

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 460 of 2025
With
IA NO: CAN 2 of 2025
National Insurance Company Limited

VERSUS

Eti Ray & Anr.

For the appellant/insurance company: Mrs. Sucharita Paul, Adv.

For the respondent No. 1: Mr. Rabindranath Mahato, Adv.

Mr. Aritra Shankar Ray, Adv.

For the respondent no. 2:

Mr. Abhisek Ghosh, Adv.

Mr. Anuradha Chakraborty, Adv.

Last Heard on: January 27, 2026

Judgment on: April 22, 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 19-11-2024 passed by Learned Additional District Judge 4th Court Paschim Medinipur in MAC Case No. 114 of 2020.

The case of the claimant/respondent no-1 may be summed up thus;

On 27-08-2019 at about 8.40 AM while the claimant/injured was proceeding to her office by a Toto and when she reached Keranitala a Bus bearing registration No. WB-33D/2950 (Bus), coming from Judges' Court side, dashed the Toto. As a result, the victim sustained severe injuries on her person. Immediately after the accident she was taken to Midnapur Medical College and Hospital and thereafter she was shifted to Spandan Advance Medicare Pvt. Ltd, Peerless Hospital, and Research Centre Kolkata. She incurred huge expenses towards her medical treatment. Her treatment continued for a long period, and she became handicap due to such accident.

The claimant/injured works in Amenity Appliances Pvt. Ltd as Customer Relation Executive. She used to earn Rs. 20,000/- per month from his work. On account of the accident injury the claimant prayed for compensation, of Rs. 34,15,000/-.

Pursuant to filing of the case notice was issued to the opposite party vehicle owner and opposite party Insurance Company.

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

Hence it is Ordered that the MAC Case no. 114 of 2020 be and the same is allowed on contest without cost against the OP No-2 National Insurance

Company Limited and in ex-parte against the owners of the vehicle without costs.

The Opposite Party No-2 National Insurance Company Limited is directed to pay compensation of Rs. 15,31,087/- (Rupees Fifty Lakh Thirty Seven only). with statutory interest @9% per annum from the date of this judgment by issuing account paying cheque, failing which the petitioner is at liberty to execute the Order in accordance with law.'

The appellant National Insurance Co. Ltd being aggrieved by the Judgment and Award passed by the Learned Trial Judge has come up with the instant appeal.

Heard Learned Advocate for the Appellant National Insurance Co. Ltd. Learned Advocate for respondent no-1/claimant, and Learned Advocate for respondent no-2 vehicle owner. Perused the evidence adduced and materials on record.

Learned Advocate for the appellant submits that the alleged accident took place on 27-08-2019, and the First Information Report about accident was lodged on the very next day ie. 28-08-2019 against vehicle no. WB-33A/6350 by the Toto Driver namely Shivaprasad Pramanik. Subsequently through an affidavit (notorial) dated 17-11-2019, the said FIR maker/complainant changed the number of the alleged vehicle to WB-33D/2950.

The said Bus no. WB-33D/2950 was seized by the Police authority on 18/10/2019 after the same was willingly produced by the owner of the said Bus no-WB-33D/2950 at the police station concerned. The charge sheet dated 31-01-2020 confirmed the facts mentioned and it was specifically stated as follows:

‘During investigation of this case, I visited P.O. of this case drew up rough sketch map of the PO. With indexI seized the damage TOTO and gave Zemma to the actual owner named Kishore Pramanik S/O Kamal Pramanik. Issued notice to complaint named Shiba Prasad Pramanik and as per notice the complainant came to P.S. and submitted an affidavit vide Notarial No-AB/21 dated 17-10-2019. On perusal of the said affidavit it is learnt that WB-33D/2950 is actually involved in the alleged incident instead of Bus No-WB-33A/6350.’

Learned Advocate further submits that it was confirmed in the charge sheet that the complainant changed the number of the alleged offending vehicle after receiving notice from the police.

The question arises as to why the complainant waited for the police to issue notice upon him so that he could provide the alleged ‘correct’ number of the vehicle through a notarial affidavit.

As the said FIR maker was aware about the alleged correct number and also the fact that he had intentionally provided the police authorities with incorrect number of the vehicle involved in the alleged accident inspite of being

aware about the 'correct' number the said complainant could very well approach the authorities concerned immediately to provide the 'correct' number.

Learned Advocate also submits that strange and suspicious action on the part of the FIR maker only strengthens the case of the appellant as far as the ground of 'implantation of the Bus no. WB-33D/2950' is concerned. It also proves the fact that the number provided by the said TOTO driver (complainant) initially in the FIR being WB-33A/6350 is actually the correct number which was subsequently altered. Learned Advocate further submits that Section 134 of the Motor Vehicles Act 1988 was not complied by the owner cum driver of alleged Bus no-WB-33D/2950 and he did not take the victim to hospital which shows that vehicle no. WB-33D/2950 was implanted.

Learned Advocate submits that the route permit of alleged Bus no. WB-33D/2950 was neither seized by police authority nor produced before the Ld. Tribunal either by the owner of the said vehicle or the claimant.

Therefore an adverse inference can be drawn that the alleged vehicle did not have a route permit. Thus for violation of policy condition of the insured the appellant should not be made liable to pay compensation to the claimant.

It is submitted by Learned Advocate for the appellant that future prospect of 50% is erroneous and in view of settled principle of law claimant was entitled to 40% of her income as future prospect, and awarding of non-pecuniary damages of Rs. 5,50,000/- is excessive. Learned Advocate further

submits that the awarding of interest should be in accordance with the banking rate and 9% simple interest from date of filing of claim case is excessive. Learned Advocate also submits that when all heads added together compensation amount comes to Rs. 13,51,087/-.

Learned Advocate for the appellant relies upon the following Judicial decisions.

Safiq Ahmad VS ICICI Lombard General Insurance Company.

Reported in (2021) 18 SCC. P-813.

Rajamma and Ors. VS M/S. Reliance General Insurance Co. Ltd. and Anr. Civil Appeal No. 5172 of 2025 Supreme Court of India.

Kamlesh and Others VS Attar Singh and others.

Reported in (2015) 15 SCC-P 364.

Union of India and 20 ors. VS Smt. Ansumi Baro MAC App. 521/2019.

Gauhati High Court.

National Insurance Company Ltd. VS Nirmalya Chakroborty and Anr.

FMA-2078 of 2014.

Calcutta High Court

FMA 337 of 2024

Smt. Sandhya Nayek and ors. VS National Insurance Company Limited and Anr.

Calcutta High Court.

K. Nagendra VS New India Insurance Co. Ltd and ors.

Reported in 2025 SCC Online SC. 2297

National Insurance Company Limited VS Pronay Sethy and ors.

Reported in (2017) 16 SCC P-680.

Learned Advocate for the respondent no-1/claimant submits that in the FIR lodged on August 28, 2019, number of the vehicle was wrongly mentioned as WB-33A/6350 but the name of the offending vehicle 'Abhinandan' and the route of such bus Moyna-Jhargram' was correctly mentioned. Thus it cannot be said that an unknown vehicle was involved in the accident and offending bus being WB-33D/2950, has been fraudulently implanted. On the basis of FIR in course of investigation offending vehicle being WB-33D/2950 was seized.

Learned Advocate further submits that in the charge-sheet submitted in GR Case No-3001 of 2019, the number of the offending bus has been correctly mentioned as WB-33D/2950. It has been observed by the Hon'ble Supreme in 2025 SCC Online SC-749 that since a FIR is not expected to be encyclopaedic and is only for the purpose of putting into motion criminal Law it is through full fledged investigation by the Police, the identity of culprit is detected Learned Advocate also submits that the mere fact initially the FIR records

against unknown vehicle would not be fatal for Prosecution/claimants to later come up with the specific identity of the vehicle/driver. Learned Advocate also submits that in the case of Kusum Lata and ors VS Satbur and others reported in (2011) 3 SCC. P-646 the Hon'ble Supreme Court granted compensation in favour of the claimant when number of offending vehicle was not mentioned in the FIR.

Learned Advocate submits that the Insurance Company was not aware as to whether the offending vehicle being Regd. No-WB-33D/2950 was involved in the accident and no steps were taken to investigate the same independently. No Specific statement has been mentioned in the written statement to the effect that the vehicle No. WB-33D/2950 was not involved in the accident.

Learned Advocate further submits that in the written statement 'fraudulent implantation of vehicle' has not been pleaded and no complaint has been lodged before any appropriate authority and further despite issue No. 3 as to whether motor accident was caused due to rash and negligent driving of the offending vehicle, was framed during the pendency of the claim case before the Trial Court the appellant has not taken the plea to the effect that the Bus No-WB-33D/2950 has been fraudulently implanted in the accident in question and now the appellant is estopped from taking such plea, as it was not argued.

Learned Advocate also submits that issue no-3 has been decided by the Learned Trial Court by holding that from oral and documentary evidence it has been proved that the accident occurred due to fault of offending vehicle.

It is submitted by Learned Advocate that the appellant has not pleaded in the written statement that the offending vehicle was plying beyond the route permit and the way Judges Court-Kerinalatta road is a part of the route permit "Moyna Jhargram". Learned Advocate further submits that as per the decision of the Hon'ble Supreme Court in the case of National Insurance Company Limited VS Pronoy Sethi Learned Trial Court rightly considered future prospect @50% as injured was a permanent employee. Learned Advocate also submits that the decision of the Learned Trial Court does not require interference.

Learned Advocate for the respondent no-2 owner of vehicle no-WB-33D/2950 submits on instruction that the vehicle WB-33D/2950 is involved in accident.

Upon hearing the Learned Advocates and considering the facts of the case it is an admitted position that it is not a case of fictional accident and false petition.

Learned Advocate for the appellant Insurance Company has submitted that the accident is not disputed by Insurance Company but the involvement of vehicle being WB-33D/2950 is disputed. Thus the case of Smt. Sandhya Nayek and ors (supra) where a Learned Co-ordinate Bench of this Court considering the Post Mortem Report which stated the information to have been received from the police that the victim had suffered injuries having fallen from the bike and unexplained delay in FIR referred the matter to SIT, is not applicable to facts of the case. In the instant case accidental injury caused by a vehicle is

admitted but the involvement of the vehicle alleged is disputed by Insurance Company.

In the instant case dispute is raised with regard to the involvement of vehicle WB-33D/2950, on the ground that at the time of institution of FIR rash and negligent driving is alleged against vehicle WB-33A-6350. Upon perusal of FIR and charge sheet it appears that the date of Lodging FIR- is 28-08-2019. During investigation the I.O. visited place of occurrence examined the witnesses and issued notice upon the complainant/FIR maker. Upon receipt of notice complainant submitted an affidavit vide Notarial stating that WB-33D-2950 is actually involved in the alleged accident.

The investigation was taken up by the Police Authority and notice was issued upon owner of vehicle no-WB-33D-2950, who appeared before police Authority with all relevant documents in connection with vehicle and surrendered in Court and was released on bail.

It is to be remembered that an FIR regarding accident caused due to rash and negligent driving may be made against known vehicle by mentioning the vehicle number, or it may be against unknown vehicle. When an FIR mentions the vehicle number the Police Authority is to conduct investigation to ascertain as to whether the allegations made in the FIR are correct or not and submit investigation report accordingly. Where allegation is made against unknown vehicle it is the duty of the Police Authority to identify the vehicle trace out the same and proceed in accordance with law. Even when a vehicle mentioned in

the FIR is subsequently altered by the FIR maker while being examined by the Police it is the duty of the Police to conduct necessary investigation to find out the truth and submit investigation report.

When an investigation is carried out by the Police Authority in accordance with law the same cannot be discarded as perfunctory without examination of I.O.

It is also seen in motor accident cases Insurance Companies on receipt of claim case notice or information about accidents conduct investigation by their officers to ascertain relevant details about accident and to verify the genuineness of the claim. In the instant case no investigation is conducted by the appellant insurance company. Unless an investigation is conducted by Insurance Company it will not be possible to assert a case to be false within their knowledge.

It is only when investigation is conducted by Insurance Companies they can plead such facts true to their knowledge so that a specific issue is framed in that regard, and evidence is adduced by Insurance Company Officials in that regard. When a contention is made by Insurance Companies on the basis of evidence or materials on record it may be on their reasonable belief but cannot be true to their knowledge.

As motor accident claim legislation is a beneficial legislation and a social aspect is involved the Insurance Companies usually conduct investigation to see that genuine claims are honoured and frivolous claims are rejected. In the

instant case the Appellant National Insurance Company Ltd. has neither conducted investigation and adduced evidence nor has examined the I.O. of the case nor the vehicle owner. Thus at this stage the appellant cannot be permitted to take the plea that it is false case or that there is violation of Policy condition.

In the instant case P.W. 1 the claimant clearly stated as to how the accident took place and where she was taken after accident. Although P.W. 1 was cross examined but nothing could be shaken with regard to accident. Nothing has come out in cross examination that she was unable to see the vehicle number. The evidence of P.W. 1 and documents filed were considered in details by the Learned Trial Judge in coming to the conclusion about rash and negligent driving by driver of vehicle no-WB-33D/2950.

The case of Rajamma and Ors (supra) as relied upon by Learned Advocate for the appellant deals with a case where due to contradictory statements by two witnesses the said evidence became unreliable.

Similarly in the case of Kamlesh and others (supra) the matter dealt with composite negligence and not applicable to the facts of the case.

The case of Union of India VS Ansumi Baro (supra) the claim case was rejected as the evidence of eye witness was shaky and did not inspire confidence.

Similarly in the case of National Insurance Company Ltd. VS Nirmolya Chakraborty and Anr. the evidence of P.W. 1 was observed to be not trustworthy. The evidence of P.W. 1 injured person in the instant case does not go to show that she is untrustworthy and her evidence is considered by Learned Trial Judge before coming to conclusion. Thus the decisions relied upon by Learned Advocate for the appellant is not applicable to the facts of the case.

Apart from evidence of P.W. 1 the claimant the charge sheet submitted by Police Authority will go to show that the Police Authority has examined P.W. 1, the FIR maker, another injured person who was in the offending vehicle and 2 other witnesses and have cited them as charge-sheet witness.

Thus from both oral and documentary evidence adduced it can be concluded that accident took place due to rash and negligent driving by driver of offending vehicle no. WB-33D/2950. Hence this Court does not find any error in the Judgment of Learned Trial Court about rash and negligent driving by driver of vehicle no. WB-33D/2950.

However as dispute is raised with regard to arithmetical (calculation of compensation on different heads and that compensation awarded is excessive it is necessary to verify the said calculation first.

Upon perusing the compensation under different heads namely loss of earning-Rs. 7,20,000/- Medical expenses Rs. 81,087/- transport charges Rs. 25,000/- compensation for pain and sufferings Rs. 200,000/- compensation

for inability to earn Rs. 150,000/- and compensation for comfort and amenities Rs. 100,000/- and a lump sum of Rs. 75,000/- the total compensation comes by arithmetical calculation to Rs. 13,51,087/- and not Rs. 15,31,087/-. However in view of this Court compensation of 13,00,000/- is just and reasonable.

Hence this Appeal FMA-460 of 2025 stands disposed. Judgment and Award dated 19-11-2024 passed by Learned Additional District Judge 4th Court Paschim Medinipur in MAC. Case No. 114/2020 stands modified to the extent that the respondent no-1/claimant is entitled to Rs. 13,00,000/- from the Appellant National Insurance Company Limited along with interest @6% per annum from date of filing claim case till today. The appellant National Insurance Company Limited shall deposit before Registrar General High Court at Calcutta Rs. 13,00,000/- along with interest @6% p.a. from date of filing claim case till today. Such deposit shall be made within 8 weeks from the date of communication of this order.

In the event deposit of the compensation awarded by Learned Trial Court is already made no further deposit be made. The claimant/respondent no-1 will be entitled to withdraw Rs. 13,00,000/- along with interest @6% per annum as observed above as well as accrued interest if any. The residuary amount along with accrued interest shall be returned to the appellant National Insurance Company Limited.

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.)