

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

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 538 of 2024

National Insurance Co. Ltd.

VERSUS

Smt. Shrabani Bhattacharyya & Ors.

For the appellants/insurance company: Mr. Sanjay Paul, Adv.

For the respondents/claimants.: Mr. Krishanu Banik, Adv.
Mr. Tathagata Banik, Adv.

Last Heard on: February 10, 2026

Judgment on: March 06, 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 13-05-2022 passed by Learned Additional District Judge Fast Track 3rd Court Paschim Medinipur in MACC 642 of 2018.

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

On 22-05-2018 at about 11.45 p.m. while the victim Shuvendu Bhattacharya was coming from Midnapore side towards his house by a motor cycle with normal speed and while he reached near Picnic Hotel under Salbani P.S. and when standing with his motor cycle bearing No. WB-34BC/5244 on the extreme left side of Midnapore Raniganj NH-60 road at that time one vehicle bearing No. WB-34AH/7436 (Maruti Omni) coming from the side of Midnapore with very high speed in rash and negligent manner dashed the victim's motor cycle from behind with great force. As a result victim was thrown on the road and sustained grievous injuries on his head and body. With the help of local people he was admitted at Midnapore Medical College and Hospital and due to serious head injury he was referred to S.S.KM. Hospital and there he expired on 24-05-2018 in course of his treatment.

The deceased Shuvendu Bhattacharya was a Primary Teacher and he used to earn Rs. 29,859/- per month as salary. The claimants/petitioners were dependants on the victim and due to sudden premature death of the victim the claimants are facing financial stringency.

Pursuant to filing of this case notice was issued upon the opposite parties. Opposite Party Insurance Company contested the case by filing written statement. The Opposite party vehicle owner although filed written statement but subsequently did not contest the case.

ISSUES were framed and evidence was adduced.

By Judgment and Award dated 13-05-2022 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 case being MACC No-642 of 2018 be and the same is hereby allowed on contest against the Opposite Party No-2 and ex-parte against the Opposite party no-1 but without costs.

The Opposite Party no-2 (National Insurance Co. Ltd.) which indemnified the opposite party no-1 is hereby directed to pay the total compensation amount of Rs. 44,91,000/- (Rupees forty four lakhs ninety one thousand) only together with interest @ 6% per annum from the date of filing of the claim application till full liquidation by issuing three A/C payee cheques in the name of the claimant no-1) Smt. Shrabani Bhattacharya the claimant no. 2) Sohom Bhattacharya and the claimant no-(3) Subham Bhattacharya u/s. 166 of Motor Vehicles Act 1988 within (2) months from the date of this Order, failing which the claimant no. 1 to 3 shall be at liberty to put the order in execution.

The claimant no. 1 is hereby directed to deposit the compensation so awarded in favour of the claimant no-2 and 3 in Fixed Deposit in any Nationalized Bank with renewal clause in their names till they get majority.'

The Appellant National Insurance Company Limited being aggrieved by the Judgment and Award dated 13-05-2022 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 to 3 perused the materials on record.

Learned Advocate for the appellant submits that the involvement of vehicle is in dispute as the FIR is against an unknown vehicle. Learned Advocate further submits that the accident took place on 20-05-2018 and vehicle seized on 25-07-2018 and P.W. 3 is not cited as charge-sheet witness. Learned Advocate also submits that consortium granted to children is not sustainable in the eye of law.

Learned Advocate relies upon the following judicial decision.

National Insurance Company Ltd. VS Pronoy Sethi.

AIR-2017 S.C. 5157.

Learned Advocate for the respondents no 1 to 3 submits that as the victim died after few days from date of accident complaint was lodged after 2 days, thus there is sufficient ground for delay. Learned Advocate relies upon the following judicial decision.

Ashalata Surya Kant. VS New India Assurance Co.

Reported in 2023(2) TAC-725.

Preetha Krishna and ors. VS United India Insurance Co. Ltd. and Ors.

Reported in 2025(4) TAC. 715(S.C)

Harjinder Kaur and others. VS Oriental Insurance Company Ltd. and Anr.

Reported in 2025(2) TAC-725(S.C).

Mangri Devi and others. VS The Oriental Insurance Co. Ltd. and others.

Reported in 2025 (4) TAC 705 (S.C).

Kulirinder Kaur and others VS Parshant Sharma and Anr.

Reported in 2025(3) TAC. 709.(S.C.)

Janabai WD/o Dinkar Rao Ghorpade VS M/S. ICICI Lambord Insurance Company Ltd.

SLP(CIVIL) No. 21077 of 2019.

(Supreme Court of India)

Now with regard to the first submission of Learned Advocate for the appellant that the case of the claimants is doubtful as there is delay in lodging FIR it is to be remembered that it is held in different Judicial Pronouncements that when a person is injured in accident in Indian Society family members rush to hospital and not to Police Station thus delay cannot be said to be fatal in all cases. Moreover in the instant case the victim died thus it is quite natural for the members of the victims family to be in a state of depression for a certain

period. The claimant in the FIR has also explained the delay. Thus in the instant case delay cannot be said to be fatal.

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.

Now upon perusal of the evidence of P.W. 2 Sri Sukumar Ghosh who has claimed himself to be the eye-witness of the case it appears that P.W. 2 has specifically stated as to how the accident took place. There is nothing in cross examination by which the evidence with regard to the accident can be shaken. Moreover in cross-examination P.W. 2 stated that the deceased was going towards Chandrakona from Midnapore side, and he was on a motorcycle. He further stated that after the accident the bike fell on the plank of the road and the motorcycle was hit at the back side and it was damaged on both the side front and rear. He also stated that he arranged for vehicle to take the deceased to the hospital. He did not wait till the police came as he is a tourist cab driver. Thus the specific particulars given by P. W. 2 in cross examination makes his

evidence more trustworthy even though he is not cited as charge-sheet witness by Police Authority.

Hence this Court does not find error in the findings of Learned Trial Judge about rash and negligent driving by driver of vehicle no. WB34AH/7436.

Now with regard to the quantum of Compensation this Court is of the view that the Learned Trial Judge upon considering the monthly salary of victim rightly assessed total dependency loss of the claimants amounting to Rs. 43,25,664/-. However with regard to the consortium awarded upon considering the judicial decisions relied upon this Court is of the view that consortium as laid down in the decision of National Insurance Company VS Pranoy Sethy reported in AIR 2017 S.C. 5157 should be followed and consortium in the instant case should only be granted to the spouse, and the consortium cannot be granted to the children. Thus consortium if granted only to spouse total compensation which comes by arithmetical calculation is Rs. 44,03,000/-. However this Court is of the view that Rs. 44,00,000/- is just and reasonable.

Hence this Appeal FMAT (MV) 381 of 2022 stands disposed. Judgment and Award dated 13-05-2022 passed by Learned Additional District Judge. Fast Track 3rd Court Paschim Medinipur Sadar in MACC No-642 of 2018 stands modified to the extent that the respondent no-1, 2 and 3 are entitled to compensation of Rs. 44,00,000/- along with interest @ 6% per annum from the date of filing claim case till today. The Appellant Insurance Company shall deposit before the Registrar General High Court Calcutta Rs. 44,00,000/- along

with interest @6% per annum from the date of filing claim case till today. Such deposit shall be made within 8 weeks from the date of communication of this Order. In the event the compensation awarded by Learned Trial Court is already deposited no further deposit be made.

The respondents no. 1, 2 and 3 will be entitled to withdraw the compensation amount of Rs. 44,00,000/- along with interest @6% per annum and also accrued interest if any upon compliance of necessary formality. The residuary amount be returned to the appellant National Insurance Company Ltd.

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.)