IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 2932 of 2015

Santu Kumar Patra & Ors.

VERSUS

National Insurance Company Limited

For the appellants: Mr. Krishanu Banki, Adv.
Mr. Thatagata Banik, Adv.

For the respondents/Insurance Co.: Ms. Sucharita Paul, Adv.

Last Heard on: April 02, 2026

Judgment on: May 22, 2026

Biswaroop Chowdhury,J:

The appellants before this Court were claimants in a case under Section 166 of the Motor Vehicles Act 1988 and is aggrieved by the Judgment and Award dated 19th day of December 2014 passed by Learned Additional District Judge 5th Court, Burdwan in MAC Case No-37/23.

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

On 03-03-2013 at about 1.15 hrs while victim a constable of Police then attached to Jamalpur P.S. was engaged to duty on foot patrolling along with his other colleague one Maruti Car being No. WNW-3755 which was from Burdwan side towards Kolkata side on NH-2 with high speed hit the victim from his back side resulting severe injuries on his person and victim was admitted in Burdwan Hospital where he died ultimately. The accident took place due to rash and negligent driving by the driver of the vehicle being no. WNW-3755. The victim/deceased was the only earning member of the family and the petitioners solely depended upon him. Due to sudden death of the victim the claimants are in deep financial trouble to maintain their family.

Pursuant to the filing of this case notice was issued upon the opposite parties. Opposite party vehicle owner although filed written statement but did not contest the case. Opposite Party Insurance Company filed written statement and petition u/s-170 of the Motor Vehicles Act 1988 and contested the case.

ISSUES were framed and evidence was adduced. Learned Trial Judge upon considering the evidence adduced and upon hearing the Learned Advocates was pleased to dismiss the claim case on contest against opposite party National Insurance Co. Ltd. and ex-parte against opposite party vehicle owner.

The appellants/claimants 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 appellants claimants and Learned Advocate for the respondent no-1/Insurance Company perused the evidence adduced and materials on record.

Learned Advocate for the appellant submits that the Learned Trial Judge erred in not relying upon the evidence of P.W. 2. Sri Dharmendra Mondal charge sheet witness. Learned Advocate further submits that the vehicle owner is cited as charge sheet witness thus the evidence ought to have been relied upon. Learned Advocate also submits that the Insurance Company upon obtaining leave under Section 170 of the Motor Vehicles Act 1988 ought to have examined the driver of offending vehicle in the event there was some doubt. It is submitted by the Learned Advocate that Motor Vehicle Claim legislation being a beneficial legislation Learned Trial Judge ought not to have dismissed the case.

Learned Advocate for the respondent no-1 Insurance Company Submits that the FIR maker did not mention the model of vehicle, although he was present when accident took place. Learned Advocate further submits that the accident took place on 03-03-2013 and the vehicle was seized from owner of vehicle on 23-05-2013, thus involvement of vehicle is disputed. Learned Advocate also submits that there is inconsistency between evidence of P.W. 2 and Written Complaint thus the Learned Trial Judge rightly rejected the claim case.

The following Judicial decisions were relied upon by the Learned Advocates:-

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

Reported in 2025 SCC-Online SC-2793.

Rajamma and Ors. VS M/S Reliance General Insurance Co. Ltd. and Anr.

Civil Appeal No-5172 of 2025.

Supreme Court of India.

National Insurance Company Limited VS Nirmalya Chakraborty and Anr.

FMA-2078 of 2014.

High Court at Calcutta.

Pushpabai Purshottam Udeshi and ors. VS Ranjit Giming and Pressing Co. (P) Ltd. and Anr.

Reported in 1977 AIR-1735.

Ranjeet and Anr. VS Abdul Kayem Neb and Anr.

Reported in 2026 ACJ-239.

Ashalata Surya Kant Patil and Ors. VS New India Assurance Company Ltd. and Another.

Reported in 2023(2) TAC-725(S.C.)

The New India Assurance Co. Ltd. VS Mita Samanta and ors.

Reported in 2010 ACJ-2212.

National Insurance Co. Ltd. VS Smt. Shrabani Bhattacharya and Ors.

FMA-538 of 2024

High Court at Calcutta.

Bina Rani Mohanta and ors. VS National Insurance Co. Ltd. and Anr.

FMA-54 of 2025.

With

National Insurance Co. Ltd. VS Bina Rani Mohanta and Ors.

FMAT(MV) 52 of 2025.

High Court at Calcutta.

Before proceeding to decide the material in issue it is necessary to consider the FIR and the evidence of P.W. 2.

Upon perusal of the complaint dated 07/03/2013 it will appear that the said complaint was made by police authority and not by any family member of the victim. Moreover the said complaint is lodged on the following day of the accident Although the vehicle number is not mentioned the place and time of the accident is mentioned.

In a FIR regarding accident due to rash and negligent driving where vehicle number is mentioned, the Police Authority is required to investigate first of all the involvement, secondly whether there was rash and negligent driving by driver of the offending vehicle. However when the vehicle number is not mentioned the task of the Police Authority become more tough as they are required to identify the vehicle first, trace out the same and proceed in accordance with law. When the Police Authority by applying their machinery carries out investigation and submits the report the same should not be discarded as perfunctory without examining the Investigating Officer.

The claimants/appellants have argued their claim case on the basis of evidence of P.W. 2 and the charge-sheet. With regard to the decision of Sithara N.S. and others (supra) the Hon'ble Supreme Court refused to grant relief due to the contradictions of the 4 witnesses cited by the claimants. Secondly the report of the Motor Vehicle Inspector revealed no damage to the offending vehicle.

In the decision of Rajamma and ors. (supra) the Hon'ble Supreme Court on the contradictory statement of two witnesses, refused to award any compensation.

In the case of National Insurance Company Limited VS Nirmalya Chakraborty and Anr. (supra) Learned Co-ordinate Bench of this Court refused to grant relief on the ground that the offending vehicle was not found in damaged condition.

In the instant case the argument of the Insurance Company is directed on two fold ground first the FIR did not mention the number of offending vehicle and that the evidence of eye witness P.W. 2 is doubtful.

It appears from the written statement of Insurance Company that the involvement of the offending vehicle is not disputed, specifically, although other issues regarding age and occupation of the deceased is specifically denied In paragraph 18 of the written statement the Insurance Company submits with regard to rash and negligent driving by driver of offending vehicle and contends that there was no rash and negligent driving on the part of the driver of the offending vehicle. It is contended that the driver of offending Vehicle (Maruti Car-800) was plying his Maruti Car with moderate speed after observing all Traffic rules and regulation but it was the fault of the victim who was on duty patrolling by foot. Thus the respondent no-1 Insurance Company did not doubt the involvement of the vehicle being satisfied by charge sheet submitted by Police Authority. Usually Insurance Companies conduct enquiry to collect evidence with regard to accident so that genuine claims are honoured and frivolous claims rejected. In the instant case no enquiry was conducted by

Insurance Company to collect evidence by the Insurance Company and thus no report is submitted in this regard before Court.

On the basis of evidence of P.W. 1 and O.P.W. 1 argument is advanced that the involvement of offending vehicle is disputed.

Now the point for further consideration is whether the Police Report/charge-sheet can be relied upon where there are no eye-witness or the statement of eye witness is not trustworthy. As Motor Vehicle claim legislation is a beneficial legislation Courts/Tribunals can rely on the charge sheet if the same inspires confidence.

In the case of Ranjeet and Anr (supra) the Hon'ble Supreme Court observed as follows:

'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.'

As the Insurance Company did not examine the vehicle owner or the driver it is necessary to consider the decision of Hon'ble Division Bench in the case of New India Assurance Co. Ltd Vs Mita Samanta (supra). In the said case Hon'ble Division Bench observed as follows:

‘*The aforesaid principle applies with greater force when a party even does not dispute the statement made in the pleading of the other side and decides to remain ex parte. We are quite conscious that in the proceedings for compensation under the Motor Vehicles Act, when the offending vehicle is insured, the owner of the vehicle may not be interested to appear at the witness box in spite of the fact that he is a party to the proceedings. For that reason, the legislature has incorporated the provision contained in Section 170 of the Act permitting the Insurance Company to contest the proceedings on all points. Once such leave is granted, it is the duty of the Insurance Company to summon the owner of the vehicle to appear as a witness for disputing the allegation of the claimants. If the Insurance Company after taking leave of the Tribunal under Section 170 of the Act, decides not to lead any evidence by summoning the relevant witnesses including the party whose liability it has undertaken, its position in law will be just like the party who is afraid of appearing in the witness box to face the cross-examination of the claimants. It is preposterous to suggest that the Court will hold against the claimants notwithstanding the fact that in spite of the allegation of rashness or negligence against the driver, the driver or the owner of the vehicle is deliberately avoiding the Court and the claimants are unable to cross-examine the owner against whom the compensation is claimed or the errant driver whose identity has been disclosed in a civil proceeding.*

Therefore, the Insurance Company in spite of taking leave under Section 170 of the Act having failed to summon the owner or the driver of the vehicle to disprove the allegation of the claimants of the involvement of the vehicle concerned or the rash and negligent driving, the Court is left with no other alternative but to accept the allegation of the claimants unless there is either admission of the claimants or their witness about non-involvement of the vehicle or about the contributory negligence of the victim in the *accident or there exists other evidence of unimpeachable nature given by uninterested witness showing falsity of the allegation of the claimants. In this case, there is no such admission or evidence of that nature. In this case, the driver has been charge sheeted and thus, there is no reason why the Insurance Company in spite of taking leave under Section 170 of the Act should not summon the said driver to give evidence for disclosing the truth. We are unable to presume collusion between the driver and the claimants when the driver has been indicted in the criminal proceedings. It will be a travesty of justice in the facts of the present case to disbelieve the eyewitness of the claimants when the owner and the driver are neither appearing nor are they even summoned by the Insurance Company even after taking leave under Section 170 of the Act to face cross-examination at the instance of the claimants.'*

In the case of Bina Rani Mohanta FMA-54 of 2025, this Court while relying upon the decision of Reliance General Insurance Co. Ltd. FMA-511 of 2018 observed as follows:-

'*With regard to the second submission of the Learned Advocate that the involvement of the vehicle is doubtful as the FIR maker did not mention the vehicle number in the FIR and the vehicle was seized after a long period, this Court is of the view that as the FIR maker did not witness the accident the vehicle number may not be mentioned. It is for the Police Authority to identify and trace out the vehicle in course of investigation. When the Police Authority in Course of investigation has identified and seized the vehicle the said seizure list and charge-sheet cannot be discarded as perfunctory investigation in absence of examination of I.O.'*

Thus from the above judicial decisions it can be concluded that Courts can rely upon the charge sheet submitted by the Police Authority if it inspires confidence in the mind of Court.

In the instant case from the Cross Examination of OPW 1 by the claimants the said witness being SI of Police who endorsed the case for investigation stated that when the charge sheet was submitted by the investigating officer he was fully satisfied with the vehicle mentioned in the said charge-sheet that it was involved in the said occurrence. The Investigation Officer who submitted the charge-sheet examined the vehicle owner Md. Samsul Haque and cited him as charge-sheet witness, thus there is no ground to doubt the involvement of WNW-3755. Now upon perusal of evidence of P.W. 2. Dharmendar Mondal it is clear that although he may not be able to notice the vehicle number but he saw the accident. From his statements it is clear that the vehicle which caused the accident was driven rashly. The charge-sheet showing involvement of vehicle WNW-3755 in the accident and deposition of P.W. 2 if considered together will go to show that the accident and death of the victim took place due to rash and negligent driving by driver of vehicle no-WNW-/3755.

As it is well settled that in Insurance Claim cases proof beyond reasonable doubt is not required and findings can be arrived at on preponderance of probability in the instant case upon considering the FIR charge-sheet and deposition of P.W. 2 it can be concluded that accident and death of the victim took place due to rash and negligent driving by driver of vehicle no-NWN/3755. Thus the appellants/claimants are entitled to compensation.

Now with regard to the quantum of compensation it is necessary to consider the evidence of P.W. 3. It appears that gross salary of the victim was Rs. 26,067/- and Rs. 150/- was deducted towards income tax. There is no statement about income tax being deducted from salary of the victim. No question was also put to the claimant P.W. 1 as to whether victim used to pay income tax however as it is submitted by Learned Advocate for the claimant/appellants that on the basis of monthly income of Rs. 26,067/- income tax to be paid under law is Rs. 2,756/- the net monthly income after deduction of income tax and profession tax of Rs. 150/- comes to Rs. 23,161/-. The annual income comes to Rs. 2,77,932/-. Future prospect taken as 15% Net annual income comes to Rs. 3,19,621/- 1/3rd being Rs. 1,06,540/- to be deducted on account of personal expenses annual dependency loss comes to Rs. 2,13,081/-. The multiplier of 9 being applied total dependency loss comes to Rs. 19,17,729/-. Further the claimants/appellants are entitled to Rs. 84,000/- on account of loss of consortium, loss of estate and funeral expenses. Thus the total compensation comes to Rs. 20,01,729/- by arithmetical calculation. However this Court is of the view that compensation of Rs. 20,00,000/- (Rupees twenty Lakh is just and reasonable).

Thus this Appeal FMA-2932 of 2015 stands allowed. Judgment and Award dated 19th December 2014 passed by Learned Additional District Judge 5th Court Burdwan presently Purba Burdwan in MAC Case No-37 of 2013/231 of 2013 is set aside. The appellants/claimants are entitled to compensation of Rs. 20 lakh along with interest @6% per annum from the date of filing claim case till today. The respondent no-1 National Insurance Company Ltd. is directed to deposit Rs. 20 lakh along with interest @6% per annum within 8 weeks from the date of communication of this order. The appellants 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.)