

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 1837 of 2014

National Insurance Co. Ltd.

VERSUS

Rekha Basu (Bose) & Anr.

With

C.O.T/29/2014

Rekha Basu (Bose)

VERSUS

National Insurance Co. Ltd. & Anr.

For Appellant:

Mr. Parimal Kumar Pahari, Adv.

For Respondent [Claimants]:

Mr. Jayanta Kumar Mandal, Adv.

Last Heard on: June 06, 2026

Judgment on: June 17, 2026

Biswaroop Chowdhury,J:

The appellant before this Court was an opposite party in a case under Section 166 of the Motor Vehicles Act 1988 and is aggrieved by the Judgment and Award dated 28th February 2013 passed by Learned Additional District

Judge 5th Court Barasat North 24 Parganas in MAC Case No 08 of 2010. The claimant/respondent being also aggrieved by the quantum of compensation awarded has come up with a cross objection.

The case of the claimant/respondent before the Learned Trial Court may be summed up thus;

On 26-06-2009 (Friday) at about 20.00 hours the offending vehicle bearing No. WB-25A/4534 (Lorry) which was proceeding along Chakdah-Bongaon Road from Bongaon side, towards Chakdah side, with a terrific high speed in a most rash and negligent manner, endangering human life and safety to others, thereby disobeying and violating all traffic rules and regulations and when the said vehicle came near Bhajabari Petrol Pump under Chakdaha Police Station it directly dashed a Motor cycle as a result of which the victim Probir Kumar Basu sustained severe injuries on his person.

The victim till the happening of the aforesaid accident was healthy man with active habits, but now he is a permanently disabled person.

The above amount of compensation is claimed under the following heads:-

- 1) Special damages or pre-trial pecuniary loss-
- 2) Medical Expenses.
- 3) Cost of future care and or treatment and other expenses etc.

Non pecuniary loss may include the following:-

1. Pain and sufferings
2. Damages for mental and physical shock.
3. Loss of amenities of life, on being not able to walk run or sit.
4. Loss of expectation of life i.e. on account of injury normal longevity of the life of the person concerned being shortened.
5. Disfigurement.
6. Discomfort or inconvenience, hardship disappointment frustration etc.

Pursuant to the filing of the case notice was issued upon the opposite parties.

Opposite party vehicle owner did not contest the case. Opposite Party National Insurance Co. Ltd. contested the case by filing written statement. ISSUES were framed and evidence was adduced. Learned Trial Court upon considering the evidence adduced and upon hearing the Learned Advocates was pleased to dispose of the claim case by observing and directing as follows:

It is therefore Ordered:

That the present petition u/s.166 of MV Act is allowed in part ex-parte as against OP No. 1/registered owner of the offending vehicle and on contest as against the OP No. 2 National Insurance Co. Ltd.

The claimant do get an award of Rs. 27,27,757 (Rupees twenty seven lakh twenty seven thousand seven hundred and fifty seven only) as compensation along with interest @6% p.a. From the date of filing of this

application i.e. 6.4.2010 from OP No-2. National Insurance Co. Ltd. till payment.

The insurance company (OP No. 2) is directed to issue A/C payee cheque of Rs. 27,27,757 (Rupees twenty seven hundred and fifty seven only) along with 6% interest p.a. in favour of the claimant interest with 30 days from the date of this order in default the claimant shall have the liberty to execute the award.'

The appellant National Insurance Company Limited being aggrieved by the Judgment and Award passed by the Learned Trial Court has come up with the instant appeal. The claimant/respondent being also aggrieved by the quantum of compensation awarded has filed a cross objection.

Heard Learned Advocate for the appellant/insurance company and Learned Advocate for the respondent/claimant. Perused the evidence adduced and materials on record.

Learned Advocate for the appellant submits that FIR was lodged after 6 months of the date of accident and the vehicle was seized after one month thus the case of the claimant is doubtful. Learned Advocate further submits that the victim was riding motor cycle but no contributory negligence is observed by Learned Judge and the insurer of victim vehicle not made party. Learned Advocate also submits that although certificate was issued by Board but none of the Board members were was examined.

Learned Advocate for the respondent/claimant submits that no evidence with regard to contributory negligence was adduced, thus upon considering the evidence of P.W. 2 Learned Trial Judge has rightly come to conclusion about rash and negligent driving by driver of offending vehicle WB-25A/4534 (Lorry). It is submitted by Learned Advocate that the Learned Trial Judge erred in not taking into consideration the future prospect.

The following Judicial decisions are relied upon by Learned Advocates.

New India Assurance Co. Ltd. VS Manab Sen.

Reported in 2023(3) TAC-871 (Cal)

Raj Kumar VS Ajay Kumar and anr.

Reported in 2011 ACJ-1

**The Oriental Insurance Company Ltd. VS Kahlon @ Jasmail
Sing Kahlon**

Reported in 2021 SAR(civ) 1078.

Rajesh Kumar VS Yudhir Singh and anr.

Reported in 2008 ACJ-2131

Supreme Court of India

National Insurance CompanyLtd. VS Pratima Barick and ors.

Reported in MANU/WB/0141/2017

High Court at Calcutta

Now with regard to the first submission of Learned Advocate for the appellant that FIR was lodged after 6 months it is well settled that mere delay in lodging the FIR is not fatal. It is held in different judicial decisions that family members of the injured person in India rushes to hospital and not to Police Station. In the instant case the delay in lodging the FIR is explained as it is stated that due to being engaged with regard to treatment of injured person there is delay in lodging FIR.

Now with regard to the argument of contributory negligence no evidence is adduced by the Insurance Company to show that there was contributory negligence on the part of the victim. From the cross examination of P.W. 2 nothing appears which will go to show that there was contributors negligence of the driver of victim motor cycle. Moreover the Police Authority on completion of investigation did not find involvement of driver of motor cycle WB-26-H/3867, and submitted charge sheet against driver of offending vehicle WB-25-A/4534 finding prima facie case against him.

With regard to the plea of the Learned Advocate for the appellant that members of the Board who issued disability certificate was not examined it is necessary to consider the decision of the Hon'ble Supreme Court in the case of Raj Kumar V Ajay Kumar and anr (supra).

The Hon'ble Supreme Court in the case of Raj Kumar VS Ajay Kumar (supra) observed as follows:

'16. We may in this context refer to the difficulties faced by claimants in securing the presence of busy Surgeons or treating Doctors who treated them, for giving evidence. Most of them are reluctant to appear before Tribunals for obvious reasons either because their entire day is likely to be wasted in attending the Tribunal to give evidence in a single case or because they are not shown any priority in recording evidence or because the claim petition is filed at a place far away from the place where the treatment was given. Many a time, the claimants are reluctant to take coercive steps for summoning the Doctors who treated them, out of respect and gratitude towards them or for fear that if forced to come against their wishes, they may give evidence which may not be very favorable. This forces the injured claimants to approach 'professional' certificate givers whose evidence most of the time is found to be not satisfactory. Tribunals should realize that a busy Surgeon may be able to save ten lives or perform twenty surgeries in the time he spends to attend the Tribunal to give evidence in one accident case. Many busy Surgeons refuse to treat medico-legal cases out of apprehension that their practice and their current patients will suffer, if they have to spend their days in Tribunals giving evidence about past patients. The solution does not lie in coercing the Doctors to attend the Tribunal to give evidence. The solution lies in recognizing the valuable time of Doctors and accommodating them. Firstly, efforts should be made to record the evidence of the treating Doctors on commission, after

ascertaining their convenient timings. Secondly, if the Doctors attend the Tribunal for giving evidence, their evidence may be recorded without delay, ensuring that they are not required to wait. Thirdly, the Doctors may be given specific time for attending the Tribunal for giving evidence instead of requiring them to come at 10.30 A.M. or 11.00 A.M. and wait in the Court Hall. Fourthly, in cases where the certificates are not contested by the respondents, they may be marked by consent, thereby dispensing with the oral evidence. These small measures as also any other suitable steps taken to ensure the availability of expert evidence, will ensure assessment of just compensation and will go a long way in demonstrating that Courts/Tribunals show concern for litigants and witnesses.

17. In this case, the Tribunal acted on the disability certificate, but the High Court had reservations about its acceptability as it found that the injured had been treated in the Government Hospital in Delhi whereas the disability certificate was issued by a District Hospital in the State of Uttar Pradesh. The reason given by the High Court for rejection may not be sound for two reasons. Firstly though the accident occurred in Delhi and the injured claimant was treated in a Delhi Hospital after the accident, as he hailed from Chirori Mandi in the neighbouring District of Ghaziabad in Uttar Pradesh, situated on the outskirts of Delhi, he might have continued the treatment in the place where he resided. Secondly the certificate has been issued by the Chief Medical Officer, Ghaziabad, on the assessment made by the Medical Board which also consisted of an Orthopaedic Surgeon. We are therefore of the view that the High Court ought not to have rejected the said disability certificate.'

The Hon'ble Supreme Court further observed as follows:

'12. The Tribunal should also act with caution, if it proposed to accept the expert evidence of doctors who did not treat the injured but who give 'ready to use' disability certificates, without proper medical assessment. There are several instances of unscrupulous doctors who without treating the injured, readily giving liberal disability certificates to help the claimants. But where the disability certificates are given by duly constituted Medical Boards, they may be accepted subject to evidence regarding the genuineness of such certificates. The Tribunal may invariably make it a point to require the evidence of the Doctor who treated the injured or who assessed the permanent disability. Mere production of a disability certificate or Discharge Certificate will not be proof of the extent of disability stated therein unless the Doctor who treated the claimant or who medically examined and assessed the extent of disability of claimant, is tendered for cross-examination with reference to the certificate. If the Tribunal is not satisfied with the medical evidence produced by the claimant, it can constitute a Medical Board (from a panel maintained by it in consultation with reputed local Hospitals/Medical Colleges) and refer the claimant to such Medical Board for assessment of the disability.'

In the instant case it is an admitted position that the disability certificate was issued by the Board constituted by Jahawarlal Nehru Hospital Kalyani. The employee of the said hospital was examined who identified the certificate issued by the hospital and signatures of two doctors who issued the

certificate. Thus the said certificate was marked exhibit without objection. Upon considering the decision of the Hon'ble Supreme Court in the case of (Raj Kumar VS Ajay Kumar) and other judicial decisions this Court is of the view that when a member of the board which issued the certificate after examining the injured person is not examined the said certificate may not be discarded but considered with abundant caution.

Upon perusal of the Disability Certificate it appears that the Board consisted of five members namely E.N.T. Surgeon, Ophthalmologist, other surgeon, physician, and chairman and superintendent of the Handicap Board. Relevant particulars are mentioned in the said certificate, and that the assessment was made as per instruction issued by the Govt. of India vide No-16-18/97-NI. Dt. 18.02.2000. It is further stated that disability is caused by injury. As the hospital which issued certificate is a Government hospital and certificate was issued one and half years before the evidence and there is every possibility of doctors being transferred and the matter being delayed insistence on examining members of medical board may not be done always unless it is very much necessary, when said certificate is marked exhibit without objection.

Thus from the necessary particulars in the certificate and the total number of members of the Board this Court is of the view that it would not be reasonable to discard the certificate, as there was no objection in exhibiting the said document by examining one of the officers of the hospital.

In the instant matter Learned Trial Judge upon considering the nature of disablement and the pain and sufferings and medical expenses passed an award of Rs. 27,27,757/- which in the opinion of this Court is not unreasonable. However considering the issue of future prospect to be added in the compensation it would be just and reasonable if the compensation is enhanced to Rs. 30,00,000/-. Thus in the view of this Court Compensation of Rs. 30,00,000/- is just and reasonable.

Hence this Appeal FMA. 1837 of 2024 along with COT No-29 of 2014 stands disposed. Judgment and Award dated 28th February 2013 passed by Learned Additional District Judge 5th Court at Barasat North 24 Parganas in MAC Case No. 08 of 2010 stands modified to the extent that the respondents/claimants are entitled to Rs. 30,00,000/- along with interest @6% p.a. from the date of filing claim case till today. The Appellant National Insurance Co. Ltd. shall deposit before Registrar General High Court Calcutta Rs. 30,00,000/- along with interest @6% p.a. Such deposit shall be made within 8 weeks from the date of communication of this order. In the event compensation awarded by Learned Trial Court is already deposited the balance amount be deposited. The respondents/claimants will be entitled to withdraw the compensation upon compliance of necessary formalities.

Urgent photostat certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(Biswaroop Chowdhury, J.)