

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

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 124 of 2024

National Insurance Co. Ltd.

VERSUS

Munmun Dhak Barui & Ors.

For the appellants/Insurance Company: Ms. Sucharita Paul, Adv.

For the respondents/claimants: Mr. J.K. Mandal, Adv.
Mr. S. Rakshit, Adv.

Last Heard on: March 10, 2026

Judgment on: April 10, 2026

Biswaroop Chowdhury,J:

The appellant before this Court was an opposite party in a claim under Section 166 of the Motor Vehicles Act 1988 and is aggrieved by the Judgment and Award dated 16-08-2023 passed by Learned Additional District Judge Fast Track 2nd Court Paschim Medinipur in MAC Case No-612 of 2021.

The case of the claimants/Respondents no-1 and 2 before Learned Trial Court may be summed up thus:

On 19-04-2021 evening at about 6.00 P.M. while the victim Megdoot Dhak was returning home from his working place through NH-60 Pitch Road and while he reached at Ledapale Jungle due to natures call he kept his motor cycle on the extreme side of the said Pitch Road in stationary condition and was engaged in urination at the relevant time the offending vehicle bearing no-WB-34AA/6380 which was coming through the said Pitch road from the Bishnupur side and was proceeding towards Chandrakona Road side with terrific high speed, rashly and negligently dashed the victim and his Motor Cycle on the morrum portion of the said pitch road causing grievous bleeding injuries to the victim Megdoot Dhak and his Motor Cycle was badly damaged in the said accident and immediate thereafter he was brought to the Garhbeta Hospital and the attending doctor declared him brought dead. Rash and negligent driving on the part of the driver of the offending vehicle bearing No-WB-34AA/6380 was the sole cause of the pathetic accident which could easily be avoided if the driver could have taken proper care and caution at the material time.

The victim since deceased was an employee under the Employment of 'SITA MAA RICE MILL' and was the sole bread earner of his family as such claimants are put to serious financial stringency due to premature accidental death of the victim in the said accident.

The claimants are deprived of dependable support due to premature death of the victim.

Pursuant to the filing of the case notice was issued upon the opposite party, vehicle owner and opposite party National Insurance Company Limited. The opposite party vehicle owner appeared in the case by filing written statement but subsequently did not contest the case.

Opposite party National Insurance Company Limited filed written statement and contested the case.

ISSUES were framed and evidence was adduced upon hearing the Learned Advocates and upon perusing the evidence adduced Learned Trial Judge disposed of the claim case by observing and directing as follows:

'Hence it is ORDERED that the instant case filed u/s. 166 allowed on contest as against the O.P. No-2/Insurer National Ins. Co. Ltd Co. and ex-parte against the OP. No-1/owner.

The petitioners/claimants no. 1 and 2 do get an award of Rs. 29,37,200/- (Twenty nine lakhs thirty seven thousand and two hundred only) in total in equal share. The amount of compensation as awarded shall carry a simple interest @4% per annum from the date of filing of this claim application i.e. 11.11.2021 till final realization of the entire amount.

The O.P. No-2/Insurer National Ins. Co. Ltd. Co. is directed to pay the awarded amount to the petitioners/claimants no. 1 and 2 in equal share with interest within three months from the date of this order 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 daughter (petitioner no-2) either with a Nationalized bank or with a post Office in a long term deposit separately till the attainment of the majority of her minor daughter and to report of compliance to this court within 15 days from the date of receipt of the cheque.

However considering the entire aspects this Court passes no order as to cost.'

The appellant National Insurance Co. Ltd. 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 respondents 1 and 2/claimants. Perused the evidence adduced and materials on record.

Learned Advocate for the appellant submits, that the involvement of the vehicle is in dispute as the vehicle number was not mentioned in the FIR and FIR was lodged after 5 days. Learned Advocate further submits that the vehicle was seized after 1 and half month which will make the doubt stronger. Learned Advocate also submits that the compensation awarded is excessive.

Learned Advocate relies upon the following Judicial decision.

Rajamma and ors. VS M/S. Reliance General Insurance Co. Ltd. and Anr. Civil Appeal No. 5172 of 2025 Supreme Court of India.

Learned Advocate for the respondent no. 1 and 2/claimants submits that there were two eye witnesses and the vehicle owner did not contest. Learned Advocate further submits that the employer of the victim was examined thus there is no error in the judgment and award passed by the Learned Trial Court.

Now with regard to the first submission of Learned Advocate for the appellant that the involvement of vehicle is doubtful as there is delay in lodging FIR, it is held in different Judicial pronouncements that when a person is injured in accident in Indian Society family members rush to hospital and not to Police Station. Moreover the victim died, thus it is quite natural for the family members of victim and near relations to be in a state of depression. The delay is explained in FIR thus the delay of six days in lodging the FIR is not fatal.

Now with regard to the second submission of the Learned Advocate for the appellant that the vehicle number was not mentioned thus the case is doubtful it is to be remembered that when a FIR maker does not witness the accident he has no scope to mention the vehicle number if he has not heard about the same from any witness. An FIR regarding rash and negligent driving need not always mention the vehicle number and it may be against unknown vehicle. Where vehicle number is mentioned in FIR the police authority has to

investigate and ascertain as to whether the allegations against the vehicle mentioned in the FIR about rash and negligent driving is correct or not and submit the investigation report accordingly. On the other hand where the vehicle number is not mentioned in FIR and there is allegation of rash and negligent driving it is the duty of the Police Authority to identify and seize the vehicle. When in the course of investigation the Police Authority has identified and seized the vehicle the said seizure list and charge sheet cannot be discarded as perfunctory investigation in absence of examination of I.O.

The evidence of P.W. 2 Subhash Majhi who is also a witness mentioned in the charge-sheet by the Police Authority also inspires confidence. P.W. 2 has specifically stated as to how the accident took place. There is nothing in cross examination which demolishes the evidence of P.W. 2 that he was present at the accident spot and witnessed the accident. Moreover P.W. 2 in cross examination stated that the offending vehicle stopped for a few moments then ran away. Thus it cannot be said that there was no scope to record the number of the vehicle.

The Police Authority in the charge sheet has stated that the unknown is identified by the statement of witness, and sufficient evidence has been collected against accused driver.

Learned Trial Judge upon considering the evidence of P.W. 2 and P.W. 3 and the materials on record was pleased to observe as follows:

'The perusal of the record further reveals that inspite of the evidence of P.W.-2 and P.W.-3 asserting rash and negligent driving on the part of the driver of the offending vehicle, the OP did not feel it necessary to bring the driver as a witness to deny rash and negligent driving of the vehicle. In the perspective of the case where there is no admission of any contributory negligence in the pleading of the claimant when defence failed to produce any evidence in order to substantiate that there was no negligence on the part of the driver and the driver has not been called for by the defence in order to explain how the accident happened, as the burden in such a situation is on the O.P. to show that the driver was not negligent, the plea of contributory negligence of the victim is not entertainable.'

With regard to the income of the victim Learned Trial Judge considered the salary slip of the victim and awarded compensation of Rs. 29,37,200/- upon taking into consideration future prospect personal expenses and general damages.

Considering the evidence and the reasons assigned by the Learned Trial Judge in arriving at a findings about rash and negligent driving by driver of offending vehicle and awarding compensation of Rs. 29,37,200/- to the claimants this Court does not find any ground to interfere with the Judgment of the Learned Trial Court. Thus this Appeal should be dismissed.

Hence this Appeal FMA 124 of 2024 stands dismissed. Judgment and Award dated 16-08-2023 passed by Learned Additional District Judge Fast

Track 2nd Court Paschim Medinipur in MACC 612 of 2021 is affirmed. The Respondents/claimants are entitled to withdraw the compensation amount deposited upon compliance of necessary formalities.

The Trial Court Records if any be sent back.

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.)