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

**FMA 61 of 2024
Piyali Barman Singh & Anr.
Vs
National Insurance Company Ltd. & Anr.
With
FMA 66 of 2024
IA No. CAN 1 of 2025**

**National Insurance Company Ltd.
Vs.
Piyali Barman Singh & Ors.**

Mr. Gobinda Saha, Adv.
Mr. Tamal Kr. Sen, Adv
Ms. Priyanka Dey, Adv
Mr. Milan Ch. Laskar, Adv.
... for the appellants in FMA 61 of 2024 and
respondents in FMA 66 of 2024.

Mr. Bikramaditya Ghosh,
Ms. Supriya Singh.
... for the Insurance Company/appellant in
FMA 66 of 2024 and Respondents in
FMA 61 of 2024.

Paper book in both the appeals filed in Court
today be kept with the record.

Both the appeals are filed assailing the same
judgment and award passed by the Learned Motor
Accident Claim Tribunal-cum-Additional District &
Sessions Judge, FTC 1st Court, Jalpaiguri in
connection with Motor Accident Claim Case No. 318
of 2019.

The appeal being No. FMA 61 of 2024 was filed
on the ground that Learned Tribunal at the time of
awarding compensation did not consider the interest
in compliance with provision of section 171 of the
Motor Vehicles Act. On the other hand, appeal being

No. FMA 66 of 2024 filed on behalf of the Insurance Company took a ground for change of vehicle involved in the alleged accident in the case. The ground was specifically taken in this appeal that initially written complaint was lodged alleging an accident by the involvement of one pick up van though subsequently same informant filed one General Diary to the concerned police station informing the whereabouts of a vehicle i.e. Maruti Alto Car bearing No. WB-70-C-0548.

Both the appeals assailing the same judgment and order passed by the Motor Accident Claim Tribunal mentioned hereinabove are being taken up together for disposal via this common judgment.

**FMA 66 of 2024
with
IA No. CAN 1 of 2025**

The instant appeal was preferred at the instance of the Insurance Company mainly on the ground that in the written statement particularly, in paragraph 6, it was averred that initially written complaint was lodged before the police station that one pick up van was responsible for the alleged accident but that information was subsequently changed by a General Diary lodged to the same police station with regard to change of vehicle from Pick up van to Maruti Alto Car.

Learned counsel appearing on behalf of the

appellant has submitted that this issue raised in the written objection was not addressed by the learned Tribunal and on that score, the judgment impugned in this appeal, is liable to be dismissed.

Learned counsel appearing on behalf of the appellant has further submitted that change of vehicle in two separate information to the police created a reasonable presumption of implantation of vehicle in the alleged accident.

Learned counsel appearing on behalf of the appellant has concluded her argument by submitting that Pick up Van, mentioned in the First Information Report, was never insured with the National Insurance Company Limited.

Per contra, learned counsel appearing on behalf of the respondent/claimant has submitted that immediately after the alleged accident one, brother-in-law of the deceased lodged the F.I.R. upon receiving an information and subsequently after nine days, he again received the correct information regarding vehicle involvement in the alleged accident and accordingly, informed the police.

It is further submitted that specific police case was started following the accident and charge-sheet was submitted against the Maruti Alto Car bearing No. WB-70-C-0548. That apart, it has been further submitted that eye witnesses were also examined and

cross-examined before the learned Tribunal and he ratified the nature of vehicle involved in the accident.

In support of his contention learned counsel appearing on behalf of the respondents/claimants has relied on the case of ***Ashalata Suryakant Patil and Others Vs. New India Assurance Company Ltd.*** reported in ***2023 (2) T.A.C. (S.C.)***.

On a careful perusal of the records and documents, I find that the alleged accident was reported before the police and First Information Report was lodged on 18.07.2019 and subsequently G.D. was lodged on 27.07.2019 and after having information, Falakata Police Station Case No.369 of 2019 dated 18.07.2019 under Sections 279/ 338 and 304A of the Indian Penal Code was registered. The case was investigated and during investigation, it was revealed that one, Maruti Alto Car bearing No. WB-70-C-0548 was involved in the accident. In course of trial, one witness viz. Amtajul Hossain was examined as P.W.2 on behalf of the claimants. In examination-in-chief supported by affidavit under Order 18 Rule 4 of the Code of Civil Procedure, it was clearly stated that one Maruti Alto Car bearing No. WB-70-C-0548 was involved in the accident due to its rash and negligent driving. In course of cross-examination on behalf of the Insurance Company some suggestions were put which were negated by the witness. However, no

specific suggestion was ever put to the witness regarding involvement of any particular vehicle.

In this circumstances, I find hardly any scope to imagine plantation of vehicle for the purpose of compensation. In course of argument, learned counsel appearing on behalf of the insurance company also could not show any investigation report by the Investigator of the Insurance Company with regard to the involvement of the vehicle in the alleged accident.

Before parting with the discussion, I would like to reproduce the principle laid down by the Hon'ble Apex Court **Ashalata Suryakant Patil (supra)** particularly in paragraph 4 to 6 which runs as follows:

"4. Having heard learned counsel for the appellants as also learned counsel for the respondents, we have at the outset, adverted to the consideration made by the MACT. Insofar as involvement of the vehicle and also the rash and negligent driving by the driver of the vehicle, the issue was considered while answering issue No.1, which has been raised for consideration in that regard. With regard to the involvement of the vehicle, the claimants apart from tendering their evidence had also examined PW-3, the investigating officer who filed the charge sheet. This is for the reason that initially the details of the vehicle was not mentioned in the FIR and it was during the course of investigation the vehicle had been identified and charge sheet had been filed.

5. The MACT having taken note of this aspect and also having taken into consideration that the respondent No.3 who was the driver of the vehicle in question, though was notified had not appeared. Further the Insurance Company also did not take any steps to secure and examine the said driver with regard to the accident since his evidence could have clinched the issue.

6. Therefore, taking all these aspects into

consideration and in a matter where the claimants had discharged their initial burden, the MACT had held the accident to have occurred due to negligence of the driver and the vehicle in question to be involved. The High Court however, without considering these aspects of the matter had only discarded the evidence of PW-3 since he was not the person who had conducted the investigation, though he had filed the charge sheet. Such consideration by the High Court is not justified in the facts and circumstances since the investigation and filing the charge sheet is a continuing process. Therefore, the judgment dated 04.10.2018 passed by the High Court is set aside and the Award dated 11.11.2014 passed by the MACT is restored. The respondent-insurance company shall deposit the compensation amount with interest @ 9% per annum within a period of six weeks from the date of receipt of a copy of this judgment, before the MACT, whereupon the compensation amount shall be disbursed to the claimants. The appeal is, accordingly, disposed of.”

Considering all the aforesaid views of the matter as well as relying on the principle laid down by the Hon’ble Apex Court, I have no hesitation to come to the conclusion that the plea of implantation of the vehicle is absolutely devoid of any merit and accordingly appeal preferred at the instance of the insurance company is liable to be dismissed.

In Re.: FMA 61 of 2024

Heard the learned counsel appearing on behalf of the parties to this appeal.

I have gone through the judgment and award passed by the learned Tribunal. It is not disputed that one, Pintu Singh i.e. the husband of the claimant no.1 died in a motor accident due to the involvement of one private car (Maruti Alto Car bearing No. WB-70-C-0548) on 16.07.2019 on account of rash and

negligent driving of the said vehicle and the said Pintu Singh eventually succumbed to his injuries.

On a careful perusal of the impugned judgment and award passed by the learned Tribunal, I find that the learned Motor Accident Claims Tribunal framed as many as seven issues based on the pleadings of the parties and recorded his finding on all issues in terms of evidence adduced on behalf of the claimants. It is pertinent to mention herein that no evidence was adduced on behalf of the insurance company. I find hardly any infirmity in the judgment. But, the learned counsel appearing on behalf of the appellants has rightly drawn my attention to the award wherein the learned Tribunal did not consider the interest on the awarded sum in violation of the mandatory provision of Section 171 of the Motor Vehicles Act.

Regard being to the above, I modify the compensation in the following words:-

- a) Claimants are entitled to the amount awarded by the claim Tribunal along with interest @ 6% per annum on the awarded sum from the date of filing of the claim application (24.09.2019) till the payment by the insurance company.
- b) It is reported that awarded amount has not been paid till date. The insurance company is directed to deposit the entire awarded amount i.e. 68,53,553/- (Rupees Sixty Eight Lacs Fifty Three

thousand Five Hundred Fifty Three only) along with interest @ 6% per annum from the date of filing of the claim petition (24.09.2019) till the date of deposit of cheques in equal share in the name of two claimants before the learned Tribunal within four weeks from date.

c) Learned Tribunal on receipt of such cheques, shall disburse the cheques to the claimants after proper verification, identification as well as on receipt of acknowledgement.

With the aforesaid observation, both the appeals being, **F.M.A. 61 of 2024 and F.M.A. 66 of 2024** stand disposed of.

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

Tribunal Records 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.)