IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 698 of 2023

Smt. Arati Manna & Ors.

VERSUS

National Insurance Company Ltd. Anr.

For the appellants:	Mr. Krishanu Banik, Adv. Mr. Tathagata Banik, Adv.
For the respondents/Insurance Co.:	Mr. Rajesh Singh, Adv.

Last Heard on: April 01, 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 15th May 2023 passed by Learned Additional District Judge Fast Track IInd Court Howrah in MACC No-110 of 2017.

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

On 18-01-2017 at about 17.00 hours the victim namely Sanjay Manna was travelling by a bi-cycle along the left side of NH-6 Kolkata bound near Khalishani. At the material time one motor cycle being no. Chassis no. ME4J.C 651JG. 7436056 which was proceeding rashly and negligently towards same direction suddenly dashed the victim with a great force. As a result of the said accident the victim sustained severe fatal injuries and it caused his death.

Rash and negligent driving on the part of the driver of the offending motor cycle being chassis no. ME4JC651JG74 360 56 was the sole cause of this pathetic accident, which could easily be avoided at the time by prudent driving.

The victim since deceased was an active man. He was the sole bread earner of his family. The applicants lost best companion throughout their life. The applicants sustained mental shock pain and agony. The accident forces them to pass life of miserable days.

Pursuant to filing of claim case notice was issued upon the opposite parties. Opposite Party National Insurance Company Ltd. contested the case by filing written statement. Issues were framed and evidence was adduced.

Learned Trial Judge upon considering the evidence adduced and upon hearing the parties was pleased to dismiss the claim case.

The claimants/appellants 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 appellant and Learned Advocate for the respondent no-1 National Insurance Co. Ltd. Perused the evidence adduced and materials on record.

Mr. Banik Learned Advocate for the appellants submits that the Learned Trial Judge erred in dismissing the claim case by disbelieving the oral evidence of P.W. 1, P.W.-2, and OPW 1 as well as documentary evidence of exhibited documents namely FIR, seizure list, charge sheet P.M. report, Insurance policy of the offending vehicle Aadhar Cards of the claimants Learned Advocate further submits that the Learned Tribunal was wrong in dismissing the claim case by not applying the principle of Res-Ipsa Loquitor in the motor accident. Learned Advocate also submits that Learned Tribunal erred in dismissing the claim case on the ground that the offending vehicle (new motor cycle) was not involved in the alleged motor accident.

The following decisions are relied upon by Learned Advocate.

National Insurance Company Ltd. VS Mita Samanta 2010(1) TAC. 343.

National Insurance Limited VS Protima Barik

2019 WBLR. (Cal) 566.

Ashalata Suryakant Palit and ors. VS New India Assurance Company Limited.

2023 (2) TAC 725(SC)

Bimla Devi VS Himachal Pradesh Road Transport Corporation and ors.

(2009) 13 SCC. 530.

Kusum and ors VS Satbir

2011 ACJ. 926-2011(2) TAC(S.C)

Sunita VS Rajasthan State Road Transport

AIR-2019 (SCC) 944.

1977 AIR-1735.

Asha Devi VS Assistant Director State Insurance and ors.

2021 ACJ. 2679.

Krishna Bus Services Ltd. VS Smt. Mangli and ors.

1976 ACJ 184.

Shyam Sunder and ors VS State of Rajasthan.

1974 AIR-890.

Bishan Devi and ors. VS Sirbaksh Singh and Anr

AIR-1979 (SC) 1862.

Basthi Kasim Saheb VS Mysore State Road Transport and ors.

1991 AIR-487.

Malati Sardar VS National Insurance Company Ltd.

2016 ACJ-542.

Mantoo Sarkar VS Oriental Insurance Co. Ltd.

AIR-2009(S.C). 1022.

Learned Advocate for the respondent Insurance Company submits that the FIR was lodged after 10 days thus the case is doubtful. Learned Advocate further submits that evidence of eye witness is doubtful. Learned Advocate also submits that the FIR maker collected the motor cycle number from Uluberia Police Station and ASI Subrata Dhamali of Uluberia. P.S. gave the number, thus the case of claimants is doubtful. It is submitted that the vehicle was plying without being registered thus the Insurance Company is not liable to pay compensation.

With regard to the first submission of Learned Advocate for the respondent no-1 that there is ten days delay in lodging the FIR it is observed in different judicial pronouncements that delay in lodging FIR is not fatal in all cases. In Indian Society after accident family members of victim rush to hospital and not to police station. In the instant case the victim died after being admitted for a period of ten days in hospital thus delay in this case is not fatal.

The next question to be taken into consideration is whether the evidence of P.W. 2 is believable.

P.W. 2 Pintu Sheet in his examination in chief has stated as to how the accident took place. He also mentioned the engine number and chassis number. In cross examination he stated that after the accident he took the victim to hospital along with bye-standers. He further stated to the police about the accident and how it took place and the colour of the Honda Motor bike. Nothing has come out in the cross-examination that P.W. 2 was not present at the accident spot and did not witness the accident.

However it is clear from the evidence that the said vehicle did not have number plate. P.W. 2 further stated that he might have collected the engine number and chassis number from Polash OPW-1. Upon perusing the FIR it appears that OPW-1 in the FIR has only mentioned chassis No-and not the engine number. In examination in chief OPW-1 stated that he collected the chassis number of motor cycle mentioned in the FIR from Uluberia P.S. and ASI Subrata Dhamali of Uluberia P.S. gave him the number. Thus from the FIR it will appear that only chassis number was mentioned. It has been held in different Judicial pronouncements that FIR is not the encyclopedia. In a FIR of rash and negligent driving where vehicle number is mentioned Police Authority is required to investigate about the genuineness of the allegation against the said vehicle. However if vehicle number is not mentioned the Police Authority is required to identify and trace out the vehicle and then proceed in accordance with law. When police authority by applying their machinery, identified and traced out the offending vehicle and submitted charge sheet the said investigation report cannot be discarded as perfunctory without examining the investigating officer. In this case the investigating officer was not examined by the Insurance Company. It appears that on the basis of the chassis number the Police Authority has identified and traced out the offending vehicle by examining 4 witnesses. Out of the four witnesses one of whom is Subrata Dhamani ASI Uluberia PS from whom OPW-1 FIR maker is stated to have obtained chassis number of offending vehicle. Thus the charge sheet should be relied upon. In case where eye witnesses are not available to be summoned to Tribunal by the claimants, Courts/Tribunals can rely on the charge sheet if the same inspires confidence.

In the case of Ranjeet and anr VS Abdul Kayem Neb and Anr reported in 2026A OT-239 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.'

In the case of Bina Rani Mahanta and Ors VS National Insurance Co. Ltd. and Anr. FMA-54 of 2025 it was 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.'

In the case of New India Assurance Co. Ltd. VS Mita Samanta and ors. (FMANo-524 of 2008) the 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.'

Now upon considering the evidence of P.W. 2 and the charge sheet this Court has no other alternative but to believe that accident and death of the victim took place due to rash and negligent driving by driver of the offending vehicle.

The case of Sithara N.S. and others VS Sai Ram General Insurance Company Limited reported in 2026 (1) TAC. 6 (S.C.) cannot be applied in this case as the Hon'ble Supreme Court in the said case refused to grant relief to the claimants as the report of the Motor Vehicle Inspector revealed no damage whatsoever to the alleged offending vehicle a circumstance inconsistent with collision, and the instant case does not involve such facts.

Now with regard to the case of United India Insurance Co. Ltd. VS Sushil Kumar Godara. reported in MANU/SC/0743/2021 relied by the Insurance Company cannot apply to the facts of the case as the said claim was made by the vehicle owner insured from insurance company on account of theft and not on account of accidental death of third party and the said claim was before consumer's forum. As third party Liability Insurance Claim involves a social aspect the principle of pay and recovery as held in different Judicial pronouncements is applicable.

In the facts and circumstances this court is of the view that the appellants claimants are entitled to compensation.

Now with regard to the quantum of compensation it is necessary to consider the income of the victim.

In the instant case the claimant P.W. 1 stated that her husband used to work at press and earn Rs. 5,000/-. However in the claim petition the name and address of employer is not mentioned, and there is a remark 'Does not arise.' Thus the claimants have failed to prove the income and occupation of deceased. Thus it would be reasonable to consider the notional income of the victim as Rs. 4,000/- per month.

In the event monthly income is considered to be Rs. 4,000/- the yearly income comes to Rs. 48,000/-. Further Prospect of 25% being added Annual income comes to Rs. 60,000/-. Upon deducting 1/3rd on account of personal expenses Annual dependency loss comes to Rs. 40,000/-. By applying the multiplier of 13 the total dependency Loss comes to Rs. 5,20,000/-. Further the claimants/appellants are entitled to Rs. 84,000/- on account of general damages. Thus total compensation comes to Rs. 6,04,000/- by arithmetical calculation. However this Court is of the view Rs. 600,000/- compensation is just and reasonable.

Hence this Appeal FMA-698 of 2023 stands allowed. Judgment and Award dated 15th day of May 2023 passed by Learned Additional District Judge-Fast Track IInd Court. Howrah in MACC No-110. Of 2017 is set aside. The claimants/appellants compensation are entitled to of Rs. 6 lakh from respondent no-1 National Insurance Company Ltd. along with interest @6% per annum from the date of filing claim case till today. The respondent no-1 National Insurance Company Ltd. shall deposit before Registrar General High Court Calcutta Rs. 6 Lakh along with interest within 8 weeks from the date of communication of this order.

The appellant insurance company upon making payment may recover the amount from vehicle owner upon giving the vehicle owner an opportunity of being heard and following the procedures as laid down in the case of National Insurance Co. Ltd. VS Lirasa Bibi and Anr. FMA-1003 of 2025.

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.)