IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 2038 of 2018

With

IA NO: CAN 1 of 2018 (Old No: CAN 4694 of 2018)

CAN 2 of 2019 (Old NO: CAN 6196 of 2019)

Shriram General Insurance Company Limited

VERSUS

Sabita Mishra & Ors.

With

COT 94 of 2025

Sabita Mishra & Ors.

VERSUS

Shriram General Insurance Company Limited & Anr.

For the appellant: Mr. Rajesh Singh, Adv.

For the respondents/claimants: Mr. Ali Imam Shah, Adv.

Last Heard on: June 16, 2026

Judgment on: June 29, 2026

Biswaroop Chowdhury,J:

The appellant before this Court was an opposite party in a claim case under Section 166 of the Motor Vehicles Act 1988 and is aggrieved by the

Judgment and Award dated 4th April 2018 passed by Learned Additional District Judge 5th Court Burdwan in MAC Claim Case No-54/2013 345/2013 The respondents no-1 to 4/claimants being also aggrieved by the Judgment and Award passed by the Learned Trial Judge have filed cross-objection.

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

On 31.03.2013 at about 12 hours the victim stood at the left side of NH-2 near Quality Hotel, Ajhapur under Jamalpur. P.S. and at that time one lorry bearing no. WB-15B/0550 in a rash and negligent manner coming from Kolkata side and proceeding towards Burdwan side dashed the victim Tapas Mishra. As a result the victim sustained serious injuries on his person and was shifted to Burdwan Medical College and Hospital from where he was referred to Vevekananda Hospital Durgapur and was admitted there. On 02-04-2013 he was admitted to S.S.K.M. Hospital, Kolkata for better treatment and he expired there on 19-07-2013. The claimants prayed for compensation of Rs. 30,00,000/-.

Pursuant to the filing of the case notice was issued to the opposite parties. Opposite party Shriram General Insurance Co. Ltd. contested the case by filing written statement. However opposite party vehicle owner did not contest the case. ISSUES were framed and evidence was adduced. Learned Trial Judge upon considering the evidence and upon 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. 54 of 2013/345 of 2013 u/s 166 of the MV Act be and the same is allowed in part ex-parte against the OP no. 1 the owner of the vehicle and in full on contest against the OP no. 2 Shriram General Insurance Company Limited.

The petitioners do get an award of Rs. 34,87,324 (Rupees Thirty four lakhs eight seven thousand three hundred twenty four and paise ninety only.) against the OP nos 1 and 2 who are jointly and severally liable to compensate the petitioners and the OP no. 2 Shriram General Insurance being the insurer of the vehicle must indemnify the owner.

The OP no. 2 Shriram General Insurance Company Limited is hereby directed to pay the awarded sum of Rs. 34,87,324.90/- (Rupees Thirty four lakhs eighty seven thousand three hundred twenty four and paise ninety only) to the petitioners to be distributed amongst the claimants by issuing an account payee cheque of Rs. 14,87,324.90/- (Rupees Fourteen lakhs eighty seven thousand three hundred twenty four and paise ninety only) in the name of the petitioner no. 1 Sabita Mishra an account payee cheque of Rs. 400,000/- (Rupees Four lakhs only) in the name of the petitioner no. 2. Bidyadhari Mishra an account payee cheque of Rs. 500,000/- (Rupees Five lakhs only) in the name of petitioner no. 3 Susmita Mishra an account payee cheque of Rs. 500,000/- (Rupees five lakh only) in the name of Minor Debasis Mishra, an account payee cheque of Rs. 300,000/- (Three lakhs only), in the name of the petitioner no. 5 Soumita Chatterjee and another account payee cheque of Rs. 300,000/- (Three lakhs only) in the name of Moumita Chakraborty along with interest @8% per annum from the date of filing of this case till realization.

The petitioner no. 1 being the natural guardian/mother of the petitioner no. 4 namely Minor Debasis Mishra is however given the liberty to encash the cheque to be received by her for her minor son on his behalf on execution that she would keep the entire sum of the minor in fixed deposit account in his name with any Nationalized Bank or post office for a long term. She would not be entitled to draw any kind of loan from the said fixed deposit account. However, she would be at liberty to withdraw the interest accrued thereon from time to time only for maintenance education and welfare of the minor till he attains majority. The Cheque of the petitioner no. 1 Sabita Mishra shall be made over to her after compliance of the above direction. The Balance deficit Court fees upon the award exceeding the sum of Rs. 30,00,000/- i.e. upon the rest awarded amount of Rs. 4,87,324/- is to be deposited by the petitioner by seven days and upon the same, the copy of the award will be handed over to the O.P. No. 2 Insurance Company.'

The Appellant Insurance Company being aggrieved by the Judgment and Award passed by the Learned Trial Judge has come up with the instant appeal. The claimants/respondents no. 1 to 4 being also aggrieved by the Judgment and Award passed by Learned Trial Judge has also filed cross examination.

Heard Learned Advocate for the appellant/insurance company, and Learned Advocate for the respondent no- 1 to 4/claimants. Perused the materials on record.

Learned Advocate for the appellant/insurance company submits that the complaint with regard to the alleged accident was made against unknown vehicle and after six months the owner of the vehicle surrendered the same before police station thus the case of the claimant is doubtful. Learned Advocate further submits that five witnesses were there but no one lodged complaint within 2 days and after 2 days owner of tractor lodged complaint which makes the case further doubtful. Learned Advocate also submits that although the daughter of the victim P.W. 1 stated to be injured but no medical papers were produced in support of injury.

The Learned Advocate for the appellant relies upon the following Judicial decisions:-

Sithara N.S. and ors. VS Sai Ram General Insurance Company Limited.

Reported in MANU/SC/1666/2025.

Rajamma and ors VS Reliance General Insurance Co. Ltd. and ors.

Reported in MANU/SC/1347/2025.

Anil and ors. VS New India Assurance Co. Ltd. and ors.

Reported in MANU/SC/0022/2018.

Safiq Ahmad. VS ICICI Lombard General Insurance Co. Ltd.

MANU/SCOR/44175/2021.

Learned Advocate for the claimants/respondent no-1 to 4 submits that no allegation is made in the written statement filed by Insurance Company that the vehicle bearing no. WB 15B/0550 was implanted thus at this stage the said plea cannot be taken. Learned Advocate further submits that in case of motor accident claim cases it is not necessary to prove a case beyond reasonable doubt but on the touchstone of preponderance of probability thus the claimants have proved the case. Learned Advocate also submits that the Learned Trial Judge erred in awarding compensation of Rs. 35,000/- on account of funeral expenses, loss of estate and consortium instead of Rs. 70,000/- as per the decision of the Hon'ble Supreme Court in the case of National Insurance Company Ltd. VS Pronay Sethi reported in AIR 2017 S.C. P. 5157.

Learned Advocate relies upon the following Judicial decisions.

Raj Kumar Das VS National Insurance Co. Ltd.

2026 INSC-541.

Janabai WD/o Dinkar Rao Ghorepada VS M/S ICICI Lombard. Insurance Company Ltd.

SLP (Civil) No. 21077 of 2019.

(Supreme Court of India).

Anita Sharma and ors. VS New India Assurance Co. Ltd. and Anr.

Special Leave Petition. (C) Nos. 32011-32012 of 2018.

ICICI Lombard General Insurance Co. Ltd. VS Rajani Sahoo and ors.

SLP (C) No. 29302 of 2019.

(Supreme Court of India).

Ranjeet and Anr. VS Abdul Kayam Neb and Anr.

SLP(C) No-10351/2019.

(Supreme Court of India).

Meera Bai and ors. VS ICICI Lombard General Insurance Company Ltd and Anr.

Special Leave Petition (C)

No. 3886 of 2019.

(Supreme Court of India).

With regard to the first submission of Learned Advocate for the appellant that there was delay in lodging the FIR and none of the injured persons lodged FIR, it is well settled that delay in lodging the FIR is not fatal. After accident families of victim run to hospital and not to police station. In the instant case the daughter of the victim had to take the victim to hospital and it is quite natural for the other injured persons also to go to hospital for their injury instead of police station.

The owner of tractor WB-15B-8709/FIR maker lodged the complaint and also mentioned about injury of driver and Khalasi of the said vehicle, who were admitted to Burdwan Hospital along with other injured persons. Thus two days delay in lodging F.I.R is not fatal.

With regard to the submission of Learned Advocate for the appellant that the FIR was against unknown vehicle and that the vehicle was seized after four months goes to show that the vehicle was implanted it is to be remembered that an information with regard to rash and negligent driving may be given to the Police Authority by mentioning the vehicle number or without mentioning the vehicle number. In cases where vehicle number is not mentioned it is incumbent upon the Police Authority to identify and ascertain the vehicle and apprehend the same and proceed in accordance with law. However in case the vehicle number is mentioned the Police Authority is to investigate and ascertain as to whether allegations made in the FIR against the mentioned vehicle is true or not and then take steps in accordance with Law. When Police Authority upon applying their investigation machinery conducts investigation and submits report the said report cannot be discarded without examining the

I.O. In the instant case the Investigating Officer was not examined thus the investigation report cannot be discarded.

Now the point for consideration is whether the case of the claimants should be disbelieved. In the instant case although the vehicle number is not mentioned in the FIR but the Police Authority upon conducting investigation has submitted charge sheet against the driver of vehicle no. WB-15B-0550. Although the vehicle owner himself came and surrendered the vehicle it cannot be said that the vehicle is implanted. It is to be remembered that when a vehicle meets with an accident, the same is brought to the knowledge of the owner by the driver, in some cases the vehicle owner surrenders out of fear that the Police Authority investigating the matter will come to his house interrogate him and seize the vehicle from gazaze and arrest the driver, in some cases out of good sense prevailing the owner surrenders the vehicle and in some cases where the vehicle is transport vehicle, on being suggested by the vehicle Association Owners he surrenders the vehicle. Thus in the absence of examination of vehicle owner, driver and Investigating officer it cannot be inferred that the vehicle is implanted.

In the case of Rajamma and ors. VS Reliance General Insurance Co. Ltd. (supra) the Hon'ble Supreme Court observed as follows:-

'*5. If the FIR is registered on the basis of the accident or on the detection of the abandoned body, then it should have been registered in a Police Station having jurisdiction over either of the two locations. In the present case, PW1 had* *categorically stated that she was informed of the accident by PW2, in which event the location was clearly known to PW1 and the FIR ought to have been registered at the Electronic City Traffic Police Station itself in the first instance. There is no explanation as to why the FIR was registered in the Hebbogodi Police Station nor was any police personnel examined before the Tribunal, to substantiate the case of a proper FIR alleging a motor vehicle accident having been registered within time and with the jurisdictional Police Station.*

6. It is on preponderance of probabilities that the proof of accident is looked at in a motor accidents claim. An FIR registered as against the driver of the offending vehicle can be relied on to find the accident having been caused by the driver of the offending vehicle, that too by his rash and negligent driving as reported at the first instance. However, the preponderance of probabilities that arise from such an FIR registered would not have the same probity if there is a valid suspicion raised on the registration of the FIR and the falsity of the claim being clearly discernible from the evidence led itself.'

In the case of Sithara N.S. and ors VS Sai Ram General Insurance Company Limited (supra) the Hon'ble Supreme court observed as follows:-

'12. At the outset, we may observe that the findings recorded by the Tribunal and affirmed by the High Court are concurrent findings of fact. This Court in collector Singh v. L.M.L. Limited, Kanpur MANU/SC/1005/2014 : (2015) 2 SCC 410 (Para 9) observed that "Jurisdiction Under Article 136 of the Constitution of India is extraordinary and interference with the concurrent

findings of fact recorded by the courts below is permissible only in exceptional cases and not as a matter of course." It was further observed that this Court may interfere with such concurrent findings where the appreciation of evidence is found to be wholly unsatisfactory or the conclusion drawn from the same is perverse in nature.

13. A perusal of the record reveals that the Tribunal, after meticulously examining the evidence, identified serious infirmities and material contradictions in the testimonies of the witnesses. The Tribunal recorded that P.W. 1 (Parashuram Singh), who is Appellant No. 2 in the first Appeal, presented a self-contradictory testimony. He claimed on one hand to have learnt about the accident from the Police, while on the other stating that he came to know about it from the witnesses. He admitted in cross-examination that he is a complete stranger to P.W. 3 (Lokesh) and P.W.4 (Ravi), the alleged witnesses to the incident. He further admitted that neither he nor his children were present at the time of the accident and that he did not visit the spot.'

In the case of Anita Sharma and Ors VS The New India Assurance Co. Ltd. and Anr. the Hon'ble Supreme Court observed as follows:-

"*17. It is quite natural that such a person who had accompanied the injured to the hospital for immediate medical aid, could not have simultaneously gone to the police station to lodge the FIR. The High Court ought not to have drawn any adverse inference against the witness for his failure to report the matter to Police. Further, as the police had themselves reached the hospital upon* *having received information about the accident, there was perhaps no occasion for AW3 to lodge a report once again to the police at a later stage either.*

18. Unfortunately, the approach of the High Court was not sensitive enough to appreciate the turn of events at the spot, or the appellant claimants' hardship in tracing witnesses and collecting information for an accident which took place many hundreds of kilometers away in an altogether different State. Close to the facts of the case in hand, this Court in Parmeshwari v. Amir Chand1, viewed that:

"12. The other ground on which the High Court dismissed the case was by way of disbelieving the testimony of Umed Singh, PW 1.

Such disbelief of the High Court is totally conjectural. Umed Singh is not related to the appellant but as a good citizen, Umed Singh extended his help to the appellant by helping her to reach the doctor's chamber in order to ensure that an injured woman gets medical treatment. The evidence of Umed Singh cannot be disbelieved just because he did not file a complaint himself. We are constrained to repeat our observation that the total approach of the High Court, unfortunately, was not sensitised enough to appreciate the plight of the victim.

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15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be *done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied.”*

In the case of Ranjeet and Anr. VS Abdul Kayam Neb and Anr. (supra) the Hon’ble Supreme Court observed as follows:-

‘*4. It is settled in law that once a charge sheet has been filed and the driver has been held negligent, no further evidence is required to prove that the bus was being negligently driven by the bus driver. Even if the eye-witnesses are not examined, that will not be fatal to prove the death of the deceased due to negligence of the bus driver.*

5. In view of the aforesaid facts, we are of the opinion that the Tribunal and the High Court both manifestly erred in law in refusing to grant any compensation to the claimants.’

Upon considering the decision of Sithara N.S. and ors. VS Sai Ram General Insurance Company Limited (supra) it appears that the same is not applicable to the facts of the case. In the said case the claim of the claimants were rejected by the Hon’ble Supreme Court on the ground of concurrent findings of fact by Tribunal and High Court. Secondly there were self contradictory statements of witnesses. In the instant case the Learned Trial Judge considered both examination in chief and cross examination of P.W. 1, discussed the same in the judgment. It is further observed in the judgment that it is found from the evidence of the eye witness Soumita Chatterjee P.W. 1

that the accident took place due to the offending vehicle being driven in a rash and negligent manner and the driver while driving the offending vehicle dashed the victim and the victim died in hospital. Learned Trial Judge upon considering evidence of P.W. 1 and the Exhibits came to the conclusion that the death of the victim took place due to rash and negligent driving by driver of offending vehicle bearing no. WB-15B/0550. (Lorry). Moreover the evidence of P.W. 1 inspires confidence in the minds of Court that she has seen the accident and the vehicle number regarding rash and negligent driving corroborated by the charge sheet. Thus this Court does not think fit to interfere in the findings of the Learned Trial Judge about rash and negligent driving by driver of vehicle no. WB-15B/0550.

However with regard to the quantum of compensation this Court finds some substance in the submission of Learned Advocate for the appellant insurance company that overtime allowance pay does not remain the same every month and in some months when overtime is not done the same is not paid, and that the claimants have not filed other months pay slip to clarify the plea of over-time allowance received during the year.

Thus if overtime allowance pay is excluded monthly income after deducting professional tax comes to Rs. 18,219/-. The annual income comes to Rs. 2,18,628/-. 1/4th personal expenses of Rs. 54,657/- being deducted net annual income comes to Rs. 1,63,971/- 30% future prospect being added the annual dependency loss comes to Rs. 2,13,162/-. The multiplier of 13 being applied, total dependency loss comes to Rs. 27,71,106/-. Further the claimants are entitled to Rs. 84,000/- on account of loss of estate, loss of consortium and funeral expenses. Thus Rs. 29,05,106/- is the total compensation which comes by arithmetical calculation which claimants/respondents no. 1 to 4 are entitled. However as the victim received overtime allowance on some months it would not be proper to exclude the overtime allowance totally. Thus in this regard compensation of Rs. 31,00,000/- (Rupees thirty one lakh) would be just and reasonable.

Hence this Appeal FMA-2038 of 2018 along with COT 94/2025 stands disposed. Judgment and Award dated 4th April 2018 passed by Learned Additional District Judge 5th Court Burdwan in MACC No.-54/2013 345/2013 stands modified to the extent that the claimants/respondent no-1 to 4 are entitled to compensation of Rs. 31,00,000/-(Rupees thirty one lakh) along with interest @6% per annum from date of filing claim case till today. The appellant Shriram General Insurance Company Ltd. shall deposit before the Registrar General High Court Calcutta Rs. 31,00,000/- along with interest @6% p.a. within 8 weeks from the date of communication of this order. In the event compensation awarded by trial Court is deposited no further deposit be made. The claimants/respondent no. 1 to 4 are entitled to withdraw compensation of Rs. 31,00,000/- along with interest @6% p.a. upon compliance of necessary formalities. Balance amount if any be returned to the appellant including accrued interest. The proportion of compensation as directed by Learned Trial Court be maintained.

Deficit Court fees on enhanced compensation be paid within 4 weeks.

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.)