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**The High Court At Calcutta
Jalpaiguri Circuit Bench
Civil Appellate Jurisdiction**

**FMA 3 of 2025
IA No: CAN 1 of 2024**

**Magma HDI General Insurance Company Limited.
Vs
Ajijur Rahaman @ Rahman & Ors
With
FMA 62 of 2024
IA No. CAN 1 of 2024
Ajijur Rahaman @ Rahman & Ors.
Vs.
Magma HDI General Insurance Company Limited &
Anr.**

Mr. Gobinda Saha, Adv.
Mr. Tamal Kr. Sen, Adv
Ms. Priyanka Dey, Adv
Mr. Milan Ch. Laskar, Adv.
... For the Appellants in FMA 62 of 2024 &
For the Respondent in FMA 3 of 2025.
Mr. Sayantan Ghosh
..... For the Appellant/Insurance Company
in FMA 3 of 2025 &
.....For the Respondents in FMA 62 of 2024

Both these appeals have assailed the self-same judgment passed by the Motor Accident Claims Tribunal. Therefore, both the appeals are taken up together for disposal via this common judgment and order.

In Re: FMA 3 of 2025

This appeal has been preferred assailing the judgment and award passed in connection with Motor Accident Claim Case No.258 of 2018.

Learned counsel appearing on behalf of the Insurance Company/appellant, in his usual fairness, has drawn attention of this Court to the delay in

lodging the F.I.R. at the instance of the legal heirs of the deceased as well as to the fact that no charge-sheeted witnesses were examined in the claim case.

From the record it appears that on behalf of the Insurance Company none of the two issues were ever taken either at the time of filing of written objection nor at the time of hearing before the learned Tribunal. Therefore, while disposing the appeal, I am not inclined to decide the issues that have not been taken before the learned Tribunal by the appellants. However, even if, I ignore the fact that both these issues were not taken up earlier, alternatively, I would like to add that delay in lodging the F.I.R. in no manner shall affect the merit of the claim petition as the factum of accident has been duly ratified by the attending circumstances where death of one Saharab Hossain @ Saharab Hosen took place due to the rash and negligent driving of the offending vehicle bearing registration No.WB-71B-1347. The fact with regard to death on account of alleged accident has not been denied by the learned counsel appearing on behalf of the Insurance Company also.

Now, coming to the issue of non-examination of charge-sheeted witnesses, it cannot be said to be an issue of any relevance as the factum of accident has duly been ratified by the eye witnesses, who were already examined on behalf of the claimants.

Moreover, the learned Tribunal is not bound to record its observation with regard to compensation only after examining charge-sheeted witnesses. In this case, on behalf of the claimants three witnesses were examined including one eye witness.

On that score, I find hardly any merit in the arguments advanced on behalf of the appellants/Insurance Company.

In Re: FMA 62 of 2024

This appeal has been preferred assailing the judgment and award passed in connection with Motor Accident Claim Case No.258 of 2018, wherein learned Motor Accident Claims Tribunal – cum- Additional District Judge & Sessions Judge, Fast Track, 1st Court, Jalpaiguri awarded compensation to the tune of Rs.64,74,535/- (Rupees Sixty Four Lakhs Seventy Four Thousand Five Hundred Thirty Five only) on account of death of one, Saharab Hossain @ Saharab Hosen in a motor accident involving a vehicle bearing registration No. WB-71B-1347. The legal representatives of the claimants filed claim application with a prayer for compensation to the tune of Rs.42,00,000/- (Rupees Forty Two Lakhs Only) along with interest @ 9% per annum from the date of filing of claim application i.e. 09.07.2018. According to claim petition, on 28.05.2018 at about

8:45 a.m. while deceased was standing at the road side at Sungsung Bazaar under P.S. Mekhliganj, District - Coochbehar, the offending Tractor coming with high speed dashed against the said, Saharab Hossain @ Saharab Hosen, since deceased. In effect, he sustained serious injuries and was taken to Chandrabhaga P.H.C., then to Jalpaiguri Sadar Hospital, and was lastly shifted to Anandaloke Nursing Home, where he succumbed to his injuries. The offending vehicle was duly insured with Magma HDI General Insurance Company Limited at the relevant point of time. On receipt of notice, both the insurance company and the owner entered their appearance in the case, but ultimately the owner did not contest the case, though Insurance Company filed written objection to the claim petition.

On receipt of the claim petition, the learned Tribunal framed the issues and after recording the evidence, came to his findings that the claimants are entitled to receive compensation to the tune of Rs.64,74,535/-.

Both the learned counsel appearing on behalf of the parties to this appeal are present.

Learned counsel appearing on behalf of the appellant has submitted that the learned Tribunal did not consider the interest at the time of awarding the compensation amount and for that reason, this

instant appeal has been filed on behalf of claimants.

Learned counsel appearing on behalf of the Insurance Company has also conceded the prayer advanced on behalf of appellant and submits that appellant is entitled to interest on the awarded amount in compliance with the provision of Section 171 of the Motor Vehicles Act.

The factum with regard to death on account of alleged accident, has not been denied by the learned counsel appearing on behalf of the Insurance Company and all the issues connected therewith have duly been addressed by the judgment impugned in this appeal. Therefore, to eschew the prolixity, I refrain myself to go into the merit of the case. Here, in this case, the appeal has been filed only with a prayer for granting interest on the awarded amount in compliance with Section 171 of the Motor Vehicles Act.

In the aforesaid view of the matter, the judgment and award passed by the learned Tribunal impugned in this appeal is being modified in the following manner:-

The claimants are entitled to get interest amount at the rate of 6% from the date of filing of the claim petition (09.07.2018) alongwith the compensation amount already awarded by the learned Tribunal.

The Insurance Company/Magma HDI General Insurance Company is directed to deposit the amount in the name of four claimants by issuing four separate cheques in equal share/proportion before the learned Tribunal within six weeks from date.

Learned Tribunal is requested to disburse the cheques to the four claimants after verification, identification as well as on receipt of acknowledgement.

With the aforesaid observation, the appeal being, **FMA 62 of 2024** stands disposed of.

In the light of the discussion made hereinabove, all connected applications stand disposed of accordingly.

Trial Court Record along with a copy of this order be remitted back immediately.

Urgent certified copy of this order, if applied for, be given to the appearing parties as expeditiously as possible upon compliance with the all necessary formalities.

(Bibhas Ranjan De, J.)

