Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice Ananya Bandyopadhyay

FMA 827 of 2023

Jotirmoy Biswas
Versus
The National Insurance Company Limited & Anr.

For the Appellant	:	Mr. Subir Banerjee, Mr. Sandip Bandyopadhyay, Mrs. Ruxmini Basu Roy
For the Respondents	:	Mr. M. P. Chakraborty, Ms. Ratnadipa Karmakar
Heard & Judgment on	:	20th August, 2025.

Ananya Bandyopadhyay, J:

1. Both the LearnedAdvocates representing the appellant/claimant and the respondents/Insurance Company are present in Court.
2. The instant appeal had been filed against the judgment and award dated 06.12.2019 passed by the LearnedJudge, Motor Accident Claims Tribunal, Uttar Dinajpur at Raiganj M.A.C. Case No. 63 of 2017.
3. An application under Section 166 of the MV Act had been filed by the claimant/victim having suffered an accident on 04.07.2016 at about 12:15 hours in the midnight as stated in the complaint marked as Exhibit 2 as well as the formal FIR marked as Exhibit 1

at F.C.I. crossing on NH 34 within the jurisdiction of Raiganj Police Station with the involvement of the offending vehicle being a truck bearing registration No.WB-65A/0834 which approaching excessive speed rashly and negligently collided with a police ambulance whereby two occupants of the said police ambulance received multiple injuries and had been shifted to Raiganj District Hospital. The appellant was referred to Disari Nursing Home at Malda on 05.07.2016 wherein he underwent treatment till his recovery having sustained operation of his spleen which had been ruptured as a consequence of the accident.

4. The Learned Advocate representing the appellant/claimant submitted that the Learned Tribunal had dismissed the claim application filed under Section 166 of the M.V. Act claiming compensation on multifarious grounds, namely, (a) the victim did not suffer any permanent disablement having failed to prove the same; (b) the victim did not incur any loss of income; (c) the medical expenditure as a result of his treatment in the hospital had been borne by the National Insurance Company Limited. Moreover, there had been an ambiguity with regard to the date and timing of the accident claimed to have occurred due to contradiction in the contemporaneous documents being the claim application, the complaint, the FIR as well as the charge-sheet. It was further submitted that the claimant underwent pain and

suffering as a victim of the accident whereby an integral organ of his body had to be removed.

5. The Learned Advocate representing the respondents/Insurance Company submitted that the Learned Tribunal considering the fact that the victim had been a constable of the police administration in the district of Uttar Dinajpur still continued with his service and did not incur any financial or monetary loss. Moreover, the appellant/claimant failed to prove to have suffered any extent of disability either permanent, partial or temporary. The medical expenditure being disbursed through a branch of National Insurance Company Limited in respect of a mediclaim policy issued in favour of the appellant/claimant did not entitle the respondent/Insurance Company to disburse the same on similar account. Accordingly, the Learned Tribunal was justified in dismissing the claim application.
6. Considered the rival contentions of the respective parties.
7. The documents marked as Exhibit 1, Exhibit 2 as well as the charge-sheet marked as Exhibit.4 in unison stated the date of the accident to have been incurred on 04.07.2016. However, the time had been mentioned at 12:15 hours which indicated the time of the accident to have been occurred in the midnight which had been erroneously stated as 12:15 pm in the claim application. The involvement of the offending vehicle had not

been disputed. The document marked as Exhibit.9 being the discharge summary certificate issued by the hospital, namely, Disari Health Point Private Limited mentioned the victim to have suffered injuries as a result of the road traffic accident inconsonance with the facts and circumstances as enumerated in the documents marked as Exhibits.1, 2 and 4 along with the deposition of P.W.3, being a representative of the aforesaid hospital, being a surgeon attached to the same. P.W.3 in his deposition confirmed the victim/claimant to have undergone spleen rapture with multiple rib fracture which consequently had to be treated through exlaparotomy with spleenectomy. The histopathological report of the victim dated 09.07.2016 depicting traumatic rapture of the spleen was marked as Exhibit.10. The USG report dated 14.08.2016 was marked as Exhibit.11 and the expenditure as far as the hospitalization and consumption of medicines through a bill dated 12.07.2016 to the tune of Rs.1,06,217/- had been marked as Exhibit.12. The fact of the medical report as stated above indubitably established the victim to have suffered an operative procedure of his spleen at the aforesaid hospital which was indeed traumatic. The victim/claimant had entered into a mediclaim policy agreement with the National Insurance Company Limited which in compliance with the terms and conditions of the said mediclaim policy had disbursed the medical bill initiated by the aforesaid hospital to the tune of Rs.1,06,217/-.

8. In view of the decision of the Division Bench of this Court in New India Assurance Company Limited –Vs.- Bimal Kumar Shah & Anr. reported in 2018 SCC Online Cal 10368 : 2019 ACJ 1532 : (2018) 4 TAC 226 the transaction between the victim/claimant as well as the National Insurance Company Limited in view of the mediclaim policy to have been issued in favour of the victim/claimant had been a distinct contractual relationship without any relation with the occurrence of the instant accident where the respondent/Insurance Company played a different role owing to have issued an Insurance policy in favour of the owner of the offending vehicle under different terms and conditions absolutely separate from that of the mediclaim policy as aforesaid. The respondent/Insurance Company under such circumstances, could not exonerate itself from bearing the medical charges as borne by the same Insurance Company in respect of a separate agreement distinguishable from the present agreement between the owner of the offending vehicle as well as the respondent/Insurance Company. The evidence of the victim being P.W.1 and other documents revealed the victim to have been in continuous service after being discharged from the hospital and declared to be fit to resume his official duties. Moreover, during

the period of his hospitalization, the victim did not lose his monthly salary as per his own evidence before the Learned Tribunal. Accordingly, the Learned Tribunal was justified in considering the fact that the victim/claimant did not incur any loss of income as well as any future loss of income since he still continued to be in service. Nonetheless the victim did suffer agony and trauma resulting in indescribable pain and suffering having a part of his body being removed therefrom. Moreover, the victim/claimant is entitled to a sum of Rs.1,06,217/- on account of the medical expenditure borne by the National Insurance Company Limited.

9. The respondent/Insurance Company is to disbursed a sum of Rs.1,06,217/- + Rs.8,217/- + Rs. 2,160= Rs.1,16,594/- as per the documents marked as Exhibit.12. In addition, the respondent/Insurance Company is to further pay a sum of Rs.50,000/- towards pain and suffering. The total amount of Rs.1,66,594/- is to be paid along with an interest @ 6% p.a. from the date of filing of the application under Section 166 of the MV Act till the date of its actual realization.

10. In view of the observation of the Hon'ble Supreme Court in Parminder Singh –Vs.- Honey Goyal & Ors. reported in 2025 1 NSC 361 the appellants/claimants are to provide the details of Bank accounts held in the name of the appellant/claimant at the

office of the Learned Registrar General, High Court at Calcutta for disbursal of the compensation amount.

11. The Learned Advocate representing the respondents/Insurance Company is to deposit the sum of Rs.1,66,594/- along with the interest at the rate of 6% per annum from the date of filing of the claim application before the Office of the Learned Registrar General, High Court, Calcutta within a period of three months from the date of passing of this order.

12. On receipt of the said amount, the office of the Registrar General, High Court, Calcutta shall encash the said cheque and thereafter disburse the same directly to the Bank accounts of the present appellant/claimant as mentioned in the award granted by the Learned Judge, Motor Accident Claims Tribunal, Uttar Dinajpur at Raiganj in M.A.C. Case No. 63 of 2017 on proof of proper identification of the appellant/claimant subject to payment of ad valorem Courts fees.

13. The instant appeal is disposed of accordingly.

14. The pending applications, if any, stands disposed of.

15. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)

Srimanta, A.R.(Ct.)