IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 3368 of 2015

Biswanath Halder & Ors.

VERSUS

The National Insurance Co. Ltd. & Anr.

For the appellants/claimants: Mr. Saidur Rahaman, Adv.

For the respondent/Insurance Co.: Mr. Saibalendu Bhowmik, Adv.
Mr. Rajsekhar Basu, Adv.

Last Heard on: January 27, 2026

Judgment on: March 11, 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 15-07-2014 passed by Learned Additional District Judge 2nd Court Nadia at Krishnanagar in MAC Case No. 12 of 2011.

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

On 06-12-07 at 23.00 hrs the victim Dipali Halder was travelling by the offending vehicle bearing No-WB-20G/0635 (Tata Sumo) which was proceeding along the Krishnanagar-Karimpur pucca Road and while it reached in between Bara Andulia and Sonepukur under P.S. Chapra it suddenly dashed with a road side tree and thereafter it capsized into the road side As a result the victim Dipali Halder died on spot and some other occupants of the vehicle sustained serious injuries on their persons. After the accident they were removed to Saktinagar Hospital. Rash and negligent driving on the part of the driver of the offending vehicle bearing No. WB-20G/0635 (Tata-Sumo) was solely responsible for this tragic accident. Before this accident the victim Dipali Halder had very sound health and active habit. Due to death of the victim her family has suffered great financial loss mental pain and agony.

Pursuant to filing of the case notice was issued upon the opposite parties National Insurance Company Ltd. and vehicle owner.

The opposite party National Insurance Company contested the case by filing written statement but the opposite party vehicle owner did not contest the case.

By Judgment and Award dated 15-07-2014, the Learned Trial Judge disposed of the claim case by observing and directing as follows:

'Hence it is ORDERED that the MAC case be and the same is hereby allowed against the OP No. 1 Kala Chand Gain the owner of the offending vehicle as ex-parte and dismissed against the OP No-2/National Insurance

Company Limited. There will be no order passed as to the cost of the proceeding.

The opposite party No. 1 Kala Chand Gain (owner of the vehicle) is hereby directed to pay compensation to the claimants to the tune of Rs. 8,20,500/- by issuing four account payee cheques directly to the claimants through NEFT within one month from this date failing which the amount shall carry interest @8% per annum till realization.

The O.P. No. 1/Kala Chand Gain (owner of the vehicle) is hereby further directed to pay compensation to the claimant No. 1 to the tune of Rs. 5,000/- as loss of consortium directly through NEFT within one month from this date failing which the amount shall carry interest @8% per annum till realization.

The claimants are hereby directed to furnish an Account of Nationalized Bank/Post office for collecting the awarded amount of compensation from the OP No-1 Kala Chand Gain (owner of the vehicle) within one month.'

The appellants/claimants being aggrieved by the Judgment and Award passed by the Learned Trial Judge has come up with the instant appeal.

The ground on which the Judgment of the Learned Trial Court is asailed is firstly the Learned Trial Judge failed to consider the future prospective income of the victim, secondly considering the net salary of the victim as Rs. 6,000/- and thirdly by exonerating the Insurance Company.

Heard Learned Advocate for the Appellants and Learned Advocate for the Respondents 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 considering the income of the victim as Rs. 6,000/- per month. Learned Advocate further submits that the Learned Trial Judge ought to have granted future prospect. Learned Advocate also submits that the Learned Trial Judge erred in exonerating the Insurance Company to pay the compensation amount, and imposed obligation upon the opposite party vehicle owner.

Learned Advocate for the respondent no-1 Insurance Company submits that the Learned Trial Judge did not err in awarding the compensation on basis of monthly income of Rs. 6,000/- of the victim. Learned Advocate further submits that the offending vehicle was used for hire which is contrary to the terms of policy thus the Learned Trial Judge rightly exonerated the Insurance Company. Learned Advocate also submits that the Judgment and Award passed by the Learned Trial Judge should not be interfered with.

Learned Advocate for the respondent Insurance Company relies on the following Judicial Decision-

National Insurance Company Ltd. VS Rattani and others. Reported in (2009) 2 SCC-P-75.

Before proceeding to decide the issue with regard to quantum of compensation and exoneration of the Insurance Company at the outset it is necessary to decide as to whether the Learned Trial Judge rightly exonerated the Respondent no-1 Insurance Company from paying the compensation amount and imposing direction upon the vehicle owner.

Upon considering the written statement and the ISSUES framed, it appears that ISSUE No-4 was as follows:-

‘4. Was the vehicle insured with the opposite party/Insurer.’

This issue being admitted was decided in favour of the claimants/appellants. As the Insurance Policy was admitted and the rash and negligent driving being proved the Insurance Company was liable to pay the compensation amount. However in the event all the passengers in the vehicles are not covered in the Insurance Policy, the Insurance Company is entitled to recover the compensation amount from the vehicle owner upon payment of the compensation to the claimants.

In the instant case there is no issue framed whether the insurance of offending vehicle covered all the passengers. The issue was raised at the time of arguments thus there is no evidence that all the passengers of said vehicle was was not covered under the policy and the vehicle owner was not examined in this regard. Thus even if the passengers in the Tata Sumo are considered as Gratuitous Passengers, the decision of the Hon’ble Supreme Court in the case of Manvara Khatun and others VS Rajesh Kumar Singh and others reported in 2017 ACJ-1031 should be followed.

In the case of Manuara Khatun and others the Hon'ble Supreme Court observed as follows:

'*21. It is for all these reasons we find no good ground to take a different view than the one consistently being taken by this court in all previous decisions, which are referred supra, in this regard.*

22. In view of the foregoing discussion, we are of the view that the direction to United India Insurance Co. Ltd., respondent No. 3, they being the insurer of the offending vehicle which was found involved in causing the accident due to negligence of its driver needs to be issued directing them (United India Insurance Co. Ltd., respondent No. 3) to first pay the awarded sum to the appellants (claimants) and then to recover the paid awarded sum from the owner of the offending vehicle (Tata Sumo), respondent No. 1, in execution proceedings arising in this very case as per the law laid down in para 25 of Saju P. Paul's case, 2013 ACJ 554 (SC).'

In the case of Sova Dey VS National Insurance Co. Ltd. FMA-1442/2014 (High Court Calcutta) it was observed as follows:

'*As the Motor Accident claim Legislation is a Welfare legislation Tribunals and Courts have to see that the compensation amount reaches to the victims or their legal heirs without delay and without any unnecessary hardship. When* *after adjudicating compensation cases insured/vehicle owners are directed to pay it may take considerable time for them to arrange the compensation amount and when there is failure to pay the amount the victims or their families will again have to knock the doors of Court to get the compensation realized. Thus after suffering injury in accident or losing near relation in accident, and after pursuing case in Court of Law if the victim or their family is unable to get the compensation realized the object of the welfare legislation will be frustrated. On the other hand if the Insurer/Insurance Company is directed to make the payment they can do so within a short period and pursuant to payment may either settle the matter with the insured to repay the compensation by granting instalments or recover the same by instituting recovery proceeding. In the conduct of recovery proceedings it may be possible for Insurance Companies to engage its officers and employees to pursue the recovery case for long period and to make all necessary enquiries for realization of the amount paid which may not be possible for the victims of accident or their relatives. A victim of accident or their relatives if made to institute a recovery case to realize compensation from vehicle owner/insured they will be in a helpless situation even after obtaining award of compensation which is not the object of a welfare legislation. Moreover the vehicle owner/insured who has to enter into contract of Insurance with Insurance Companies under the Law can be approached by the Insurance Companies for settlement before initiating recovery proceedings which is not possible for third party victims. It is held in different judicial pronouncements that Tribunals are not required to adhere rigidly to the doctrine of stare decis so* *that they can consider the claim more sympathetically. The contribution of the Tribunals should be to ensure that the benefits reach the helpless person.*

It is once again necessary to quote the observation of the Hon''ble Supreme Court in the case of National Insurance Co. Ltd. VS Abhaysing Pratapsing Waghala and ors (supra) at the cost of repetition.

*'**17.** It is in the aforementioned situation, we are of the opinion, that the judgment of the High Court cannot be faulted. No doubt, a contract of insurance is to be governed by the terms thereof, but a distinction must be borne in mind between a contract of insurance which has been entered into for the purpose of giving effect to the object and purport of the statute and one which provides for reimbursement of the liability of the owner of the vehicle strictly in terms thereof. In that limited sense, a contract of insurance entered into for the purpose of covering a third party risk would not be purely contractual. We may place on record that an ordinary contract of insurance does not have a statutory flavour. The Act merely imposes an obligation on the part of the insurance company to reimburse the claimant both in terms of the Act as also the Contract. So far as the liability of the insurance company which comes within the purview of Section 146 and 147 is concerned, the same subserves a constitutional goal, namely, social justice. A contract of insurance covering the third party risk must, therefore, be viewed differently vis – vis a contract of insurance qua contract.'*

Upon considering the facts of the case and the decision of the Hon'ble Supreme Court in the case of Manuara Khatun and others (supra) this Court is of the view that the Respondent No-1, National Insurance Company Limited should be directed to pay the compensation amount with liberty to recover the same in accordance with law.

Now with regard to the quantum of compensation it appears from the Judgment of the Learned Trial Judge that on the basis of pay statement filed in Court Learned Trial Judge did not commit any error on proceeding on the basis of monthly income of Rs. 6,000/- per month. However with regard to future prospect this Court is of the view that future prospect of 40% should be added.

Thus in the event monthly income is considered to be Rs. 6,000/- 40% future prospect being added the net monthly income comes to Rs. 8,400/-.

The annual income comes to Rs. 100,800/-. 1/3rd to be deducted on account of personal expenses i.e. Rs. 33,600/-, the annual dependency loss comes to Rs. 67,200/-. The Multiplier of 17 applied brings the total dependency loss to Rs. 11,42,000/- Further the claimants are entitled to Rs. 84000/- on account loss of consortium, funeral expenses and loss of estate; Hence total Compensation comes to Rs. 11,26,000/- by arithmetical calculation which the claimants are entitled. However this Court is of the view that compensation of Rs. 11,00,000/- is just and reasonable.

Before concluding this matter this Court thinks fit that as the present case involves non-coverage in the Insurance Policy of gratuitous passengers, of a vehicle, and ultimately the dispute with regard to the obligation of the Insurance Company in paying compensation amount to victims of accident who were travelling in the said vehicle, arises and similar cases which are also coming before this Court some awareness amongst vehicle owners general people, and Insurance Companies is necessary. As motor vehicle claim legislation is a beneficial legislation to compensate the third party victims of accident and to protect the vehicle owners from bearing the huge burden of compensation in case of accidents, vehicle owners should be made aware about the Policies so that the owners and third party victims do not suffer. Similarly general public should also be made aware about consequences of travelling in a vehicle which is not for carrying passengers but for goods. For this purpose awareness programmes are necessary.

Hence this Appeal FMAT-3368 of 2015 stands disposed. Judgment and Award dated 15-07-2014 passed by Learned Additional District Judge 2nd Court Krishnanagar Nadia in MAC Case No-12/2011 stands modified to the extent that the claimants/the appellant no- 1 to 3 are entitled from Respondent no-1 National Insurance Company Limited Rs. 11,00,000/- (Rupees eleven lakh) along with interest @6% per annum from the date of filing of claim case till today, such payment shall be made by Respondent No-1 National Insurance Company Ltd. by depositing before the Registrar General High Court Calcutta within 8 weeks from the date of communication of this Order. The appellants are entitled to withdraw the amount upon compliance of necessary formalities.

The respondent no-1 National Insurance Company Ltd. upon making the deposit will be entitled to recover the compensation amount from vehicle owner respondent no-2 Kala Chand Gain, upon instituting recovery proceedings before Trial Court, where parties will be entitle to raise relevant points of law.

Let a copy of this Order be sent to the Secretary State Legal Service Authority West Bengal with a request to carry out awareness programme either by itself or through District Legal Service Authorities of the States on the issue as observed above.

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.)