IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 789 of 2023

National Insurance Company Limited

VERSUS

Ruma Mukherjee & Ors.

For the appellant: Mr. Rajesh Singh, Adv.

For the respondents: Mr. Ashique Mondal, Adv.
Mr. Shahmeraz Alam, Adv.

Last Heard on: June 17, 2026

Judgment on: July 02, 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 05-07-2023 passed by Learned Additional District Judge Fast Track 3rd Court Paschim Medinipur in MAC case No. 625 of 2021.

The case of the claimants/respondents before the Learned Trial Court may be summed up thus;

On 22-03-21 at about 9.45 p.m. when this deceased was proceeding towards his house from bazaar, at that time near Dhaka Petrol Pump on Durgapur Express way one Omni Bus which being no. WB-02P/8606 coming with tremendous high speed in a zig-zag manner rash and negligently and dashed the deceased with great force as a result deceased was seriously injured. Local people took him to SSM Hospital but he expired there. The accident took place due to rash and negligent driving by the driver of the Omni Bus. being no. WB-02P/8606.

The deceased was the only earning member of his family. He was an income tax payee. All the claimants have suffered great mental shock, pain for his sudden accident death and suffered great financial loss due to his pathetic accident. Due to this accident claimant no-1 lost her conjugal life and claimant no. 2, 3 lost their love and future care.

Pursuant to filing of this case notice was issued upon the opposite parties. Opposite Party vehicle owner did not contest the case. However opposite party Insurance Company 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 Learned Advocate 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. 625 of 2021 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 cost.

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. 1,23,02,600/- (Rupees one crore twenty three lakh two thousand six hundred) 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) Ruma Mukherjee, 2) Minati Banerjee and 3) Anushka Banerjee u/s. 166 of Motor Vehicles 1988 within two (02) 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 appellant National Insurance Company Limited being aggrieved by the Judgment and Award passed by Learned Trial Court has come up with the instant appeal.

Heard Learned Advocate for the appellant and Learned Advocate for the respondents/claimants. Perused the evidence adduced and the materials on record.

Learned Advocate for the appellant National Insurance Co. Ltd submits that the FIR was lodged against unknown vehicle after 24 days which makes the case of the claimants doubtful.

Learned Advocate draws attention to the treatment sheet of hospital where it is provided that the patient's car was hit by an unknown lorry from behind following which the patient proceeded to confront the lorry driven and tried to get up into the lorry when the lorry driver fled and the patient fell down. Learned Advocate further submits that the complainant came to know about the details of the offending vehicle on the date of accident thus there was no reason for the delay in lodging the FIR and mentioning the vehicle number. Learned Advocate also submits that although the vehicle involved was seized after 3 months but P.W. 1 in Cross examination stated that the vehicle was seized on the following day of the accident. It is submitted by Learned Advocate that when accident took place about 15/20 people were there and there was no reason for not lodging the complaint on the same day.

It is further submitted that the Investigating Officer recorded the vehicle number on the basis of letter issued by the widow of the deceased to him and thereafter the power of Attorney holder produced the vehicle at Police Station after 6 months 12 days from the date of accident. It is also submitted by the Learned Advocate that the compensation granted is excessive.

Learned Advocate relies upon the following Judicial decisions:-

Anil and others VS New India Assurance Co. Ltd and ors.

MANU/SC/0022/2018

Sithara N.S. and ors. VS Sai Ram General Insurance Company Ltd.

MANU/SC/1666/2025

Rajamma and ors. VS Reliance General Insurance Co. Ltd.

MANU/SC/1347/2025.

Learned Advocate for the respondents/claimants submits that the claimants examined 4 witnesses and the Learned Trial Judge upon considering the evidence passed the award.

Learned Advocate further submits that P.W. 1 stated that she is not a witness thus whatever she has stated about accident is hearsay. It is also submitted that Sudip Chatterjee whose statement at hospital is relied upon by the appellant Insurance Company was not examined by the appellant as witness and no question was put in cross examination to the witness of the claimant that it was a fall from lorry.

Learned Advocate relies upon the following Judicial decisions:-

Bajaj Allianz General Insurance Company Limited. VS Anjali Mondal and Anr.

2018 SCC Online Cal 15585.

Saraj and others. VS Het Lal and others.

(2011) 1 SCC-388.

Raj Kumar Das. VS National Insurance Co. Ltd.

SLP (C) No. 3585 of 2023.

(Supreme Court of India)

Now with regard to the first submission of Learned Advocate for the appellant that there was delay of 28 days in lodging the FIR it is held in different judicial pronouncements that in Indian families after the accident the family members run to hospital and not to police station. In the instant case the victim after the accident passed away on the following day thus it is not unusual for the members of bereaved family to lodge complaint after a reasonable period of time when the grief is partly overcome.

Moreover it is always not necessary for the family members of victim to lodge complaint if complaint is already lodged by third party or Police Authority.

With regard to the submission of Learned Advocate that the FIR is against unknown vehicle it is to be remembered that a FIR with regard to accident caused by rash and negligent driving may be made against known vehicle or unknown vehicle. When FIR is lodged against unknown vehicle it is incumbent upon the Police Authority to identify and trace out the vehicle and then proceed in accordance with law. In the event of FIR against known vehicle the Police Authority is to ascertain the genuineness of the allegation and then proceed in accordance with law. Where the Police Authority upon applying their investigating machinery has carried out investigation and submitted the report the said report cannot be discarded without examining the Investigating

Officer. In the instant case the charge-sheet provides that during investigation of the case the Investigating Officer received a letter from Ruma Mukherjee daughter of Ashok Mukherjee and Wife of Late Pinaki Benerjee and on perusal it could be learnt that on 22-03-2021 accident occurred at Dankuni P.S. and the informant stated that vehicle no. WB 02P 8606 (maruti van) is involved. It is further stated that he visited place of occurrence examined the available witnesses and received information from source that one Maruti Suzuki Omni vehicle bearing registration no. WB.02P 8606 is involved in the case. Upon further perusal of the charge sheet it appears that upon examination of 12 witnesses charge sheet is submitted against driver of vehicle no-WB-02P 8606. The Appellant Insurance Company did not examine the Investigating officer or the owner or the driver of the offending vehicle. Thus the charge-sheet cannot be discarded and the investigation cannot be said to be perfunctory. Moreover no question was put to P.W.-1 Ruma Mukherjee in Cross examinations about sending any letter to Investigating Officer and from which source she obtained information thus the issue of sending letter regarding involvement of vehicle no. WB-02P-8606 cannot be disbelieved.

The decision of the Hon'ble Supreme Court in the case of Sithara NS. VS Sai Ram General Insurance Company Ltd. cannot apply in this case. In the said case no interference was made by the Hon'ble Supreme Court due to concurrent findings by the Tribunal and High Court and due to contradictions in the statement of witnesses.

In this case Learned Trial Court based its findings on the evidence of P.W.2 and the documentary evidence.

Similarly in the case of Rajamma and ors VS Reliance General Insurance Co. Ltd. (supra) the case was not accepted by the Hon'ble Supreme Court due to defect in lodging of FIR and untrustworthiness of a particular witness which is not so in this case.

In the case of Anil and ors VS New India Assurance Co. Ltd. (supra) also cannot apply as in the said case no post mortem was conducted along with other inconsistencies which is not so in the instant case.

Whether a witness is reliable or not can be considered from his deposition. In the instant case there was a sole eye-witness, who specifically stated how accident took place, and about his presence. Learned Trial Court upon considering the evidence came to a finding of rash and negligent driving by driver of offending vehicle by assigning reasons. The evidence of P.W. 2 and the charge-sheet taken together will lead to the conclusion that death of victim took place due to rash and negligent driving by driver of vehicle no. WB-02P/8606. Thus this Court does not find any error in the findings of Learned Trial Judge about rash and negligent driving.

However as the Judgment and Award of the Learned Trial Judge is also assailed with regard to the quantum of compensation awarded it is necessary to consider the quantum of compensation awarded. As courts and Tribunal are empowered under Section 168 of the Motor Vehicles Act 1988 to award compensation which appears to it to be just courts and tribunal after computing compensation as per arithmetical calculation and by following the guidelines laid down under law or by Judicial decisions can consider as to whether the said compensation is just and reasonable. In the event Courts and Tribunals consider the compensation excessive the same may be reduced to the extent what the Court thinks fit. In the event the Court is of the view that it is required to be enhanced the same may be enhanced.

In the case of National Insurance Co. Ltd VS Indira Srivastava reported in AIR 2008 S.C. P.845 the Hon'ble Supreme Court observed as follows:-

'23. The expression just must also be given its logical meaning. Whereas it cannot be a bonanza or a source of profit but in considering as to what would be just and equitable all facts and circumstances must be taken into consideration.'

In the case of T.N. State Transportation Ltd. VS Rajapriya and ors. reported in (2005) 6 SCC 236 the Hon'ble Supreme Court observed as follows:-

'10. Much of the calculation necessarily remains in the realm of hypothesis and in that region arithmetic is a good servant but a bad master" since there are so often many imponderables. In every case it is the overall picture that matters" and the court must try to assess as best as it can the loss suffered.'

In the instant case the victim was an officer of the Central Government, where on death of employee the widow receives pension or compassionate appointment. In Motor accident compensation cases hypothesis and ground realities are applied. Although grant of pension or death benefits cannot deprive the dependents from claiming compensation nor the death benefits received can be adjusted from compensation computed but the said factors may be taken into consideration along with the compensation computed by arithmetical calculation to decide what should be just and reasonable compensation.

In the instant case upon considering the compensation computed which is Rs. 1,23,02,600/- and the fact that the victim was a Central Government Officer this Court is of the view that compensation of Rs. 10,00,00,00/- (Rupees One Crore) would be just and reasonable.

Hence this Appeal FMA 789 of 2024 stands disposed. Judgment and Award dated 05-07-2023 passed by Learned Additional District Judge Fast Track 3rd Court Paschim Medinipur in MAC Case No-625/2021 stands modified to the extent that the respondents/claimants are entitled to compensation of Rs. 10,00,00,00/- (Rupees One Crore) along with interest @6% p.a. from date of filing claim case till today. The appellant Insurance Company shall pay respondents/claimants Rs. 1 crore along with interest @6% per annum from the date of filing claim case till today. Such payments shall be made by depositing the compensation amount along with interest within eight weeks from the date of communication of this Order. In the event compensation awarded by Learned Trial Court is deposited no further deposit be made. The claimants/respondents will be entitled to withdraw Rs. 100,00,000/- (Rupees one Crore) along with interest @6% p.a. upon compliance of necessary formalities Balance amount along with accrued interest if any be returned to the appellant/insurance company.

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.)