

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

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 1184 of 2025

With

IA NO: CAN 2 of 2025

National Insurance Company Limited

VERSUS

Shila Dutta & Ors.

For the appellant:

Mr. Deb Narayan Ray, Adv.

For the respondents/claimants:

Mr. Jayanta Kr. Mandal, Adv.

Mr. Sayantam Rakshit, Adv.

Last Heard on: March 12, 2026

Judgment on: April 16, 2026

Biswaroop Chowdhury,J:

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 27th day of January 2025 passed by Learned Additional District Judge Fast Track Court at Raiganj Uttar Dinajpur in Motor Accident Claim Case No-166 of 2021.

The case of the respondents no. 1 to 3 before Learned Trial Court may be summed up thus:

On 07-07-2021 at about 5.00 A.M. the victim Chandan Dutta since deceased was returning home with his bi-cycle after finishing his work (as security guard) and when he reached at Saharai more at that time the offending motor-cycle being no-WB-60J/3896 was coming with high speed and rash and negligent manner and all on a sudden the said vehicle went to the wrong side and struck the bi-cycle of the victim. As a result the victim had received severe injuries and he was taken to Raiganj Hospital by local people and was admitted there. According to the claim petition during treatment the victim was detected as 'Corona positive' and finally on 13-07-2021, he succumbed to his injuries. As Chandan Dutta was infected by 'Corona Virus' at the time of his death neither any post mortem of his dead body was done nor the body was handed over to family members and the dead body was cremated as per Government Rules Death was due to accident.

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

Opposite Party vehicle owner did not file the written statement in time and did not contest the case. Opposite party National Insurance Company Limited contested the case by filing written statement. ISSUES were framed and evidence was adduced. Learned Trial Judge upon considering evidence

adduced and upon hearing Learned Advocates was pleased to dispose of the claim case by observing and directing as follows:

‘Hence it is ORDERED that the application registered as MAC Case No. 166 of 2021 is allowed on contest against the OP No-2 i.e. the National Insurance Co. Ltd. and ex-parte against the OP No-1/Kalan Barman i.e. the owner of the offending vehicle bearing registration no. WB-60J/3896.

That the petitioners namely 1) Shila Dutta, 2) Bikram Dutta and 3) Piyali Das do get an award of Rs. 500,000/- (Rupees five lakh only) plus interest @6% per annum from the date of filing of this case (26/08/2021)) till payment from opposite party no-2. Insurer i.e. National Insurance Co. Ltd.

The OP No-2/Insurance Company i.e. National Insurance Co. Ltd. is directed to make payment of Rs. 500,000/- (Rupees five lakhs) in favour of the petitioners, plus interest @6% per annum from the date of filing of the instant application till realization of the award by issuing three account payee cheques of equal amount in their names within two months from the date of this order failing which petitioners shall have the liberty to proceed in accordance with law to realize the fruit of this award. The petitioners are entitled to receive the cheques on payment of deficit Court fees as per rules if not paid.’

The appellant National Insurance Company Limited being aggrieved by the Judgment and Award passed by Learned Trial Judge has come up with the instant appeal.

Heard Learned Advocate for the appellant and Learned Advocate for respondent no. 1 to 3. Perused the evidence adduced and materials on record.

Learned Advocate for the Appellant submits that the victim was suffering due to Covid and there is no document to show that death of the victim was due to accident. Learned Advocate further submits that there is no eye witness and report submitted by Insurance Company Officials will go to show that there was no accident. Learned Advocate also submits that the Award of Trial Court cannot be sustained.

Learned Advocate for the respondent no-1, 2 and 3 submits that to prove the case the claimants/respondents adduced one witness as P.W. 1 wife of deceased victim and produced 8 documents marked exhibits 1 to 8. On the other hand appellant Insurance Company adduced one witness as D.W. 1 (Investigator) and produced documents marked Exhibit-A. Learned Advocate further submits that from the document Exhibit-A the witness of Insurance Company admitted that the accident took place by the offending vehicle and the FIR is true. As such the dispute of involvement of the offending vehicle as raised by the appellant Insurance Company does not arise. Learned Advocate also submits that the death certificate of deceased victim reflects that the victim expired on 13th July 2021, due to Cardio-Resp. Failure; CKD+Sepsis+Covid Pneumonia+RTA and it also appears from the evidence as well as the exhibited documents that the accident took place on 7th July 2021 and on the said date victim was admitted to hospital. It is submitted that the

victim died during Covid period for which post Mortem Examination could not be conducted.

Learned Advocate relies upon the following Judicial decisions:-

United India Insurance Co. Ltd. VS Sunil Kumar and Another.

2018(1) TAC 3(S.C.)

Pita Devi and Ors VS New India Assurance Co. Ltd. and Anr.

Reported in 2000 WBLR (S.C.) 330.

National Insurance Co. Ltd. VS Kulsoma Begum and Ors.

Reported in 2015(1) TAC 161 (Cal.)

Mamata Das and others VS New India Assurance Co. Ltd. FMA-450/2009.

National Insurance Co. Ltd. VS Smt. Sandhya Devi and others.

2019(3) TAC 371 (Cal.)

Upon perusing the evidence adduced and considering the materials on record and upon hearing the Learned Advocates, the accident caused by offending vehicle no. WB-60J/3896 is established. It further appears from the Investigation report filed by officer of National Insurance Company Ltd. that vehicle being no. WB-60J-3896 in high speed dashed the victim and the victim received severe injuries and admitted to Raiganj Government Medical College

and Hospital. Further upon perusal of the charge sheet submitted by Police Authority it appears that the victim was dashed by vehicle being no. WB-60J/3896 in excessive speed and the victim suffered grievous injuries and admitted at Raiganj Govt. Medical College and Hospital. Thus from the report of Investigating officer of National Insurance Company Limited and charge sheet of the Police Authority it is clear that not only vehicle no-WB-60J/3896 (Motor Cycle) was involved in accident but there was rash and negligent driving which caused grievous injury to the victim and the victim had to be admitted in hospital. After six days from the date of admission in hospital the victim died.

Now the point for consideration is whether the cause of death of the victim is due to road traffic accident. Upon perusal of the death certificate it will appear that the victim died due to Cardio Respiratory Failure; CKD+sepsis+Covid Pneumonia+Road Traffic accident. Thus there is observation that cause of death was not only due to road traffic accident but also due to Cardio Respiratory Failure, Covid Pneumonia and CKD+ Sepsis. However in the instant case it is clear that the victim did not have knowledge about Covid and he was on the road and covid was detected after he was admitted to hospital. Further in case of Covid it is always not necessary to get admitted to hospital as Covid can be cured by following Covid restrictions and medications at residence but in case of accident the injured person has to be admitted to hospital for treatment or surgery as the case may be. Moreover injury caused in accident creates pain, which makes the injured person face extreme difficulty to respond to treatment of other disease, which is not faced

in case of normal treatment of diseases. Although the death of the victim took place due to road traffic accident, cardio respiratory failure sepsis and covid pneumonia, but the probability of death due to accidental injury is more than the other disease.

As sepsis mentioned in the death certificate is caused due to organ dysfunctioning and infection which also arises out of road traffic accident, injury and motor accident claim law is a beneficial legislation findings can be arrived on the basis of preponderance of probability. On the principle of preponderance of probability it can be concluded that the death of the victim took place due to road traffic accident.

In the case of Mamata Das and others VS New India Assurance Company Ltd. and Anr FMA-450 of 2009 a Learned Co-ordinate Bench of this Court after considering the nexus between accident, and death date of the victim was pleased to observe as follows:

‘From the medical papers it appears that immediately after accident the victim was admitted into Malda Sadar Hospital and thereafter he was taken to Bellona Nursing Home at Kolkata wherein he was admitted for a certain period of time and an operation was done. As per deposition of P.W-1 that immediately after releasing from Bellona Nursing Home he was taken to Malda but his father was confined to bed and for which he sustained bed sore. The victim was taken to Malda Sadar Hospital and was admitted therein for 6 days and subsequently died on 20-12-2005. The chain of circumstances as narrated

above clearly shows that the victim, sustained injury on his person and was treated in hospital and nursing home at Kolkata and due to such accident he was confined to bed and sustained bed shore and the victim subsequently expired on 20-12-2005 so it cannot be said that there is no nexus between the accident and the death of the victim and all the incidents from the very date of accident it indicates that the victim died due to the road traffic accident in which he sustained injuries.'

In the instant case the victim was not released and died in hospital. Considering the preponderance of probability and the decision relied it can be concluded that the victim died due to road traffic accident. The Learned Trial Court while considering the claim case has given reasons for arriving at the conclusion that death was due to road traffic accident. Thus this Court does not find any ground to interfere in the Judgment and Award passed by the Learned Trial Court. Hence this Appeal should be dismissed.

Hence this Appeal FMA-1184 of 2025 stands dismissed. Judgment and Award dated 27th day of January 2025 passed by Learned Additional District Judge Fast Track Court at Raiganj Uttar Dinajpur in Motor Accident claim case No-166 of 2021 stands affirmed. The appellant National Insurance Company Limited is directed to deposit the compensation amount along with interest as directed by the Learned Trial Court within 8 weeks from communication of this order.

In the event the compensation amount along with interest is already deposited the claimants/respondents no. 1 to 3 may 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.)