

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

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 51 of 2023

Sk. Nazrul Islam

VERSUS

The National Insurance Company Limited & Anr.

For the appellant:

Mr. Jayanta Banerjee, Adv.

Mr. Sandip Bandyopadhyay, Adv.

For the respondent/insurance
company:

Mrs. Ruxmini Basu Roy, Adv.

Mr. Argha Bhattacharjee, Adv.

Mr. P.K. Pahari, Adv.

Last Heard on: April 23, 2026

Judgment on: May 22, 2026

Biswaroop Chowdhury, J:

The appellant before this Court was a claimant in a case under Section 166 of the Motor Vehicles Act 1988 and is aggrieved by the Judgment and Award dated 5th day of July 2017 passed by Learned Additional District Judge 6th Court Paschim Medinipur in MAC claim Case No. 488/2010.

The case of the claimant/appellant before the Learned Trial Judge may be summed up thus:

On 28-02-2008 at about 4.25 hrs the injured/claimant SK. Najrul with driver stopped the vehicle WB-33A-1212 (Jeep) on the left side portion of the N.H. 60 near Hondla Brize, within the jurisdiction of Narayangarh P.S. Dist Paschim Medinipur West Bengal for attending his nature call and suddenly one offending vehicle bearing Registration No. WB-1771 (Truck) was coming from Belda side towards Kharagpur side through NH-60 with high speed and negligent driving by its own driver dashed the injured/claimant and the injured/claimant has sustained grievous injury on his person specifically head injury and taken to Lokpali. Nursing Home at Narayangarh and thereafter admitted to Medinipur Medical College and Hospital and thereafter to NRS Medical College and hospital and after that at Calcutta Medical Research Institute where treatment was continuing. The claimants further contended that in the FIR offending vehicle registration number is wrongly written, and the accident took place due to rash and negligent driving of the driver of the offending vehicle bearing Regn. No. WMK 1771 (Truck) who drove the vehicle violating the Traffic Rules and Regulation. The injured/claimant having sustained grievous injury on his person specifically head injury resulted from the accident the injured lost his earning capacity. The injured was the only earning member of his family and due to his disablement the family of the injured is passing days in financial stringency.

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 National Insurance Company 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 Learned Advocates for the parties was pleased to dismiss the claim case.

The appellant/claimant being aggrieved by the Judgment and Award passed by Learned Trial Judge has come up with the instant appeal.

Heard Learned Advocate for the claimant/appellant and Learned Advocate for the respondent no-1 National Insurance Company Limited. Perused the evidence adduced and materials on record.

Learned Advocate for the claimant/appellant submits that the incident happened on 28-02-2008, at about early morning and the GD has been made on the same day at about 11.15 a.m. by one ASI/563 Sishir Kumar Mahato.

Learned Advocate further submits that the informant/complainant/ASI wrongly stated the offending vehicle number as WB-11A/1664 (Truck) in written complaint during course of investigation. The I.O. of the case found the mischief with regards vehicle number as mentioned in the written complaint and with through enquiry it is revealed that the said vehicle was not involved and on the basis of materials collected during course of investigation the IO.

upon consultation with Senior officers submitted charge sheet against driver of WMK/1771 Truck. Learned Advocate also submits that the Insurance Company failed to bring the owner/driver of the offending vehicle as witness to prove that the vehicle in question was not actually involved in the accident.

Learned Advocate for the respondent no-1 Insurance Company submits that the vehicle number mentioned in the claim Petition and that mentioned in FIR are different thus the case of the claimant is doubtful. Learned Advocate further submits that the claimant did not file the disablement certificate thus the claim case should fail. Learned Advocate also submits that the Order of the Learned Trial Judge is not required to be interfered with.

Now with regard to the first submission of Learned Advocate for Insurance Company that the vehicle number mentioned in claim petition and that mentioned in the FIR are different it is to be remembered that in FIR where there is allegation about accident caused by rash and negligent driving by a vehicle and the vehicle number is mentioned the task of the Police Authority is to verify the allegations and if sufficient materials are there to submit the charge-sheet. However when vehicle number is not mentioned the task of the Police Authority becomes more tough as the vehicle involved has to be identified, traced out and thereafter proceed in accordance with law. Even when a vehicle number is mentioned in the FIR but the Police Authority during course of investigation does not find the involvement of the driver or owner of the said vehicle they should be exonerated in the report and further

investigation should be carried out to arrive at the truth. Where police Authority applies their machinery to carry out the investigation and submits the report the said report should not be discarded as perfunctory without examining the Investigating officer.

In the instant case the I.O. of the case has mentioned in the charge sheet that in course of investigation he found that Vehicle number WB11A/1664 was not involved. Upon engaging the source the IO. found that vehicle No-WMK/1771 was involved. The I.O. prior to submitting charge sheet examined 8 witnesses. The Insurance Company neither examined the I.O. nor the vehicle owner nor driver of the vehicle. In the event charge sheet inspires confidence in the minds of Court, Tribunals/Courts are empowered to grant compensation on the basis of chargesheet without examining eye witness. In the instant case apart from the charge-sheet the statement of P.W. 1, P.W. 2 and P.W. 3 will also go to show how the accident took place. Nothing could be shaken with regard to accident. Thus it is established that the claimant/appellant suffered injury due to rash and negligent driving by driver of vehicle No. WMK-1771 Truck. Thus the claimant is entitled to compensation.

Now with regard to the quantum of compensation it appears that from evidence it is clear that the claimant is a driver. Although the occupation of claimant is proved but income is not proved thus it would be reasonable to consider monthly income as Rs. 4,000/-. Further as the claimant/appellant did not furnish disability certificate, compensation should be considered on

account of medical expenses, pain and suffering, and loss of income. Considering the nature of injury the treatment undergone, medical bills and nature of occupation this Court is of the view that compensation of Rs. 2 lakh on account of medical expenses, Rs. 2 lakh on account of pain and sufferings and Rs. 1 lakh on account of loss of income is just and reasonable. Thus the claimant/appellant is entitled to total compensation of Rs. 500,000/- from the respondent no-1/National Insurance Company Ltd.

Hence this Appeal FMA-51 of 2023 stands allowed. Judgment and Award dated 5th July 2017 passed by Learned Additional District Judge 6th Court Paschim Medinipur in MAC Case No. 488/2010 is set aside. The appellant/claimant is entitled to compensation of Rs. 5 lakh from respondent no-1 National Insurance Company Limited along with interest @6% per annum from date of filing of claim case till today. The respondent no-1 shall deposit Rs. 5 lakh along with interest before Registrar General, High Court Calcutta within 8 weeks from the date of communication of this order.

The appellant/claimant will be entitled to withdraw the compensation amount 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.)