29.01.2026
Sl. No.3-4
Court No.9
Ali & BM

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 467 of 2023

ICICI Lombard General Insurance Co. Ltd.
Vs.
Jashoda Haoladar & Ors.
With

COT 12 of 2023

Jashoda Haoladar & Ors.
Vs.
ICICI Lombard General Insurance Co. Ltd. & Anr.

Mr. Saswata Bhattacharyya
.... for the appellant/Insurance Co.

Ms. Sima Ghosh
...for the respondents/claimants.

1. Learned advocates for the parties are present.
2. Heard the learned advocates for the parties.
3. The appellant before this Court was an opposite party in a case under Section 166 of the Motor Vehicle Act, 1988 and is aggrieved by the judgment and award dated 31st day of August, 2022 passed by learned Additional District Judge, 3rd Court, Berhampore, Murshidabad in M.V. Case No. 562 of 2014.
4. The respondent Nos. 1, 2 and 3 who was a claimant in the Motor Accident Claim Case have also filed the Cross Objection being aggrieved by the judgment and

award dated 31st August, 2022 passed by the learned Trial Judge.

5. The case of the claimants/respondent Nos. 1, 2 and 3 before the learned Trial Judge may be summed up thus:

6. ON 11.11.2014 at about 1 pm one Ganesh Haoladar @ Ganesh Ch. Haoladar was going to his work place at Berhampore Hospital from Hatinagar by his motor cycle bearing Registration No. WB-58Y/3044 and when he reached near Manindranagar Green Farm, one truck bearing Registration No. WB-03/4223 coming from opposite side, dashed the said motor cycle as such said Ganesh Ch. Haoladar sustained injuries. The victim was shifted to Murshidabad Medical College & Hospital and therefrom he was referred to Kolkata for better treatment. On 12.04.2014 at about 9.35 pm he died at hospital. The victim is to earn Rs. 18,040/- per month. Pursuant to the accident the complaint was made before the police authority and case under Sections 279/338/304A/427 of IPC was instituted. The charge sheet was submitted against the driver of the offending vehicle. Pursuant to the filing of the case notice was issued upon the opposite parties. Opposite party/appellant ICICI Lombared General Insurance Company Ltd. contented the case by filing written statement. Issues were framed and evidences were

adduced both by the claimants and opposite party/Insurance Company.

7. The learned Trial Judge by judgement and award dated 31st day of August, 2022 disposed the claim case by observing and directing as follows:

"Hence, it is,

ORDERED

That the instant Motor Accident Claim Case be and the same is allowed on contest without cost against the opposite party no. 2 and ex parte without cost against opposite party No. 1.

It is hereby declared that petitioner No 1 shall get Rs. 6,29,009.33/- while the petitioner nos. 2 and 3 shall get Rs. 6,24,009.33/- each as compensation along with 5% simple interest per annum on the said amount of compensation to be calculated from the date of filing of this case, i.e. from 12.12.2014 from the Opposite Party no. 2, namely, ICICI Lombard General Insurance Co. Ltd.

The Opposite Party no. 2 is hereby directed to pay the aforesaid amount of compensation along with the interest as decided to the claimants by A/C Payee cheque, as per their entitlement so decided, within two months from the date of this judgement.

Let copy of this award be delivered to the parties concerned within fifteen days from this day".

8. The appellant/ICICI Lombard General Insurance Company Ltd. being aggrieved by the judgment and

award passed by the learned Trial Judge has come up with the instant appeal being FMAT 61 of 2023. The respondent Nos. 1, 2 and 3 being claimants before the learned Trial Court being also aggrieved by the judgement and award of the learned Trial Court has preferred a Cross Objection being COT 12 of 2023.

9. Heard learned advocate for the appellant Insurance Company and learned advocate for the respondent Nos. 1, 2 and 3/claimants. Perused the materials on record.

10. Learned advocate for the appellant/Insurance Company submits that there was two days delay in lodging the FIR thus the claimants' case should not have been believed. Learned advocate further submits that the multiplier of 11 should have been applied as because the victim was more than 50 years of age and the learned Trial Judge erred in applying the multiplier of 13. The learned advocate also submits that there is contributory negligence on the part of the victim which is not taken into consideration by the learned Trial Court. It is submitted that the employer being the pension authority of the victim was not examined but the income was accepted by the learned Trial Judge. It is also submitted that the victim did not have any valid driving licence thus there is contributory negligence on his part.

11. Learned advocate for the respondent Nos. 1, 2 and 3/claimants submits that the learned Trial Judge erred in not taking into consideration the issue of future prospect and thereby granting compensation which is not just and reasonable. It is further submitted that the learned Trial Judge erred in not taking into consideration the grant of consortium which ought to have been Rs. 40,000/-and the amount of general damages ought to have been Rs. 84,000/-. Learned advocate also submits that the compensation awarded should be enhanced and the interest should be awarded more. With regard to the first submission made by the learned advocate for the appellant regarding the delay of two days this Court is of the view that two days delay in lodging the FIR is not fatal. Secondly, it has been held in different judicial decisions that in Indian society after a person meets with an accident his family members usually rushes to the Hospital and will not have the tendency to go and lodge a complaint thus the delay in lodging the FIR cannot be said to be fatal. With regard to the examination of the pension authority not examined with regard to the proof of income this Court is of the view that as the claimant has submitted the pension papers which was exhibited with objection the non examination of the pension authority is not fatal.

Moreover, the Motor Accident Claim Tribunal is not Civil Court and the rigid rules of evidences are not applicable in case of Motor Accident Claims Tribunal. When a document is exhibited with objection the Insurance Company has opportunity to make enquiry as to the genuineness of the documents and submit report before the Court as to whether it is genuine or not. As the object of the Insurance Company is to see that genuine claims are honoured and frivolous claims are rejected it is always open to the Insurance Company contesting a claim case by make necessary enquiries with regard to the documents filed by the claimants more so, when the said document is issued by the Government authority. As in the instant case the pension papers are exhibited and no enquiry is made by Insurance Company and nothing contrary has come in the cross examination the said pension papers has to be accepted in evidence.

12. With regard to the income which the victim is to earn as the security guard after retirement, the employer of the said establishment has deposed and the evidence of the said employer is accepted by the learned Trial Court.

13. Now with regard to the issue of the contributory negligence although it is stated by the driver of the offending vehicle that the victim has come in front of

the motor vehicle but considering the fact that the driver himself is an accused person and charge sheet has been submitted against him and the eye witnesses has deposed about rash and negligence driving of the driver of the said motor vehicle the said witness being an independent witness his evidence may be taken into consideration with regard to rash and negligent driving. As it is pointed out by the learned advocate that necessary enquiry was made by the legal manager of ICICI Lombared General Insurance Company the appellant herein who found that the driver of the vehicle being WB-58Y/3044 and WB-03/4223 has no valid driving licence at the time of accident it appears that the driver of the vehicle WB-58Y/3044 produced the driving licence at the time of examination as a witness being DW-2. However, with regard to WB-03/4223 it is not clear as to how the enquiry was made by the Insurance Company whether the Insurance Company has called for the member of the family of the victim to ascertain the fact or the Insurance Company has make necessary enquiry from the motor vehicles authority licence department regarding valid licence of vehicle No. WB-03/4223 and the driving licence of the victim being not reflected this statement cannot be relied upon. With regard to the submission of the learned advocates for the respondent Nos. 1, 2 and 3 that future prospect is not taken into consideration this Court is of the view that considering the age of the victim and the fact that the victim was retired although future prospect may be taken into consideration at 15% it would be just and reasonable to take the future prospect along with Annual dependency loss and proceed on the consolidated sum of Rs. 20,000/- as monthly income.

14. As monthly income of the victim was considered as Rs.20,000/-, yearly income comes to Rs.2,40,000/-. One third should be deducted on account of personal expenditure and annual dependency loss comes to Rs.1,60,000/-.

15. Considering the age of the victim and the submission made by the learned advocate for the appellant/Insurance Company, it would be just and reasonable if the multiplier eleven is applied to ascertain the total dependency loss. Hence, by applying the multiplier eleven the total dependency loss comes to Rs.17,60,000/-. Further the claimants/respondent nos.1, 2 and 3 are entitled to compensation on account of consortium of Rs.40,000/- and loss of estate and funeral expenses to the extent of Rs.44,000/-. Thus, Rs.18,44,000/- is the total compensation which the respondents No. 1, 2 and 3 are entitled from the appellant Insurance Company.

Thus, the respondent nos.1, 2 and 3/claimants are entitled to compensation of Rs.18,44,000/- from the appellant ICICI Lombard General Insurance Company along with interest @ 6% per annum from the date of filing claim case till today

16. The appellant/Insurance Company shall deposit the compensation amount before the Registrar General, High Court, Calcutta within eight weeks from the date of communication of this order. In the event the amount awarded by the learned Trial Judge is already deposited the balance amount shall be deposited.

17. It is hereby make clear that if amount is not deposited within eight weeks, the claimants will be entitled to interest of nine per cent per annum from the date of default.

18. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Biswaroop Chowdhury, J.)