

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

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 792 of 2023

Magma HDI General Insurance Company Limited

VERSUS

Tahamina Bibi & Ors.

For the appellant:

Mr. Rajesh Singh, Adv.

For the respondents/claimants:

Mr. Jayanta Kr. Mandal, Adv.

Mr. Sayantan Rakshit, Adv.

Last Heard on: February 26, 2026

Judgment on: April 16, 2026

Biswaroop Chowdhury,J:

The appellant before this Court was an opposite party in an application under Section 166 of the Motor Vehicles Act 1988 and is aggrieved by the Judgment and Award dated 7th day of July 2023 passed by Learned Additional District Judge Fast Track Court Suri Birbhum in MAC Case No. 132/2019.

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

On 15-03-2019 at about 10.30 hrs to 11.00 hrs (night) when the victim Rajel Sekh was coming from Kalidanga towards Rampurhat riding a motorcycle bearing no. WB 46E-4519 and when he reached Bomhat Hajra Kala pond on the road left side at that time one vehicle (new) bearing Engine No. 91804071J63626938 and chassis No. MAT. 466131 H 3K25746 was coming rashly and negligently with high speed without blowing any horn from the same direction. i.e. Kalidanga to Rampurhat and directly dashed behind the said motor cycle causing severe injury as a result victim sustained grievous head injury and died on the spot. The victim was aged about 29 years and he was the owner of crusher and also vehicle owner and used to earn Rs. 30,000/- p.m. The offending vehicle is solely responsible for the death of the victim. The petitioners claimed Rs. 60 lakhs as well as general damages future prospects loss of care and guidance of minor children loss of consortium and funeral expenses as well as affection deprivation of protection, security with interest @10% per annum from the date of filing of claim case till realization.

Pursuant to the filing of this case notice was issued upon the opposite party vehicle owner, and opposite party Magma HDI General Insurance Company Limited. Although opposite party vehicle owner appeared but did not contest the case. Opposite party Magma HDI General Insurance Co. 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 dispose of the claim case by observing and directing as follows:

Hence it is ORDERED that the claim petition u/s-166 of the MV Act is allowed on contest against the OP No-2 i.e. Magma HDI Gen. Ins. Co. Ltd and allowed exparte against OP No.1 with costs.

The O.P. No. 1 and O.P. No-2 are jointly and severally liable to pay the awarded amount to the petitioners.

The petitioner No. 1,2 and 3 do hereby get an award for Rs. 54,78,973/- (Rs. Fifty Four Lakhs Seventy Eight thousand Nine Hundred Seventy Three) only as compensation and interest on date of filing of the case i.e. from 13-06-2019 till realization of the awarded amount.

The OP No. 2 i.e. Magma HDI Gen. Ins. Co. Ltd. is directed to pay the awarded amount of Rs. 54,78,973/- (Rs. Fifty Four Lakhs Seventy Eight Thousand Nine Hundred Seventy Three) only along with accrued interest as mentioned above, by issuing three account payee cheques to tune of Rs. 18,26,324/- (Rs. Eighteen Lakhs Twenty Six Thousand Three Hundred Twenty Four) only each in favour of the claimants namely 1. Tahamina Bibi, 2. Minor Ummar Fareck Sekh and 3. Minor Rahat Sk. within thirty days from the date of delivery of Judgment. Failing which the OP No-2 will have to pay further interest @10% p.a. upon the awarded amount from the date of expiry of thirty days till realization of the awarded amount. In default the petitioners are at liberty to execute the same in accordance with Law.

It is mentioned here that any amount awarded and paid in any other case including a case u/s-140 of the MV Act 1988 to the petitioners for this accident be adjusted against this awarded amount.

The claimants/petitioners are directed to pay deficit court fees within 15 days from the date of passing Judgment.

The claimants/petitioners are debarred from obtaining the certified copy of this judgment unless deficit court fees is paid.

The petitioner no. 1 is directed to deposit the awarded amount of petitioner no-2 and 3 in a Nationalized Bank in a fixed deposit scheme for welfare of the minors till attaining of their majority.

The O.P. No. 2 is at liberty to realize the awarded amount of compensation from the registered owner of the offending vehicle bearing Engine No. 91804071J63626938 and chassis No. MAT-466131H3K25746.'

The 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, 2 and 3. Perused the materials on record.

Learned Advocate for the appellant submits that the case does not come under the category of an accident due to rash and negligent driving but a case of culpable homicide as the Police Authority has instituted case and submitted charge-sheet under Section 304 of the Indian Penal Code.

Learned Advocate relies upon the following Judicial decision:

Rupa Begum SK and ors. VS National Insurance Copmpany Ltd. and Anr.

FMA-700/2014 (Calcutta High Court)

Learned Advocate for the Respondents no. 1, to 3 submits that the Learned Trial Judge upon considering the evidence adduced came to the conclusion of rash and negligent driving by driver of offending vehicle. Learned Advocate further submits that no question was put in the cross-examination by the Insurance Company that it was a murder.

Learned Advocate relies upon the following Judicial Decision:

Dipa Ganguly and Anr. VS New India Assurance Company Limited and Anr.

Reported in (2010) 2 WBLR (Cal)-P-251.

Before proceeding to decide on the issue it is necessary to consider the FIR and the statement of P.W. 2 Juwel SK.

In the FIR it was mentioned that the victim was dashed by an unknown dumper. The complainant also suspected conspiracy but no name was mentioned in FIR. The case was instituted under section 304 of the Indian Penal Code. The investigation was taken up and charge-sheet was submitted

under Section 304/120B against all the accused persons, including driver of the offending vehicle Toriful SK.

In the claim petition there is allegation of rash and negligent driving by vehicle (New) Engine No. 91804071J63626938 Chasis No. MAT 466131H3K25746. There is no allegation of conspiracy in the deposition. P.W. 2 Juwel Sekh stated that one vehicle new was proceeding from opposite direction dashed behind the deceased motor cycle.

The opposite party vehicle owner in cross-examination stated that the accident took place as usual which generally happened.

Thus from the evidence of the parties it is clear that death of victim took place on road due to dashing by one vehicle although the charge sheet is submitted under Section 304 of Indian Penal Code.

Now the point for consideration is whether the family of victim is entitled to compensation inspite of charge sheet submitted against driver of offending vehicle under Section 304IPC.

In the case of Dipa Ganguly and Anr. (supra) Hon'ble Division Bench of this Court observed as follows:

"15. In the Act, the word "accident" has not been defined. Therefore, we are to interpret the said word as used in the context of the provisions of the Act. The word "accident" according to Oxford Advanced Learner's Dictionary of Current English, Fourth Edition, by A.S. Hornby means "events that happens

unexpectedly and causes damages, injury, etc; chance: fortune;" According to the Oxford Universal Dictionary Illustrated, Revised and edited by C.T. Onions, Third Edition, the said word means, an event, esp. an unforeseen contingency; a disaster: chance; fortune; an unfavourable symptom; a casual appearance or effect;

16. The learned Tribunal below proceeded on the assumption that if the event occurs due to an intended act of somebody, the same cannot be described as an accident and in this case, since, the charge-sheet under Section 302 of the Indian Penal Code has been given, it is not a mere accident but intentional act of the murderer. In other words, the Tribunal was of the opinion that in order to invoke the jurisdiction of the Motor Vehicles Tribunal, the incident resulting in injury or death must arise of an act of negligence but not from a positive intended act.

*17. We are, however, of the opinion that an accident within the meaning of the Act may occur not only from the negligent act but also from positive or intended act. Our aforesaid view finds support from the explanation added to Section 147(1) of the Act according to which the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, **if the act or omission which led to the accident occurred in a public place.***

18. Therefore, according to the said explanation, the accident within the meaning of the Act may cause either due to "omission" or "an act" of a person and in our opinion, such omission or the act need not be unintentional as would appear from the fact that in the proceedings under Sections 140, 163A or 163B of the Act, the Tribunal is not required to consider whether there was rash or negligent driving on the part of the driver of the offending vehicle or whether there was contributory negligence on the part of the victim. However, in order to invoke Section 166 of the Act, accident must not cause due to the self-incurred act on the part of the victim. But if the driver of the offending vehicle with the intention of killing the victim deliberately runs over the victim, the case will attract the provision of Section 166. In this connection, we may profitably refer to the following observations of the Supreme Court in the case of *Regional Director, E.S.I. Corporation vs. Fransis de Costa* reported in 1993 (suppl) 4 SCC 100 while dealing with the undefined word "accident" in the context of Employee's State Insurance Act:

"Accident has not been defined under the Act. The popular and ordinary sense of the word 'accident' means the mishap or an untoward happening not expected and designed to have an occurrence is an accident. **It must be regarded as an accident, from the point of view of the workman who suffers from it, that its occurrence is unexpected and without design on his part, although either intentionally caused by the author of the act or otherwise.** It may also arise in diverse forms and not capable of precise

definition. The common factor is somewhat concrete happening at a definite point of time and an injury or incapacity results from such happening.

(Emphasis supplied by us).

19. We are, therefore, of the view that in order to maintain an application under Section 166 of the Act, from the point of view of the victim who suffers from it, the event, in order to be accident, must be unexpected and without design on his part, although it might be caused intentionally by the author of the act. For the purpose of granting relief under Sections 140 or 163A of the Act or in the cases under the category of 'hit and run', however, even the intentional act of the victim resulting in the accident is inconsequential."

The decision of Rupa Begum SK. And Ors. (supra) relied by Learned Advocate for Appellant is not applicable to the facts of the case. In the said case the dead body of the victim was found murdered inside the vehicle it was not a case that the victim was dashed by another vehicle.

Thus upon considering the facts of the case and the decision of Dipa Ganguly and Anr (supra) this Court is of the view that even if a charge sheet is submitted by Police Authority under Section 302 or 304 IPC against driver of vehicle involved in accident Motor Accident Claim Tribunal shall consider the same as accident, and proceed in accordance with law. It has to be remembered that a charge-sheet may be submitted by Police Authority against driver of a vehicle involved in accident under Section 304 IPC, or 304 A IPC or under Section 302 IPC. By simply submitting charge sheet under Section 302

or Section 304 IPC and Section 304 A IPC against driver of offending vehicle does not make him guilty of offence of murder or culpable homicide or offence of rash driving unless it is proved beyond reasonable doubt before competent criminal court and there is finding to that effect by competent court. Moreover proceedings before Motor Accident claim Tribunal cannot remain stayed till findings is arrived at by Criminal Court, as Motor Vehicle Accident Claim Legislation is a beneficial legislation. Even if there is findings of Criminal Court the same may be challenged in higher forum, thus Motor Accident Claim case should not depend on the result of criminal trial as the proceedings before tribunal are quasi judicial in nature and proof beyond reasonable doubt is not necessary, but simply on preponderance of probability. When driver of a vehicle dashes a person on the road rashly he may have the intention to cause death of the said person or may not have the intention. The Motor Accident claim Tribunal which is adjudicating claim case on death due to accident should consider the death due to rash driving as accident and proceed in accordance with law, irrespective of the intention of the driver, which is to be decided by Criminal Court. In other words unless there is an intentional act of the victim Motor Accident Claim Tribunal should consider the death caused by motor vehicle as accident as observed by the Hon'ble Division Bench of this Court in the case of Dipa Ganguly and ors (Supra.)

Thus considering the Judicial decision relied and the facts of the case this Court is of the view that the Learned Trial Court has not committed any

error of arriving at a finding of rash and negligent driving by driver of offending vehicle and awarding compensation.

With regard to the quantum of compensation awarded although the Learned Trial Judge upon considering the income of the victim rightly assessed the total dependency loss of Rs. 54,78,973/- but with regard to grant of consortium to minor children of the victim amounting to Rs. 80,000/- the same is not sustainable in view, of the decision of the Hon'ble Supreme Court in the case of National Insurance Company Ltd. VS Pronoy Sethi reported in AIR 2017. S. C. P5157. Thus the total compensation which the appellants no. 1 to 3 are entitled to from Respondent no-1 Magma HDI General Insurance Co. Ltd. comes to Rs. 53,98,973/- by arithmetical calculation. However this Court is of the view that compensation of Rs. 54,00,000/- is just and reasonable.

Hence this Appeal FMA No-792 of 2023 stands disposed. The Judgment and Award dated 7th July 2023 passed by Learned Additional District Judge Fast Track Court Suri Birbhum in MAC case No. 132 of 2019 stands modified to the extent that the Respondents no. 1, 2 and 3 are entitled to compensation of Rs. 54,00,000/- (Rupees fifty four lakhs) from the appellant Magma HDI. General Insurance Co. Ltd along with interest @6% per annum from the date of filing claim case till today.

As the amount of compensation awarded by Learned Trial Court along with interest is deposited the respondent no. 1 to 3 is permitted to withdraw Rs. 54,00,000/- along with interest @6% per annum from the date of filing of

claim case till today. The residuary amount along with accrued interest if any by returned to the appellant Insurance Company.

It is hereby made clear that the Appellant Insurance Company will be entitled to recover the compensation amount from Respondent no-4, vehicle owner in accordance with law.

The claimants/respondents are entitled to withdraw the compensation amount deposited 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.)