In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

01.04.2026
Item No.2-3
Ali
ct. no.9

FMA 359 of 2024

The Oriental Insurance Company Ltd.
Vs.
Sajeda & Ors.
With

COT 112 of 2024

Sajeda & Ors.
Vs.
The Oriental Insurance Company Ltd. & Anr.

Ms. Sayanti Santra
…..for the appellant/Insurance Co.

Mr. Subir Banerjee,
Mr. Sandipan Bandyopadhyay,
Ms. Ruxmini Basu Roy
…for the respondents/cross appellant/claimants.

1. Learned advocates for the parties are present.

2. Heard learned advocates for the parties.

3. 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 17th March, 2023 passed by the learned Additional District Judge, 2nd Court, Islampur, Uttar Dinajpur in MAC Case No. 40 of 2020. The claimants/respondents No. 1 to 5 being also aggrieved by the judgment and award passed by the learned Trial Judge has come up with the cross objection. The case of the claimants/respondents No. 1 to 5 may be summed up thus:

On the date of occurrence on 24.10.2019 at about 08.00 P.M. the victim, "Md. Exramul Haque @ Md. Akramul Hoque @ Ikramul Haque" (now deceased) and one Md. Khasibul we
re standing eastern side footpath of the NH-31, at Gunjaria Bazar to cross the road, at that time a vehicle bearing registration No. BR-06-GC/7751 was proceeding towards Kishanganj side from Islampur side at a very high speed and in a very rash and negligent manner and at the place of occurrence, the said bus suddenly went on to the left side of the road and dashed both of them. As a result, both of them were thrown up on the road and sustained grievous multiple injuries on their person. Immediately after the accident, the local people rescued them and took them to Islampur S.D. Hospital for treatment, wherefrom Md Ekramul Haque the victim was referred to the N.B.M.C. & Hospital, Siliguri but he was admitted at Shanti Swasthalaya & Anusandhan Kendra, Siliguri on the same day i.e., on 24.10.2019 and was treated there up to 03.11.2019 as an indoor patient. Thereafter on 04.11.2019 he was attended at MGM Medical College & LSK Hospital, Kishanganj for treatment and he was referred from there to any higher centre, as such he was admitted at NBMC & Hospital, Siliguri on 06.11.2019, on the same day he was referred to SSKM/NRS for better management but his relatives' admitted him at Greenage Hospitals Pvt. Ltd. Siliguri, due to financial crisis his relatives' took him from the said nursing home on 11.11.2019 and took him to Kolkata on 05.12.2019 for treatment and on 11.12.2019 as an indoor patient. Thereafter his treatment was continuing and during treatment on 31.12.2019, he was admitted at SSKM Medical College & Hospital and treated there up to 19.12.2019. His condition deteriorated, for which he was taken to the Islampur S.D. Hospital for treatment, where the attending doctor declared him dead.
The accident took place due to rash and negligent driving on the part of the driver of the Bus bearing No. BR-06-GC/7751. At the place of occurrence the road is straight and wide and there was no obstacle on the road at the relevant time. Hence the Bus driver was absolutely responsible for the alleged accident. There was no laches on the part of the deceased in the allege accident.
Due to the premature and pathetic death of Md. Ekramul Haque the claimants are facing great financial loss. They are also subjected to suffer mental pain and agony, loss of estate, loss of love and affection and also the loss of consortium etc.

4. Pursuant to the filing of this case, notice was issued upon the opposite parties and opposite party/Oriental Insurance Company Limited filed written statement to contest the case. Issues were framed and evidence was adduced. By judgment and award dated 17.03.2023 the learned Trial Judge disposed of the claim case by observing and directing as follows:

"Hence, it is

*5. **__O R D E R E D__***

that the Motor Accident Claim being No. 40/2020 be and the same is allowed on contest against OP No. 2 and ex parte against OP No. 1 without any order as to cost.

Claimant/petitioners, namely, Sajeda Irfani Begum, Zinat Begum, Anukha Begam and Sarmad Shah are entitled to get Rs. 10,84,764/- (Rupees Ten Lacs Eighty-four Thousand Seven Hundred Sixty-four only) along with interest.

O.P. No. 2, the Oriental Insurance Co. Ltd. Is directed to pay the said amount of compensation by way of issuing a cheque of Rs. 6,50,858/- (Rupees Six Lakh Fifty Thousand Eight Hundred Fifty-eight only) in favour of petitioner no. 1, namely, Sajeda and two cheques of Rs. 2,16,952/- (Rupees Two Lakh Sixteen Thousand Nine Hundred Fifty-two only) each in favour of petitioner nos. 2 and 3, namely, Irfani Begum and Zinat Begum along with interest @ 6% per annum calculated simply following the judgment of Hon'ble High Court, Calcutta reported in 2014 (2) TAC 864 (Cal), (The calculation of payment of interest since 24.03.2020 till 31.12.2021 is exempted due to pandemic), within 90 (ninety) *days from the date of filing of this claim petition i.e., on and from 28.01.2020 till realization of the award i.d. the claimants/petitioners will be at liberty to realize the awarded amount through execution.*

Petitioner no. 1 is directed to deposit the share of Rs. 2,16,952/- (Rupees Two Lakh Sixteen Thousand Nine Hundred Fifty-two only) each in favour of petitioner nos. 4 and 5 namely, Sarmad Shah (minor son) and Anukha Begam (minor daughter), till attaining their majority, in any Nationalized Bank or Post Office.

Let a copy of the judgment be supplied to the Ld. Lawyer for the OP, the Oriental Insurance Co. Ltd. As well as to the petitioners/claimants free of cost for information and compliance."

6. The appellant/Oriental Insurance Company Ltd. being aggrieved by the judgment and award passed by the learned Trial Judge has come up with the instant appeal. The respondent Nos. 1 to 5 being also aggrieved by the judgment and award passed by the learned Trial Judge has filed a cross objection being No. COT 112 of 2024.

7. Heard learned advocate for the appellant Insurance Company and learned advocate for the respondents/claimants. Perused the materials on record.

8. Learned advocate for the appellant/Oriental Insurance Company Ltd. submits that learned Trial Judge erred in considering the notional income of the victim as Rs.6,000/-when the

claimants were unable to prove the income of the victim as well as his occupation.

9. Learned advocate further submits that the victim cannot be in the occupation of the driver as because the driving licence relied upon by the claimants expired long time before.

10. Learned advocate also submits that there was no driving licence of the driver of the offending vehicle to drive the transport vehicle but the point was not taken into consideration by the learned Trial Judge.

11. Learned advocate appearing for the claimants/respondents No. 1 to 5 submits that the learned Judge ought to have considered the income of the victim as Rs.6,500/- considering his occupation as driver as well as the income required to maintain the family.

12. Learned advocate also relies upon the decision in the case of ***Latika Paul & Ors. Vs. The Oriental Insurance Company Limited & Anr. in FMA 27 of 2024.***

13. Learned advocate also submits that the Insurance Company did not adduce any evidence with regard to the driving licence and the said extract of driving licence relied upon by the Insurance Company was not exhibited before the learned Trial Court.

14. Upon hearing the learned advocates and considering the facts of the case with regard to first submission of the learned advocate for the appellant that the driver of the offending vehicle had no valid driving licence to drive a transport vehicle, the attention of the Court is drawn to exhibit-7 where the driving licence of the offending vehicle was exhibited and in the said driving licence it was mentioned that it was valid till 25.06.2020. The extract of the driving licence relied upon by the leaned advocate for the appellant was not filed before the learned Trial Court nor was the driver of the said vehicle examined and nor the Insurance authority examined in this regard. In the facts and circumstances, there was no scope for the learned Trial Court to arrive at a findings that the driver of the offending vehicle had no valid driving licence to drive the transport vehicle. With regard to the income of the victim it appears that the driving licence of the victim already expired in the year 2014 and the accident took place in 2019. Thus, it cannot be concluded that the victim was engaged in driving occupation when there is no corroboration by any third party witness that the victim was engaged in driving occupation nor is there any evidence by any persons that he had engaged a victim as a driver for driving his

vehicle. Thus, the claimants have failed to prove the occupation of the victim as well as his income. Thus, the learned Trial Court did not commit any error to proceed on the notional income of Rs.6,000/-. The annual income comes to Rs. 72,000/-. 1/4th is deducted on account of personal expenses and the annual dependency loss is Rs.54,000/-. The multiplier of 11 is applied to this annual dependency loss, and the total dependency loss comes to Rs.5,94,000/-. Further the claimants are entitled to consortium of Rs.40,000/- and Rs.15,000/- as funeral expenses and Rs.15,000/- as loss of estate. Thus, Rs.70,000/- is payable to the claimants/appellants on account of general loss and damages. Further as medical expenses was incurred for the treatment of the victim the claimants are entitled to compensation of Rs.2,01,364/-. Thus total compensation comes to Rs.8,65,364 on arithmetical calculation. However, in the view of this Court compensation of Rs.9,00,000/-is just and reasonable. Thus, the claimants/respondents No. 1 to 5 are entitled to compensation of Rs.9,00,000/- from appellant/Oriental Insurance Company Ltd. along with interest @ 6% per annum from the date of filing of the claim case till today. The appellant/ Oriental Insurance Company Limited shall deposit the compensation amount of Rs.9,00,000/-along with interest within eight weeks from the date of communication of this order before the learned Registrar General, High Court, Calcutta. However, in the event the amount awarded by the learned Trial Court is already deposited no further deposit be made. The claimants/respondents No. 1 to 5 are entitled to withdraw Rs.9,00,000/- along with interest @ 6% per annum upon compliance of the necessary formalities the balance amount, if any, be returned to the appellant/Oriental Insurance Company Limited along with accrued interest if any.

15. The appeal FMA 359 of 2024 along with COT 112 of 2014 stand disposed of.

16. Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Biswaroop Chowdhury, J.)