Item No. 05 | 03.02. 2026

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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA1393 of 2024

The Future Generali India Insurance Company Limited
Vs
Smt. Uma Das & Ors.

Ms. Sayanti Santra.
… for the appellant.
Mr. Krishanu Banik.
Mr. Tathagata Banik
… for the respondents/claimants.

Learned advocate for the appellant/insurance company and learned advocates for the respondent nos. 1 to 5/claimants are present.

Heard learned advocates.

The appellant/ The Future Generali India Insurance Company Limited before this Court was a opposite party in a claim under Section 166 of the Motor Vehicles Act 1988 and is aggrieved by the judgment and award dated 6th day of March, 2024 passed by the Learned Additional District Judge, Fast Track 2nd Court, Paschim Medinipur in M.A.C. 206 of 2021. The case of the claimants/respondent nos. 1 to 5 may be summed up thus:

On 20.01.2021 at about 8.45 hrs when the victim was doing urinal on the road side of Udaypurpatra road morum portion near Arbadi on his left side, at that time one tractor bearing No. WB-33D/6470 coming from the side of the Udaypur with very high speed with rash and negligent manner endangering human life and safety dashed the victim Tapan Das. As a result, victim Tapan Das was seriously injured and with help of local people he was shifted to Midnapore Medical Collage and Hospital and after examination doctor of the said hospital declared him dead. The accident took place due to rash and negligent driiving of the driver of the offending vehicle bearing No. WB- 33D/6470 (tractor).

Pursuant to the filing of the case notice was issued upon the insurance company and vehicle owner. The insurance company/appellant herein contested the case by filing written statement and adducing evidence. Although opposite party owner of the vehicle filed written statement but did not contest the case. Issues were framed and evidences were adduced by the appellant and respondent nos. 1 to 5.

Upon considering the evidence adduced and upon hearing the learned advocates learned Trial Court was pleased to dispose of the claim case by observing and directing as follows:

"Hence, it is,

<u>ORDERED</u>

that the instant case filed u/s 166 of Motor Vehicles Act, 1988 is allowed on contest as against the

O.P No-2/Insuer Future Generali Ins. Co. Ltd Co. and ex-parte against the O.P. No-1/owner.

The petitioners/claimants no. 1 to 5 do get an award of Rs.19,60,000/- (Nineteen lacks sixty thousand only) in total. Claimant No.1 Smt. Uma Das do get an award to the tune of Rs.8,00,000/- (Eight lacks only), claimant no.2 Sudipta Das (minor and claimant no.3 Arindam Das (minor) do get an award to the tune of Rs.3,00,000/- each (three lacks only) and claimant no.4 Tulshi Das and claimant no.5 Dasarath Das do get an award of Rs.2,80,000/- each (two lacks eighty thousand only).

The amount of compensation, as awarded, shall carry a simple interest @ 6% per annum from the date of filing of this claim application, i.e 05.04.2021 till final realization of the entire amount.

The O.P. No-2/ Insurer, Future Generali Ins. Co. Ltd. Co. is directed to pay the awarded amount to the petitioners/claimants no. 1 to 5 with interest within three months from the date of this order according to given award and the same to be defrayed without deduction of any TDS, whatsoever, over the interest amount or the awarded amount, after deposit of deficit court fees, by the claimants before the tribunal, in default, the petitioners shall be at liberty to put this award in execution in accordance with law.

The petitioner no.1 is directed to deposit the share of the minor sons (petitioner no.2 & 3) either with a Nationalized bank or with a Post Office in a long term deposit separately till the attainment of the majority of her minors sons.

However, considering the entire aspects this court passes no order as to cost.

Let a copy of this judgment be supplied to the O.P No-2/Insurer Future Generali Ins. Co. Ltd Co. free of cost for compliance."

The appellant/ The Future Generali India Insurance Company Limited being aggrieved by the judgment and award passed by the learned Trail Court has come up with the instant appeal.

Heard learned advocate for the appellant/insurance company as well as learned advocate for the respondent nos. 1 to 5/claimants. Perused the material on record.

Learned advocate for the appellant submits that the issue of income was not properly considered by the learned Trial Judge and the learned Trial Judge without any supporting documents with regard to the income considered the income of the victim to be Rs. 10,000/-. Learned advocate further submits although there is violation of the condition of the policy as the vehicle was not covered by the road permit, but there is no such observation made by the learned Trial Judge. It is also submitted by the learned advocate that the Legal Manager although conducted inquiry with regard to the hospitalization of the victim, but the Superintendent-cum-Vice Principal Midnapore Medical Collage and Hospital furnished the information that no records were found in the name of Tapan Das at that time.

Learned advocate for the respondent nos. 1 to 5/claimants submits that the learned Trial Judge rightly considered the issue of notional income of Rs.10,000/- and has rightly come to the conclusion by awarding the reasonable compensation. Learned advocate relies upon the decision in the case of **Maheshwari and Ors. vs. Ramachandran and Ors**. reported in **2023 (1) T.A.C. 387 (S.C.)**. Learned advocate further submits that as the victim was brought dead at the hospital, there is no question of any treatment of the victim the information of which was sought for by the Legal Manager of the Insurance Company. Learned advocate also submit that although allegation was made with regard to the violation of the condition of the policy but no evidence was adduced in this regard. Before proceeding to decide on the issue with regard to the death of the victim by accident which is disputed by the insurance company, it appears from the report of the Medical Officer Midnapore Medical Collage and Hospital that the victim was brought dead to hospital at 12.00 noon on 20th January, 2021. Further the post-mortem and the investigation by the police authority and the charge-sheet submitted corroborates the case of the claimants regarding the death of the victim due to accident. Learned Trial Judge has considered the issue and have come to a finding in this regard upon holding that the offending vehicle bearing No. WB-33D/6470 was liable for rash and negligent driving. Thus, there is no scope to interfere with the said finding.

With regard to the consideration of notional income it is the case of the claimants that the victim used to earn Rs. 21,000/- per month. Although certificate issued by one of the persons claiming himself to the owner of the said transport was filed but the same was not proved before the Court. In absence of the relevant documents with regard to the proof of income, the learned Trial Judge considering the nature of occupation number of members of the family came to the finding and observed that to run of family at least Rs.300/- per day income is necessary and there is no evidence that the parents and the wife of the deceased used to earn any money. As the driving licence of the victim was proved and exhibited it corroborates the case of the claimant that the victim was a driver and considering the nature of occupation and the income required to maintain a family, the learned Trial Judge did not commit any error in proceeding with the notional income of Rs.10,000/- per month.

With regard to the submission that the vehicle was not covered by the road permit although the insurance company filed a written statement in that regard but no evidence was adduced by examining either the driver or the motor vehicles authority or the I.O. to ascertain as to whether the vehicle was covered by road permit. In the facts and circumstances it cannot be held that there was violation of the policy of insurance.

In the facts and circumstances, this Court is of the view that the learned Trial Judge upon considering the necessary facts awarded just and reasonable compensation in favour of the claimants/respondent nos. 1 to 5. Hence, there is no scope to interfere. Thus, this appeal fails and the same is dismissed.

The judgment and award dated 6th day of March, 2024 passed by the Additional District Judge, Fast Track 2nd Court, Paschim Medinipur in M.A.C. 206 of 2021 is affirmed.

The awarded sum along with accrued interest if any, if already deposited by the insurance company may be released in favour of the respondent nos. 1 to 5/claimants upon compliance of all necessary formalities.

With the aforesaid observation, the appeal being **FMA 1393 of 2024** stands dismissed.

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Biswaroop Chowdhury, J.)