

Item No. 132

Ct 09

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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMAT (MV) 506 of 2025
With
IA NO: CAN 1 of 2025
CAN 2 of 2025

National Insurance Company Limited
Vs
Pratima Hait & Ors.

Mr. Deb Narayan Ray.
... for the appellant.
Mr. Amit Ranjan Roy.
... for the respondents.

Learned advocates for the parties are present.

Heard learned advocates.

The appellant before this Court was an opposite party/insurance company in a claim case under Section 166 of the Motor Vehicle Act, 1988 and is aggrieved by the judgment and award dated 29th day of July, 2025 passed by the Learned Additional District Judge, Fast Track, 2nd Court, Tamluk Purba Medinipur in M.A.C. Case No.262 of 2022. The case of the claimants/respondent nos. 1 and 2 may summed up thus:

On 10.02.2022 at 11.30 p.m. the victim was standing near Khamarchak Hanuman Mandir, keeping the left side of the NH-41 for returning Home after seeing, the function near Khamarchak

Hunuman Mandir at that time one Motor cycle No.WB30L/9406 which was coming from Hakollar side with extreme high speed, endangering to human life and safety, in a rash and negligent manner, without blowing any horn dashed the victim with great force.

As a result the victim sustained grievous bleeding injury all over the body specially on head. After accident the victim was taken to Purba Medinipur District Hospital for treatment. But the victim died after short treatment on 11.2.22 at 1.20 a.m.

The accident was caused due to rash and negligent driving on the part of the driver of the offending vehicle bearing No. WB-30L/9406 Motor cycle.

The victim was flower gardland & flower decorator by his profession. Due to the death of the victim, the claimants are very much shocked as the victim was the only earning member of his family.

Pursuant to the filing of the claim case, notice was issued upon the opposite parties. Opposite party/vehicle owner did not appear and contest the case. However, the opposite party/insurance company contested the case by filing written statement. Issues were framed and evidence was adduced.

Upon considering the issues framed and evidence adduced, the Learned Trial Judge was pleased to dispose of the claim case by observing and directing as follows:-

“ORDERED

that the application under section 166 of the M.V. Act, 1988 is allowed on contest against the opposite party No.2 (National Insurance Co. Ltd.) and ex parte against the opposite party No.1. There shall be no order as to cost.

The petitioners namely- (1) Pratima Hait (mother of the deceased Binoy Hait) and (2) Jaydeb Hait (father of the deceased Binoy Hait) shall get an award from the Opposite Party No.2 (National Insurance Co. Ltd.) of a sum of Rs. 12,79,600/- (Rupees Twelve Lacs Seventy Nine Thousand and Six Hundred only) as compensation along with 6% simple interest per annum on the said amount to be calculated from the date of filing of this case, i.e. from 30.03.22 till the actual deposit of the amount.

It is made clear that since the claim ordered herein is not an income of the claimants, no TDS shall be deducted on the claim amount including the interest on the same.

The Opposite Party No.2 (National Insurance

Co. Ltd.) is hereby directed to pay the aforesaid amount of compensation along with the interest to the claimants by issuing separate A/c payee cheques in the manner herein below within one month from the date of delivery of judgment as follows :-

1. In the name of Pratima Hait (mother of the deceased Binoy Hait) amounting to Rs. 6.39,800/- (Rupees Six Lacs Thirty Nine Thousand and Eight Hundred only) along with interest as ordered; and

2. In the name of Jaydeb Hait (father of the deceased Binoy Hait) amounting to Rs. 6,39,800/- (Rupees Six Lacs Thirty Nine Thousand and Eight Hundred only) along with interest as ordered.

The case stands disposed of. Bench Clerk to make note in the relevant register accordingly.

The case record be consigned to the Record Room.”

The appellant/insurance company being aggrieved by the judgment and award passed by the Learned Trial Court has come with the instant appeal.

Heard learned advocates for the appellant and learned advocates for the respondent nos.1 and 2/claimants. Perused the evidence adduced and materials on record.

Learned advocate for the appellant submits

that the FIR was lodged after 33 days and thus the case of the claimants is doubtful. Learned advocate further submits that the evidence of PW 1 and 2 will create doubt about the accident as PW2 is not summoned witness. Learned advocate also submits that the driver of the motor cycle was not driving the motor cycle upon obtaining authorization from the motor vehicle owner. Thus, the insurance company is not liable in the instant case. It is submitted that the compensation awarded by the Learned Trial Court is excessive.

The learned advocate for the respondent nos. 1 and 2/claimants submits that the delay of lodging FIR is explained in the FIR itself thus the same is not fatal in the instant case. Learned advocate further submits that there is no hard and fast rule that witness should be summoned witness. Hence, the evidence of the eye-witness of PW2 cannot be discarded. It is submitted by the learned advocate that the driving licence of the offending vehicle is seized by the police authority, therefore, it is not a case that the conditions of policy are violated. It is submitted that the Learned Trial Court upon considering the relevant facts has awarded the reasonable compensation, which should not be interfered with. Learned advocate relies on the following judicial decisions.

- 1) Sanju Bai Parajapati Vs. The New India Assurance Company Ltd. reported in 2025 Insc 823.
- 2) FMA 3272 of 2016, National Insurance Company Ltd. Vs. Sujata Manna & Ors. (High Court at Calcutta).
- 3) Criminal Appeal No. 1931 of 2023, Mathew Alexander vs. Mohammed Shafi and Anr (Supreme Court of India).
- 4) Special Leave Petition (C) Diary No. 47869 of 2024, Jyotsna Roy & Anr. Vs. The National Insurance Co. Ltd.

I have considered the submission of the learned advocates and the judicial decisions relied upon.

With regard to the first submission of the learned advocate that the FIR is lodged at belated stage, this Court is of the view that as the delay in lodging the FIR is explained and there are different judicial pronouncements which observed that mere delay in FIR is not fatal as in Indian society families of the injured person rushes to hospital and not to police station. With regard to the second submission that the eye witness of PW2 is not a summoned witness, this Court is of the view that under the Motor Vehicle Act, it is not always necessary that witness must be the summoned witness. In the event the evidence of eye witness

inspires confidence in the minds of the Court such evidence cannot be discarded merely on the ground that the said eye witness is not a summoned witness. With regard to the submission of learned advocate for the appellant that the driver of the offending motor cycle was not driving without any authorization letter of the owner, this Court does not find anything to interfere in this regard as necessary witnesses including vehicle owner were not examined in this regard to ascertain as to whether the driver has driven the motor vehicle without any authority or not. Thus, at this stage this interference is not necessary. With regard to the quantum of income it appears that although the claimants have been able to prove the occupation of the victim but the income of the victim is not proved. However, considering the age of the victim the income of the victim can be taken at lower side as Rs.6000/- as well as on the higher side of Rs.8000/-.

Considering the judicial decisions, this Court does not find any error of considering the notional income of the victim to be Rs.8000/- per month on the higher side. However, considering the facts of the case, this Court is of the view that although the Learned Trial Judge has considered the relevant factors in arriving at the quantum of compensation

but in view of this Court the compensation of Rs.12,00,000/- is just and reasonable.

Thus, this appeal stands disposed of. The judgment and award dated 29th day of July, 2025 passed by the Learned Additional District Judge, Fast Track, 2nd Court, Tamluk Purba Medinipur in M.A.C. Case No.262 of 2022 stands modified to the extent that the respondent nos. 1 and 2/claimants will be entitled to compensation of Rs.12,00,000/- from the appellant/ National Insurance Company Limited along with interest @6% per annum from the date of filing of the claim case i.e 30.03.2022 till today. The appellant/National Insurance Company Limited shall deposit Rs.12,00,000/- along with interest @6% per annum before the Registrar General, High Court, Calcutta within a period of eight weeks from the date of communication of this order.

In the event the amount award by the Learned Trial Court is already deposited no further deposit is required to be made.

The claimants/respondent nos. 1 and 2 are entitled to withdraw the compensation amount of Rs.12,00,000/- along with interest @6% per annum from the date of filing of the claim case i.e 30.03.2022 upon compliance of all necessary formalities. The balance amount, if any, be

returned to the appellant/insurance company.

The amount of compensation shall be withdrawn in equal shares.

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

(Biswaroop Chowdhury, J.)