S/L 4-5
29.06.2026
Court No.9
Swd

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 279 of 2026
With
IA NO: CAN/2/2026, CAN/3/2026

National Ins. Co. Ltd.
Vs.
Smt. Pushpa Diger & Ors.

With
COT 37 of 2026

Smt. Pushpa Diger & Ors.
Vs.
National Insurance Company Ltd. & Anr.

Mr. Deb Narayan Ray.
… for the Appellant/Insurance Co.

Mr. Amit Ranjan Ray.
… for the Respondent/Claimant.

1. The learned Advocates for the parties are present.
2. Heard learned Advocates.
3. 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 5th June, 2025 passed by the learned Additional District and Sessions Judge, Fast Track, 2nd Court, Purba Bardhaman, in M.A.C Case No.27 of 2018/143 of 2018.
4. The claimants/respondent Nos.1 to 4 being also aggrieved by the judgment and award passed by

the learned Trial Judge has filed a cross objection.

5. The case of the claimants/appellants before the learned Trial Court may be summed up thus:

On the fateful date and time the victim was proceeding with his bi-cycle along the Shyamsundar Road towards Kisen Bazar and while he reached near Kishen Bazar, at that time the offending Vehicle bearing No. WB 38Q/7105 coming from the same direction, with high speed, rash and negligent manner dashed the victim from behind, resulting the victim fell down on the ground and sustained severe bleeding injuries on all over the body and he was removed to Burdwan Medical College and Hospital for treatment and ultimately, the victim succumbed to the injuries after a while at 12.10 p.m. on that day.

Rash, reckless and negligent driving on the part of the driver of the said vehicle No.WB 38Q/7105 was the sole cause of the pathetic accident. The victim was the sole earning member of his family and he used to maintain the petitioners and the petitioners were solely dependent upon him and due to sudden demise the petitioners/claimants have suffered a great loss besides suffering from pain and mental agony.

6. Pursuant to filing of this case, notice was issued upon the opposite party. Opposite party vehicle owner did not contest the case. However, the opposite party National Insurance Co. Ltd. contested the case by filing written statement. Issues were framed and evidence was adduced.

7. Learned Trial Judge upon considering the evidence and upon hearing the learned Advocates was pleased to dispose of the claim application by observing and directing as follows:-

"Hence it is,

ORDERED

that the instant M.A.C is allowed on contest against the Opposite party No. 2, the National Insurance Company Ltd. and exparte against the Opposite party No.1, without costs. The claimants do get an award of Rs.05,98,000/- along with the interest mentioned above from the Opposite party No. 2, Insurance Company.

The Opposite party No. 2, National Insurance Company Ltd is directed to pay the aforesaid amount of compensation by way of issuing four (4) account payee cheques, out of which, one cheque to be issued amounting to Rs. 2,80,000/- in the name of petitioner 1. Smt. Pushpa Diger, and three separate A/C Payee cheques amounting to Rs.1,06,000/- each in the name of petitioner No. 2. Smt Madhumita Diger, 3. Sri Pabitra Diger & 4.

Smt. Kalpana Diger, through this Tribunal together with interest within three months (90 days) from the date of this order.

Let a copy of this, Judgment be supplied to the O.P 2, Insurance Company, free of costs for carrying out the directions embodied in the Judgment, but if there the petitioners fail to pay the additional Deficit Court Fees as directed aforesaid, the copy of the Judgment should not be handed over to the Insurance Company Concerned and the cheques issued by the Insurance Company shall not be handed over to the petitioners.

Let a copy of this Judgment be supplied to the O.P 2, Insurance Company, free of costs for carrying out the directions embodied in the Judgment, the copy of the Judgment should not be handed over to the Insurance Company Concerned if the Court fees are not sufficiently paid and the cheques issued by the Insurance Company shall not be handed over to the petitioners."

8. The appellant National Insurance Company Limited being aggrieved by the judgment and award passed by the learned Trial Judge has come up with the instant appeal.

9. The claimants/respondent Nos.1 to 4 being also aggrieved by the quantum of compensation awarded by the learned Trial Judge have filed a cross objection.

10. Heard learned Advocates. Perused the evidence, adduced and materials on record.

11. Learned advocate for the appellant submits that there is delay of 28 days in logging the FIR and thus the case of the claimant is doubtful. Learned Advocate further submits that this vehicle is involved in several accidents and there is every possibility that the vehicle is being implanted.

12. Learned advocate also submits that the learned Trial Judge without considering relevant documents have taken into consideration monthly income of Rs.6,000/-.

13. Learned advocate for the claimants/respondent No.1 to 4 submits that the learned Trial Judge did not commit any error in coming to the finding of rash and negligent driving by the offending vehicle. However, learned Advocate submits that the learned Trial Judge erred in not taking into consideration personal expenses deduction as one-fourth and proceeded on the basis of personal expenses deduction as one-third. Learned Advocate further submits that the learned Trial Judge erred in not awarding future prospect at the rate of 10% per annum, in view of the decision of the Hon'ble Supreme Court in the case of ***National Insurance Company Limited***

Vs. Pranay Sethi & Ors. reported in ***2017 (4) T.A.C 673 (S.C)***.

14. Learned Advocate also submits that the compensation awarded should be enhanced. It is submitted by the learned Advocate that the married daughters are also legal representatives and thus the personal deduction expenses in respect of married daughters should also be taken into consideration and one-fourth shall be deducted as personal expenses.

15. Learned Advocate relies upon the decision of the Hon'ble Supreme Court in the case of ***National Insurance Company Ltd. Vs. Birender*** reported in ***AIR 2020 SC 434*** and the decision of the Hon'ble Supreme Court in the case of ***Sarla Verma (Smt.) Vs. Delhi Transport Corporation & Anr.*** reported in ***(2009) 3 WBLR (SC) 700***.

16. Upon hearing the learned Advocates and considering the facts of the case this Court is of the view that with the regard to the first submission of the learned Advocate for the appellant that delay of 28 days in lodging the FIR make the case of the claimant doubtful, it is decided in different judicial pronouncements that mere delay in lodging the FIR is not fatal.

17. It is observed in different cases that in Indian Society, families of the injured person rushes to hospital and not to police station. Hence, it

cannot be said that delay in 28 days in lodging the FIR is fatal.

18. With regard to the submission of the learned Advocate that the vehicle involved is implicated in several cases and several claim cases are pending, this Court does not find any such pleading in the written statement before the learned Trial Court. No inquiry conducted in this regard by the Insurance Company by issuing notice to the driver and the vehicle owner. The vehicle owner and the driver were also not examined by the Insurance Company. Thus, the plea that the vehicle is implanted cannot be sustained at this stage.

19. With regard to the monthly income of Rs.6,000/- the claimants in their claim petition have stated that the income of the victim was Rs.6,000/-. Although, no document was filed in this regard but from the cross examination of PW 1 nothing can be shaken that the victim was a vegetable vendor. Considering the nature of the occupation it is not unusual for a vegetable vendor to earnRs.6,000/- per month.

20. Thus, this court does not find any error of the learned Trial Judge to proceed on the basis of monthly income of Rs.6,000/-. With regard to the submission of the learned Advocate for the claimants/respondents Nos.1 to 4, relying upon

the decisions, it appears that in the case of ***National Insurance Company Ltd. Vs. Birender (Supra)*** the Hon'ble Supreme Court observed as follows:

"15. It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the concerned legal representative was fully dependant on the deceased and not to limit the claim towards conventional heads only. The evidence on record in the present case would suggest that the claimants were working as agricultural labourers on contract basis and were earning meagre income between Rs.1,00,000/ and Rs.1,50,000/ per annum. In that sense, they were largely dependant on the earning of their mother and in fact, were staying with her, who met with an accident at the young age of 48 years.

16. The next issue is about the deduction of the amount receivable by the legal representatives of the deceased under the 2006 Rules from the compensation amount determined by the Tribunal *in terms of the decision of threeJudge Bench of this Court in Shashi Sharma (supra). This Court, after analysing the relevant rules, opined as follows: "23. Reverting back to Rule 5, subrule (1) provides for the period during which the dependants of the deceased employee may receive financial assistance equivalent to the pay and other allowances that was last drawn by the deceased employee in the normal course without raising a specific claim. Subrule (2) provides that the family shall be eligible to receive family pension as per the normal Rules only after the period during which they would receive the financial assistance in terms of subrule (1). Sub-rule (3) guarantees the family of a deceased government employee of a government residence in occupation for a period of one year from the date of death of the employee, upon payment of normal rent/licence fee. By virtue of sub rule (4), an ex gratia assistance of Rs 25,000 is provided to the family of the deceased employee to meet the immediate needs on the loss of the bread earner. Subrule (5) clarifies that house rent allowance shall not be a part of allowance for the purposes of calculation of assistance."*

21. In the case of ***Sarla Verma (Smt.) Vs. Delhi Transport Corporation & Anr. (Supra)*** the Hon'ble Supreme Court observed as follows:

"49. As an earning member, the deceased would have spent more on himself than the other members of the family apart from the fact that he would have incurred expenditure on travelling/transportation and other needs. Therefore we are of the view that interest of justice would be met if one-fifth is deducted as the personal and living expenses of the deceased. After such deduction, the contribution to the family (dependants) is determined as Rs.57,658/- per annum. The multiplier will be 15 having regard to the age of the deceased at the time of death (38 years). Therefore the total loss of dependency would be Rs.57,658 x 15 = Rs.8,64,870/-."

22. In the case of ***National Insurance Company Limited Vs. Pranay Sethi & Ors. (Supra)*** the Hon'ble Supreme Court observed as follows:

"39. Before we proceed to analyse the principle for addition of future prospects, we think it seemly to clear the maze which is vividly reflectible from Sarla Verma, Reshma Kumari, Rajesh and Munna Lal Jain. Three aspects need to be clarified. The first one pertains to deduction towards personal and living expenses. In paragraphs 30, 31 and 32, Sarla Verma lays down:-

"30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra4, the general practice is to apply standardised deductions. Having considered several subsequent decisions of this (2003) 3 SLR (R) 601 Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six."

23. Upon considering the judicial decisions relied upon, it appears that the Hon'ble Supreme Court in the case of ***National Insurance Company Ltd. Vs. Birender (Supra)*** has decided the issue with regard to legal representative as to who are entitled to maintain a claim petition. It is well settled that the legal representatives of the victim are entitled to maintain a claim petition before the tribunal.

24. However, from the decisions relied upon, nowhere it provides that the married daughter is the

dependent of a victim. As the said decisions are only with regard to the legal representatives and not with regard to who are the dependents. The said decision cannot apply in this case. Maintaining a claim petition by the legal representative is one aspect and claiming of personal deduction on the basis of maintenance of dependents is another aspect. Just become, the legal representatives are entitled to maintain a claim petition does not give rise to the inference for all the legal representatives, the personal deduction will be taken into consideration on the basis of the number.

25. It is only those representatives who are fully dependent upon the victim should be taken into consideration for the purpose of personal deduction. In case of married daughter, unless a specific case is pleaded with evidence, it would not be reasonable to consider the married daughter as a dependent while computing compensation and fixing the personal deduction.

26. Thus, this Court does not find any error with regard to taking into consideration one-third personal expenses to compute the compensation. However, with regard to the future prospects, this Court finds that the learned Trial Judge ought to have taken into consideration

10% future prospects considering the age of the victim and the occupation.

27. Learned Trial Judge further ought to have considered the issue of consortium to the mother. However, instead of going into the arithmetical calculation, this Court is of the view that it would be just and reasonable to enhance compensation to the extent of Rs.6,50,000/- to the claimants/respondent No.1 to 4.

28. Hence, this appeal **FMA 279 of 2026** with **COT 37 of 2026** stands disposed. Judgment and award dated 5th June, 2025 passed by the learned Additional District and Sessions Judge, Fast Track, 2nd Court, Purba Bardhaman, in M.A.C Case No.27 of 2018/143 of 2018 stands modified to the extent that the claimants Respondent No.1 to 4 are entitled to compensation of Rs.6,50,000/- from the appellant National Insurance Company Limited along with interest at the rate of 6% per annum from the date of filing of the claim case till today.

29. The appellant National Insurance Company Limited shall deposit before the Registrar General, High Court, Calcutta Rs.6,50,000/- along with interest at the rate of 6% per annum within eight weeks from the date of communication of this order. In the event the compensation awarded by the learned Trial Court

is already deposited the balance amount should be deposited within eight weeks.

30. The Respondent No. 1 to 4 claimant will be entitled to withdraw the compensation upon compliance of all necessary formalities. As the compensation awarded by the learned Trial Court is enhanced, the claimants respondent Nos.1 to 4 shall pay the deficit court fee on the enhanced compensation within four weeks from the date of communication of this order.

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

(BISWAROOP CHOWDHURY, J.)