

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

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 1776 of 2018

With

IA NO: CAN 1 of 2018 (Old No. CAN 1826 of 2018)

National Insurance Company Limited & Anr.

VERSUS

Shyamali Biswas (Rikihiyasan) & Ors.

With

COT 30 of 2021

Shyamali Biswas (Rikihiyasan) & Anr.

VERSUS

National Insurance Company Limited

For the appellant in FMA 1776 of 2018 and respondent in COT 30 of 2021:

Mrs. Suchitra Paul, Adv.

For the respondents in FMA 1776 of 2018 and appellant in COT 30 of 2021:

Mr. Subir Banerjee, Adv.

Mr. Sandip Bandyopadhyay, Adv.

Mrs. Ruxmini Basu Roy, Adv.

Last Heard on: January 07, 2026

Judgment on: February 11, 2026

Biswaroop Chowdhury, J:

The Appellant before this Court was an opposite party in a claim case under Section 163A of the Motor Vehicles Act 1988 and is aggrieved by the

Judgment and Award dated 01-12-2018 passed by Learned Additional District Judge 2nd Court Uttar Dinajpur at Raiganj in MAC Case No-50 of 2016.

The case of the claimants before the Learned Trial Court may be summed up thus:

On the date of accident i.e. 12-03-2015 at about 3.50 P.M. the victim was going to grossary shop for buying body soap. After purchasing soap she returned to her house left hand side of the road at that time the vehicle bearing no-WB-74P/3574 was proceeding from Dalkhola side towards Raniganj side very rash and negligently and the driver lost his control over the vehicle and struck the victim as a result the victim died on the spot.

Due to rash and negligent driving by the driver is the sole cause of accident.

The victim was of active habits and she was a good student. Due to premature death the claimants suffer great financial loss and mental pain and agony throughout their lives.

Pursuant to filing of this claim case notice was issued upon the opposite party/Appellant Insurance Company and opposite party vehicle owner the respondent no-3 herein. Opposite party vehicle owner although appeared but did not contest the case. Opposite party National Insurance Company Ltd. contested the case by filing written statement and application under Section

170 of the Motor Vehicles Act 1988, ISSUES were framed and evidence was adduced by the claimants.

Upon considering the evidence adduced and upon hearing the parties Learned Trial Court was pleased to dispose of the claim case by observing and directing as follows:

‘Hence it is Ordered that the Motor Accident claim case u/s-163(A) of MV. Act is allowed on contest in full against National Insurance Company Ltd. and exparte against registered owner Shigen Ray but without cost. The claimants are entitled to get Rs. 2,55,000/- (Two lakhs fifty five thousand only) towards compensation from National Insurance Company Ltd. National Insurance Company Ltd. is directed to satisfy the award by depositing two cheques in equal amount with proportionate interest from the date of filing (03.03.2016) till its realization within 30 days from the receipt of this judgment.’

The appellant National Insurance Co. Ltd being aggrieved by the Judgment and Award passed by the Learned Trial Court has come up with the instant appeal. The respondent no-1 and 2 being also aggrieved by the Judgment and Award passed by the Learned Trial Court has come up with a counter objection being COT-30 of 2021.

Heard Learned Advocate for the Appellant Insurance Company and Learned Advocate for the respondent no-1 and 2/claimants perused the materials on record.

Learned Advocate for the appellant Insurance Company submits that the Learned Judge failed to appreciate that the alleged accident took place on 01-04-2015 and First Information Report' about the said accident was lodged on 01-08-2015 against an unknown vehicle i.e. almost four months after the accident meaning thereby that the vehicle in question was not involved in the accident and was subsequently implicated in the claim case only to gain an unlawful advantage from insurance company. Learned Advocate further submits that the alleged eye-witness to the accident while deposing as P.W. 2. confirmed that the victim was known to him P.W. 2 further stated that he was neither the summoned witness nor his name appeared in the witness list of the charge sheet. Admittedly the police authorities had never interrogated P.W. 2 P. W. 2 deposed more that 2 (two) years after the accident and in spite of knowing the number of the alleged vehicle never went to the police authorities to provide such information.

Learned Advocate relies upon the following Judicial Decisions:

Anil VS New India Assurance Company Limited and ors.

Reported in (2018) 2 SCC- P-482.

New India Assurance Company Limited VS VElu and Anr.

SLP-32138/2018.

National Insurance Company Limited VS Nirmalya Chakraborty and Anr.

FMA-2075/2014.

Safiq Ahmad VS ICICI Lombard General Insurance Company Limited.

Reported in (2021) 18 SCC. 813.

Learned Advocate for the respondent no-1 and 2/claimants submits that the victim minor girl aged about 12 years at the time of her returning from one grocery shop was badly injured due to the rash and negligent driving of the offending vehicle on 01-04-2015 at about 3:50 p.m. and after the accident she was taken to Karandighi BPHC. Doctors of the said Health Centre found the daughter of the claimants as brought dead and then Dr. Partha Mondal, the Medical Officer from the said Health Centre sent one requisition to the Inspector-in-charge of Karandighi Police Station who started on UD case bearing No. 17/15 dated 01.04.2015 and endorsed Shri Shibayan Chatterjee the S.I. for investigation of the said UD case on the same day. The police case was thus started without any delay.

Learned Advocate further submits that after being endorsed with the investigation of the UD case being No. 17/15 dated 01.04.2015, the SI Shibayan Chatterjee with other Police Officials went to Karandighi Hospital and prepared Swarthal Report/Inquest Report of the dead body of the daughter of the claimants and sent the dead body to the District Hospital Morgue, Raiganj for holding post mortem examination of the said dead body to ascertain the actual cause of death of the deceased.

After the post mortem examination of the dead body, Shri Shibayan Chattarjee S.I. of Karandighi Police Station received the Post Mortem Report only on 01.08.2015 from the District Hospital Raiganj. On getting the copy of the said post Mortem Report, SI Shibayan Chatterjee found that the autopsy surgeon Dr. Kayum Golder of Raiganj District Hospital has opined that the cause of the death was due to RTA. In view of the said S.I. Sibayan Chatterjee on the same day i.e. on 01.08.2015 lodged the written complaint with the Inspector-in-charge of the Karandeghi Police Station against the driver of an unknown vehicle under Sections 279/304 A of the Indian Penal Code after stating the relevant facts. After receiving the complaint, the first information report being Karandighi Police Station case No. 400/2015, dated 01.08.2015 investigation was started under Sections 279/304A of the Indian Penal Code.

Learned Advocate submits that in the facts and circumstances there is practically no delay at all and even if there is delay the reason for delay has been explained in the First Information Report by the Complainant S.I. Shibayan Chatterjee.

Learned Advocate further submits that after registration of the first information report the Inspector in charge of the said Police Station directed A.S.I. Bhaktipada Ghosh to take up the investigation and during investigation, the said Investigating officer seized the vehicle bearing No. WB-74P/3574 and submitted charge sheet under Sections 279/304A of the Indian Penal Code against the driver of the offending vehicle.

Learned Advocate also submits that the owner of vehicle bearing No. WB-74P/3575 filed his written statement in the MAC case No. 50 of 2016 and in the said written statement admitted that his vehicle was involved in the accident on 01.04.2015. It is submitted that the Insurance Company during the cross-examination of P.W. 2 (eye witness) has not given any suggestion that the offending vehicle bearing No. WB-74P/3575 was not involved in the accident. It is further submitted that though the Insurance Company filed the application under Section 170 of the Motor Vehicle Act but has not examined the owner of the vehicle or the driver of the vehicle to prove and/or disprove that the offending vehicle WB-74P/3574 was not involved in the accident on 01-04-2015 at about 3:50 pm for which the daughter of the claimant died at the age of 12 only being a student. Learned Advocate also submits that the Insurance Company also failed to examine the complainant of the case S.I. Shibayan Chatterjee Karandighi Police Station, and ASI Bhaktipada Ghosh of Karandighi Police Station who submitted charge sheet against the driver of the vehicle WB-74P/3574 after doing proper investigation.

Learned Advocate submits that compensation to be awarded under the statute is Rs. 500,000/- thus compensation awarded by Learned Trial Court should be enhanced.

Learned Advocate relies upon the following Judicial Decisions.

New India Assurance Company Ltd. VS Mita Samanta and others.

2010(1) TAC-393 (Cal).

National Insurance Company Limited VS Sarmistha Sikdar and ors.

Reported in 2018(4) TAC. 295 Cal.

Bajaj Allianz General Insurance Company Limited VS Mousumi Das Chatterjee.

Reported in 2024 SCC On Line Cal-277.

Mangola Ram VS Oriental Insurance Company Ltd.

(2018) 5 SCC. P-656.

Dr. N.G. Dastane VS Mrs. S. Dastane

1975 (2) SCC. P-326.

AEG Carapiet VS A.Y. Dorderian

AIR-1961(cal)-P-359.

Ravi VS Badrinath

2011(1) TAC. 867 (SC).

New India Assurance Co. Ltd. VS Urmila Halder.

SLP (CIVIL) No. 23420 of 2019.

Smt. Vijay Laxmi and Ors. VS Arvind Saxena and Anr.

2025(3) TAC-385.

Manjwara Khatun VS The Oriental Insurance Co. Ltd.

FMAT-833 of 2018.

Upon considering the decisions relied upon by Learned Advocate for the appellant where Hon'ble Courts refused to grant compensation on the ground there was contradictory evidence which makes the case of the claimant unbelievable this Court is of the view that the decisions do not apply to the facts of the case.

With regard to the argument made by the Learned Advocate for the appellant Insurance Company that the FIR was lodged 4 months after the accident against unknown vehicle and vehicle Tata India No. WB-74P/3574 was subsequently implicated and seized after 10 months will go to show that it is an afterthought to gain unlawful benefit from insurer, it is necessary to note at the outset that the FIR was not lodged by the claimants who lost their minor daughter in the pathetic road accident. At no point of time the claimants lodged the FIR. Thus it cannot be alleged that the claimants have falsely implicated the driver of offending vehicle being WB-74P/3574 in collusion for unlawful gains.

It is the police authority who instituted unnatural Death Case and commenced enquiry. On receiving post Mortem report from autopsy surgeon after four months the Sub Inspector of Police lodged written complaint against unknown vehicle and the investigation was taken up. In course of investigation the vehicle was identified, and seized. On completion of investigation charge

sheet was submitted against driver of vehicle WB-74-P-/3574. Thus it will appear that Police Authority in discharge of their official function, instituted Unnatural Death case and on receipt of Post Mortem report lodged Suo Moto FIR against unknown vehicle and thereafter upon investigation ascertained the offending vehicle and submitted charge sheet. When the Police Authority by applying their investigating machinery carried out investigation to identify the vehicle involved in any accident, Courts should be slow in interfering with such investigation, unless from the examination of I.O., by Insurance Company, or Driver of offending vehicle, or the owner the case becomes totally unbelievable.

In the instant case the Appellant Insurance Company has neither examined the Investigating Officer, nor the driver of offending vehicle, nor the owner of offending vehicle. In the absence of evidence from those persons Court cannot infer that the investigation was done in a perfunctory manner or in collusion with the claimant.

Now with regard to evidence of P.W. 2 it appears that the said witness has given the particulars as to how the accident took place. In cross examination also the said witness also gave the particulars. Nothing could be shaken as to accident taking place and involvement of vehicle no-WB-74P/3574. No suggestion was given to the said witness regarding involvement of the vehicle. Thus the Learned Trial Court rightly relied upon the evidence of P.W. 2.

It is to be remembered that when a complaint regarding road accident is lodged against unknown vehicle, sincere endeavour should be made by the Police Authority to identify the offending vehicle so that the victims of accident or their families can proceed for claim of compensation in accordance with law, which is the object of the Motor Vehicles Claim Law being a welfare legislation. In the instant case also investigation is carried out in discharge of official function and charge sheet submitted against driver of vehicle involved in accident.

Upon considering the evidence adduced both oral and documentary this Court is of the view that involvement of vehicle being WB-74P/3574 is established. Thus the learned Trial Court rightly decided the claim application in favour of the claimant/respondent no-1 and 2. Hence the findings cannot be interfered with.

Now with regard to the quantum of compensation. Learned Advocate for the claimant relied upon the decision of Smt. Vijaylaxmi and others (supra) where the Hon'ble Court observed as follows:

"9. Likewise, this Court in the case of Guddu and Another v. State of UP and Another 2024(2) AICCC 1277 after placing reliance on earlier judgment in the case of Poonam Gupta v. Arun Kumar Mishra, 2019 S.C.C. OnLine All 6786 has held as under:

"11. This Court is reminded of its decision in Poonam Gupta v. Arun Kumar Mishra, 2019 S.C.C Online All 6786, whereby this Court had the occasion to

consider the impact of the amended provisions accident occurred prior to that date and what would be the effect if the amendment which was introduced in the year 2018 can be made applicable in cases of appeal.

This Court after considering the decisions of the Apex Court and another decision of the Division Bench of Calcutta High Court has held as under:

18. In view of the above, it would be noted that in terms of the aforesaid amendment introduced in the Second Schedule which replaces the entire structured formula which was prevalent in the earlier Second Schedule appended to Section 163-A. From the aforesaid, it would also reveal that the concept of non-pecuniary damages has been taken away and a complete lump sum amount in case of fatal accident causing death for which a lump sum of Rs. 5,00, 000 has been provided. Earlier, the compensation was being calculated on the structured formula thereafter, the interest and the amount towards the non-pecuniary damages was granted by the Court and with fixing the non-pecuniary damages by the Apex Court in the case of Pranay Sethi (supra) the claimants were entitled to be same, however, as the appellant has relied upon the amendment incorporated in the year 2018 in the Motor Vehicles Act, 1988 and has urged that the same is applicable in the present circumstances, Thus, this Court has no hesitation to hold that as far as the applicability of the Second Schedule is concerned, the same shall apply, however, the submission of learned Counsel for the appellant to the extent that upon the aforesaid sum of Rs. 5,00,000, the appellants/claimants should also be granted non-pecuniary

damages as fixed by the Apex Court in the case of Pranay Sethi (supra) does not find favour with this Court,

19. The entire premise upon which the new Schedule has been amended gives no reason to doubt that as far as death cases which the claimants may be entitled to the interest, however, are concerned, one lump sum amount is to be granted upon which the claimants may be entitled to the interest however apart from the lump sum, there is no scope to grant any further amount towards the non-pecuniary damages as it would be seen that earlier in the second schedule an amount was mentioned towards grant of non-pecuniary damages even though meager which in certain decisions of the Apex Court was termed as redentant and now with the new substitution of the IIInd Schedule as per the amendment of 2018, there is no provision for grant of any sum towards non-pecuniary damages. The legislature has introduced the amendment after the decision of the Apex Court in the case of Pranay Sethi (supra) and if wanted to provide for non-pecuniary damages it could have provided so in the schedule, however, it has not been done and it appears to be purposefully to provide one composite amount as lump sum in case of fatal accidents and injury cases covered under Section 163-A of the Motor Vehicles Act, 1988 and to make the grant of amount of compensation relevant in today's scenario."

10. Accordingly, keeping in view the discussion made above as well as the judgment of the Hon'ble Supreme Court in the case of Urmila Halder (supra) and the judgment of this Court in the case of Guddu (supra), the order passed by the

learned Tribunal is modified to the extent that the appellants are entitled to the benefit of a sum of Rs. 5,00,000/- along with interest at the rate of 7% per annum from the date of application till the date of its actual payment. Any amount already paid by the respondents shall be adjusted from the same and the balance, if any, shall be payable to the claimants-appellants.”

Hence this Appeal FMA No-1776 of 2018 and COT 30 of 2021 stands disposed. The Judgment and Award dated 01-12-2018 passed by Learned Additional District Judge 2nd Court Uttar Dinajpur at Raiganj in MACC50 of 2016 stands modified to the extent that the respondent no-1 and 2/claimants are entitled to compensation of Rs. 500,000/- (Rupees five lakh). The Appellant National Insurance Company shall deposit Rs. 500,000/- along with interest @6% per annum from the date of filing of claim case till today. Such deposit shall be made within 8 weeks from the date of communication of the order. In the event the compensation awarded by Learned Trial Court is already deposited balance amount shall be deposited.

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.)