

Item 12.06.  
No. 2026  
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IN THE HIGH COURT AT CALCUTTA  
CIVIL APPELLATE JURISDICTION  
APPELLATE SIDE

**FMA 372 of 2009**  
**With**  
**IA NO: CAN 2 of 2025**

Tartila Bibi & Ors.  
Vs  
The New India Assurance Co. Ltd. & Anr.

Mr. Niranjana Maity,  
Ms. Indrani Ghosh.

... for the appellants.

Mrs. Suchotira Paul.

... for the respondents.

Learned advocates for the parties are present.

Heard learned advocates for the parties.

The appellants before this Court were claimants in a case under Section 166 of the Motor Vehicles Act, 1988 and is aggrieved by the judgment and award dated 13.05.2008 passed by the Learned Additional District Judge, 10<sup>th</sup> Court, Alipore in M.A.C. Case No. 33 of 2007.

In the instant matter, the learned Trial Judge was pleased to come to a finding that there was rash and negligent driving of the driver of the offending vehicle bearing No. WB. 19A-5799 (TATA 407) but dismissed the claim case on the ground that the claimants/appellants were not able to establish their relationship with the victim of the accident. The

appellants/claimants being aggrieved by the judgment and award passed by the Learned Trial Court have come with the instant appeal.

During pendency of this appeal, Learned Coordinate Bench of this Hon'ble Court was pleased to pass an order on 19.09.2024, directed the appellants to file copy of Aadhaar Card of the deceased and any other related documents on affidavit. Thereafter, the petitioners have come out with two applications being CAN 1 of 2024 and CAN 2 of 2025. The appellants in CAN 1 of 2024 have filed the Aadhaar Card of the claimant no.1/Tartila Bibi, Aadhaar Card of Abu Bakkar Mokami and Aadhaar Card of Abu Sattar Mokami. The Panchayat certificate issued on 03.01.2008 is also filed in the said application. In application CAN 2 of 2025, the appellants/claimants have filed the voter identity card of the deceased Abul Hasan Mokami and certificate issued by Panchayat authority on 06.09.2024 and Aadhaar Card of Abul Hasan Mokami is also annexed with the said application. Both applications CAN 1 of 2024 and CAN 2 of 2025 are opposed by the opposite party/ The New India Assurance Co. Ltd. As CAN 1 of 2024 is already disposed of, no question arises of further considering the same and passing any orders. However, this application CAN 2 of 2025 is taken up along with hearing of this appeal.

Learned advocate for the appellants submits that so far the Aadhaar Card of victim is concerned at the time of death of the victim, the same was not issued for which the same cannot be furnished. However, learned advocate draws attention to the Aadhaar Card of the appellants/claimants no.1 to 3. Learned advocate submits that the appellants/claimants in the Trial Court have affirmed that Abul Hasan Mokami and Hasem Ali Mokami are one and the same person but the same was disbelieved. Learned advocate submits that the Aadhaar Card of the claimants/appellants will go to show that they are the widow and children of the Hasem Ali Mokami. Learned advocate further submits that the point of relationship of the victim with the claimants was not argued before the Learned Trial Court and thus the Learned Trial Judge erred in dismissing the claim on the ground that the claimants were unable to establish their relationship with the victim.

Learned advocate for the respondent no.1/ The New India Assurance Co. Ltd. submits that neither in the FIR nor in the chargesheet there was any mention of Abul Hasan Mokami. All along the claimants claimed themselves to be widow and children of Abul Hasan Mokami. However, the relationship with Abul Hasan Mokami and the claimants were disputed by the insurance company/ New India Assurance Co.

Ltd. and pursuant to filing the postmortem report it appears that the person who died is not Abul Hasan Mokami but Hasem Ali Mokami. Learned advocate submits that considering the discrepancy in the postmortem report and the documents filed there is no mention of the claimants/appellants being in relation with Hasem Ali Mokami, thus the Learned Trial Court rightly dismissed the claim case.

Upon perusal of the materials on record and upon hearing the learned advocates, it is an admitted position that the claimants all along contended that their relation was with Ali Hasan Mokami who died in the road accident. The complaint was before the police authority with regard to the accident but was not lodged by any of the claimants but by family of another affected person whose name appears in the chargesheet. It is only from the postmortem report the name of the person who died appears as Hasem Ali Mokami and not Abul Hasan Mokami. Before the Learned Trial Court, it appears that in the voter identity card of the claimant/ Tartila Bibi it is mentioned that her husband name is Hasen. However, in the ration card of the said claimant it is mentioned as Hasan Ali Mokami. Thus a particular document was available before the Learned Trial Court with regard to claimant no.1 to establish the relationship. Upon comparative study of the name of

the victim as contended by the claimants and the name of the person mentioned in the postmortem report the similarity is with the surname, Mokami and the middle name Hasan. It also cannot be disputed that in certain communities when a person is known by different names and names with certain variation and similarities appear in different documents dispute arises with regard to identity. However, the dispute which arises due to difference of names should be reconciled by a comparative analysis of the documents so that just and reasonable decision is taken and the person belonging to the said communities are not deprived of any legitimate benefits due to variation of names.

Upon further perusal of the application being CAN 2 of 2025, it appears that Aadhaar Card of the claimants mentions the name of Hasem Ali Mokami. The certificate issued by the Panchayat authority also mentions that Hasem Ali Mokami was also known as Abul Hasan Mokami who died twenty years ago.

In the facts and circumstances, this Court is of the view that in the interest of justice the claimants/appellant should not be deprived from the compensation, which they are entitled under law. Thus the claimants/appellants are entitled to compensation from the respondent no.1/ The New India Assurance Co. Ltd. As the income of the victim

could not be proved notional income of Rs.3000/- should be taken into consideration. In the event monthly notional income is Rs.3000/- , the future prospect 40% being added the annual income comes to Rs.8,06,400/-.  $\frac{1}{4}$  should be deducted on account of personal expenses and the same comes to Rs.6,04,800/-. Further the claimants are entitled to the consortium of loss of estate and loss funeral expenses which comes to Rs.70,000/-. Thus, 6,74,800/- is the total compensation which the claimants/appellants nos. 1,2, 3(a), 3(b), 4 and 5 are entitled from the insurance company/New India Assurance Co. Ltd. as per arithmetical calculation.

However, this Court is of the view that the compensation of Rs.6,00,000/- is just and reasonable.

Hence, this appeal FMA 372 of 2009 along with connected application stands disposed.

The judgment and award dated 13.05.2008 passed by the Learned Additional District Judge, 10<sup>th</sup> Court, Alipore in M.A.C. Case No. 33 of 2007 is set aside with regard to identity of claimants/appellants.

The claimants/appellants no 1,2,3(a), 3(b), 4 and 5 are entitled the compensation of Rs.6,00,000/- along with interest @ 6% per annum from the date of filing of the claim case till today.

The respondent no.1, the New India Assurance Co. Ltd. shall deposit the compensation amount of

6,00,000/- along with interest @ 6% per annum within eight weeks from the date of communication of this order.

The claimants/appellants will be entitled to withdraw the compensation upon compliance of all necessary formalities.

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

***(Biswaroop Chowdhury, J.)***