IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 1005 of 2024
With
IA No: CAN 2 of 2024
Bajaj Allianz General Insurance Co. Ltd.

VERSUS

Aparna Mandal & Ors.

With

COT 141 of 2024

Aparna Mandal & Ors.

VERSUS

Bajaj Allianz General Insurance Co. Ltd. & Anr.

For the appellant/insurance Co. in FMA 1005 of 2024 and respondent no. 1 in COT 141 of 2024: Mrs. Sucharita Paul, Adv.

For the claimants/respondents in FMA 1005 of 2024 and appellants/claimants in COT 141 of 2024: Mr. Amit Ranjan Roy, Adv.

Last Heard on: April 21, 2026

Judgment on: May 15, 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 29th April 2024 passed by Learned Additional District Judge 1st Court Tamluk Purba Medinipur in MAC Case No-162 of 2015. The respondent no. 1 to 8/claimants being also aggrieved by the Judgment and Award of the Learned Trial Judge has filed cross objection.

The case of the claimants/respondents no. 1 to 8 before the Learned Trial Court may be summed up thus;

On 07-11-2014 at about 6.00 p.m. the victim Asta Mandal @ Astha Mandal was walking along the unmettalled portion of NH. (Bombay Road) near Babua, Kolaghat Bye-pass and that relevant point of time a Pick-up-Van bearing No-WB-29X/0172 was proceeding from ‘Bagnan side’ towards Dhulia side at a high speed endangering human life and safety and knocked down the victim from behind with a great force resulting which the victim sustained severe injury on his right leg waist and head. Subsequently the victim succumbed to injuries at Purba Medinipur District Hospital at Tamluk.

The accident occurred due to rash and negligent driving of the driver of the bus bearing Regn No-WB-29X/0172 (Pick-up-Van). Asta Mondal @ Ashta Mandal was 43 years old at the time of accident and he was earning Rs. 300/- to Rs. 400/- per day.

Pursuant to the filing of the case notice was issued upon the opposite parties. Opposite party vehicle owner did not appear to contest the case.

Opposite Party Bazaz Allianz General Insurance Co. Ltd. filed written statement and contested the case. ISSUES were framed and evidence was adduced By Judgment and Award dated 29th April 2024 the Learned Trial Judge was pleased to dispose of the claim case by observing and directing as follows:

'Hence it is ORDERED that the instant MACC No-162 of 2015 be and same is allowed on contest against OP No. 2 Bazaz Allianz General Insurance Co. Ltd. and ex-parte against the OP No-1 without costs.

The Claimants/petitioners do get award of Rs. 7,42,000/- (Rupees Seven Lakhs and Forty Two Thousand only) as compensation along with interest @6% per annum from the date of filing claim petition i.e. on and from 02.02.2015 till realization of the award.

Out of the total claim amount of Rs. 7,42,000/- the claimant No-1, Aparna Mandal will get Rs. 1,27,750/- [1/8 of Rs. 7,02,000 (i.e. Rs. 7,42,000/- Rs. 40,000/-)=Rs. 87,750 + Rs. 40,000/- towards consortium] and the other petitioners i.e. petitioner Nos. 2 to 8 will get Rs. 87,750/- each (i.e. 1/8th of Rs. 7,02,000/-).

The OP No.-2 Bazaz Allianz General Insurance Co. Ltd, being the insurer of the vehicle bearing Registration No. WB-29X/0172 is directed to pay the compensation award by issuing 8(Eight) Account Payee Cheques together with interest thereon @6% per annum to the petitioners/claimants at the first instance and then recover the same from the owner of the offending vehicle following the due process of law within 60 (Sixty) days from the date of order i.d. the claimants/petitioners shall be at liberty to realize the awarded amount through due process of Law.

The petitioner no. 1 being the mother and natural guardian of the minor petitioner Nos. 5, 6, and 7 shall deposit the compensation amount of the minor petitioners/claimants nos. 5, 6, and 7 in any Nationalized Bank for long term fixed deposit in the name of the minor petitioners/claimants until the minor petitioners/claimants attain majority and the petitioner no. 1 shall file indemnity bond to that effect and that she shall be liable to compensate the amount if not deposited the same in minors name.

The petitioner No. 1 shall also file the copy of the fixed deposit certificate within a month from the date of receiving the cheque of the petitioner no. 5, 6 and 7.

The claimants are directed to pay the required DCF within 10 days from the date of passing order.

The Appellant Insurance Company being aggrieved by the Judgment and Award dated 29th April 2024 has come up with the instant appeal. The respondent/claimants no. 1 to 8 being also aggrieved by the Judgment and Award passed by the Learned Trial Judge has filed cross objection.

Heard Learned Advocate for the Appellant and Learned Advocate for the respondent. Perused the evidence adduced and materials on record.

Learned Advocate for the appellant submits that there is delay in lodging the FIR thus the involvement of the vehicle is disputed. Learned Advocate further submits that P.W. 2 was known to the victim and no local person was examined and copy of the written complaint not filed. Learned Advocate also submits that driver denied the accident. With regard to the quantum of compensation Learned Advocate submits that 1/3rd should have been deducted on account of personal expenses, and not 1/4th.

Learned Advocate relies upon the following Judicial decisions.

Deep Shikha and Anr. VS National Insurance Company Ltd. and others.

Reported in 2025 SCC Online SC. 1090.

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

Civil Appeal No-5172 of 2025.

(Supreme Court of India).

Learned Advocate for the respondents/claimants submits that the claimants have been able to prove the case. Learned Advocate further submits that although the driver of the offending vehicle stated that he did not cause any accident before claim officer but before Learned Magistrate he admitted that he is involved in two cases of accident and on verification by Learned Magistrate it appeared that 4 cases with regard to accident is pending. Learned

Advocate also submits that the statement made by the driver before claim officer cannot be relied upon. It is submitted by the Learned Advocate that the Learned Trial Court ought to have considered the income of the victim to be Rs. 12,000/- instead of Rs. 4,000/- and the compensation awarded should be enhanced.

Learned Advocate relied upon the following Judicial decisions:

Sanju Bai Prajapati and ors VS The New India Assurance Company Ltd. and ors.

Reported in 2025 INSC. 823.

With regard to the delay in lodging FIR it is well settled that delay in lodging FIR is not fatal in a claim case. In Indian Society after accident of a person members of his family usually rushes to hospital and not to police station. Moreover in the instant case the victim died hence it is quite natural that members of his family and near relations will be in a state of depression thus delay in FIR is not unusual.

P.W. 2 has specifically stated how the accident took place. Nothing has come out in the cross examination that P.W. 2 was not present at the accident spot. Learned Trial Judge dealt with the issue by assigning reasons. The charge sheet submitted and charge framed by the Learned Magistrate against driver of offending vehicle strengthens the case of the claimants.

The decision of the Hon'ble Supreme Court in the case of Rajamma and Ors. (supra) cannot be applied in this case. In the said case due to contradictory statements of two witnesses the case of the claimant failed. In the instant case the statement of one eye witness being trustworthy has to be accepted. Further the case of National Insurance Company Limited VS Nirmalya Chakraborty and Anr (supra) also cannot be applied in this case. In the said case the offending vehicle dashed another vehicle and the said vehicle was not found in damaged condition thus the involvement of maruti car was disputed and the Learned Judge observed that reliable evidence of eye witness was lacking in that case. In the instant case from the statement of P.W. 2 who is also a charge-sheet witness the involvement of offending vehicle being no. WB-29X-0172. cannot be disputed.

Hence this Court does not find any ground to disturb the findings of Learned Trial Judge that the accident took place due to rash and negligent driving by driver of vehicle no. WB-29X-0172.

Now with regard to the quantum of compensation it is necessary to consider the evidence of P.W. 1 P.W. 1 in her examination in chief has stated that the victim had business of fish. In the claim petition also it is specifically mentioned. In the cross examination suggestion was put with regard to income of victim but not with regard to victim being engaged in fish business. Thus the occupation of the victim is proved. In the event occupation is proved it is not unusual for a fish vendor to earn atleast Rs. 7,000/- per month. Thus notional monthly income should be considered as Rs. 7,000/- per month.

In the event monthly income is Rs. 7,000/- the yearly income comes to Rs. 84,000/- 25% should be added on account of future prospect and total annual income comes to Rs. 1,05,000/-. Considering the number of dependants 1/3rd should be deducted on account of personal expenses which is Rs. 35,000/- Net annual dependency loss comes to Rs. 70,000/-. The multiplier of 14 applied brings the total dependency loss to Rs. 9,80,000/-. Further the respondents no. 1 to 3 are entitled to Rs. 70,000/- on account of consortium loss of estate and funeral expense. Thus the total compensation comes to Rs. 10,50,000/- by arithmetical calculation, which this Court is of the view is just and reasonable.

Hence this Appeal FMA-1005 of 2024 along with COT 141 of 2024 stands disposed. The Judgment and Award dated 29th April 2024 passed by Learned Additional District Judge 1st Court Tamluk Purba Medinipur in MAC Case No. 162 of 2015 stands modified to the extent that the respondents/claimants are entitled to Rs. 10,50,000/- from the Appellant Insurance Company along with interest @6% per annum from the date of filing till today. The appellant Insurance Company shall deposit Rs. 10,50,000/- (Rupees ten lakh fifty thousand only) along with interest @6% per annum before Registrar General High Court Calcutta within 8 weeks from date of communication of this Order. In the event compensation awarded by Learned Trial Court is already deposited balance amount be deposited. Claimants respondents will be entitled to withdraw compensation amount upon compliance of necessary formalities. With regard to deposit in the name of minors as directed by the Learned Trial Court such deposit shall be made and report be submitted before Learned Trial Court.

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.)