cited the eye witnesses Muktaram Roy of Serampore Police Station of Hooghly to be a

witness who also appeared before the Tribunal as an eye witness adduce his evidence as PW-2.

11. The said eye witnesses being PW-2 deposed before the Tribunal that PW-2 Muktaram Roy, who is also a police constable and an eyewitness of the incident in his affidavit in chief stated that on the ill-fated day he along with Mir Alim was performing traffic duty at Dirghangi more, left turn corner towards Tarakeswar on Delhi Road crossing as a traffic constable and at that time one dumper loaded with stone chips having registration No.WB-53B/7246 which was coming towards Dirghangi more from Tarakeswar side, with excessive speed, violating the lane discipline and overtaking other vehicles and at that time Mir Dalim showed signal to stop the dumper but the said dumper violating the signal smashed him and fled away towards Kolkata. He stated that as a result of Mir Dalim sustained severe injury and was shifted to Walsh Hospital, Srirampur, Hooghly for treatment where the doctor declared him as brought dead.

12. During his cross examination PW-2 stated "he was on the spot along with the victim constable and was standing at a distance of 60-70 feet from the victim on the road. The occurrence is a busy place having so many vehicles passes by. I was at the spot of the duty along with the victim constable Mir Dalim since deceased. I was standing at a distance of 60-70 feet from the victim on the road".

13. The evidence of the PW-2 being an eye witness who had been cited as a witness in the charge sheet evidenced cross of the accident in the mode and manner as detailed in the brief facts of the state narrated in the charge sheet as well as the opinion of the Investigating Officer through his investigation. Whether a charge under Section 279 of the Indian Penal Code had been stated in the charge sheet or not at a preliminary stage was to be scrutinized by the concerned court while framing the charges taking into consideration to entire facts and circumstances along with the culpability of the offender in disposing of an application under Section 166 of the M. V. Act. The evidence on record being the deposition of the eye witness being PW-2 which corroborate with facts stated in the charge sheet and the investigation report as mentioned in the charge sheet were not only corroborative but also palpable. Accordingly, the Learned Tribunal was justified in concluding that the offending vehicle was responsible for the occurrence of the accident due to rash and negligent driving of the owner of the same. The examination in chief of PW-1 being wife of the deceased victim stated that they were fully dependent upon the income of her deceased husband who maintained their family during his lifetime and the said statement was not controverted by the learned advocate representing the Insurance Company before the learned tribunal.

14. Under such circumstances, the dependency of the father of the victim upon the income of the deceased victim during his life

time cannot be disbelieved. Accordingly, this court inclined to interfere with the impugned judgment and order. The Learned Advocate representing appellant/Insurance Company submitted to have deposited the principle sum of Rs.63,44,800/- at the office of the Registrar General, High Court at Calcutta. The appellant/Insurance Company is to further deposit the same to be computed @ 6% per annum on the principle already deposited at the office of the Registrar General, High Court, Calcutta from the date of filing of the application under Section 166 of the M. V Act till the date of deposition of the principle amount at the office of the learned Registrar General, High Court, Calcutta. The interest accrued on the principle sum as aforesaid from the date of its deposition at the office of the learned Registrar General, High Court, Calcutta till the date of its withdrawal be disbursed in favour of the claimants.

15. Urgent Photostat Certified copy of this Judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Ananya Bandyopadhyay, J.)