IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 1351 of 2025

The New India Assurance Company Limited

VERSUS

Manisha Dhar & Ors.

For the appellant/insurance company:	Mr. Rajesh Singh, Adv.
For the respondent/claimants:	Mr. Ali Imam Shah, Adv.

Last Heard on: April 01, 2026

Judgment on: May 22, 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 19th May 2023 passed by Learned Additional District Judge Fast Track Court Durgapur in MAC Case No-62 of 2019.

The case of the claimant/respondents nos. 1 to 3 may be summed up thus:

The victim Somnath Dhar was proceeding towards house from City Centre side on foot. While he reached near Bajrangbali Mandir Paschim Para at that time one Four wheeler Maruti Omni bearing No-WB-40 AA/5998 coming with high speed rash and negligent manner dashed behind the victim. As a result the victim was seriously injured and died at Hospital. Due to rash and negligent driving by the driver of the said Maruti Omni the accident took place.

Pursuant to the filing of the case notice was issued upon the opposite parties. Opposite party vehicle owner although filed written statement but did not contest the case. Opposite Party New India Assurance Company Limited filed written statement and also obtained leave under Section 170 of the Motor Vehicles Act 1988 and contested the case. ISSUES were framed and evidence was adduced. By Judgment and Award dated 19th May 2023 Learned Additional District Judge Fast Track Court Durgapur was pleased to dispose of the claim case by observing and directing as follows:

'Hence it is ORDERED that the application under Section 166 of the MV. Act 1988 is allowed on contest against the opposite party No. 2/New India Assurance Co. Ltd. and ex-parte against the rest. There shall be no order as to costs. The petitioners namely 1) Manisha Dhar (wife of the deceased), 2) Monti Dhar (son of the deceased). And 3) Bholanath Dhar (Father of the deceased) being the 'Legal Representative in view of the decision reported in 2020(1) TAC 675 (S.C) National Insurance Co. Ltd. versus Birender and others) shall get award from the opposite party no. 2, New India Assurance Co. Ltd sum of Rs.

10,1,13,440/- (One crore one lakh thirteen thousand four hundred forty) 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 02-04-2019 till the actual deposit of the amount.

The Opposite Party no. 2 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 here-in-below within one month from the date of delivering of Judgment as follows:-

1. In the name of Manisha Dhar (wife of the deceased) amounting to Rs. 33,97,813/- (Rs. 33,57,813/-+Rs. 40,000/-) (Rupees thirty three lakh fifty seven thousand eight hundred thirteen only) along with interest as ordered;
2. In the name of Manisha Dhar (share of minor son, Monti Dhar) amounting to Rs. 33,57,814/- (Rupees thirty three lakh fifty seven thousand eight hundred fourteen only) along with interest as ordered and
3. In the name of Bholanath Dhar (father of the deceased) amounting to Rs. 33,57,813/- (Rupees thirty three lakh fifty seven thousand eight hundred thirteen only) along with interest as ordered and

The Opposite Party no-2 is hereby directed to pay the aforesaid amount of compensation along with the interest to the claimants by issuing three separate A/C payee cheques in the names of the claimants as mentioned here-in-above within one month hereof, failing which the Petitioners would be at liberty to take steps in accordance with law to have the same realized.

The petitioner No. 1 Manisha Dhar is directed to deposit the amount awarded to her minor son in a fixed deposit scheme with any Nationalized Bank or Post Office benevolent scheme and the amount shall not be withdrawn before attaining of her majority but with an Order passed by the competent Court of Law.

The petitioner Manisha Dhar shall however be at liberty to utilize the interest accruing from such deposits, standing in the name of the minor son of the deceased, for his maintenance and upbringing and only after filing of the fixed deposit certificate in this Tribunal, would the Petitioner No. 1 Manisha Dhar be entitled to withdraw her cheque.

An attested copy of the award be given to the parties free of cost.'

The Appellant New India Assurance Company Limited being aggrieved by the Judgment and Award Passed by the Learned Trial Court has come up with the instant appeal.

Heard Learned Advocates for the appellant and Learned Advocate for the respondents no. 1 to 3/claimants perused the evidence adduced and materials on record.

Learned Advocate for the appellant Insurance Company Submits that the Learned Trial Judge failed to appreciate that the accident took place on the night of 18th March, 2019, at 12;05 hrs and the inquest report prepared on the said day was signed by Pintu Sarkar wherein the vehicle number could not be mentioned but subsequently after 2 years the vehicle number is mentioned, which will go to show that he was not aware of the registration number of the offending vehicle. Learned Advocate further submits that Maruti Omni No. WB-40AA/5988 was implicated as an afterthought. Learned Advocate also submits that the said vehicle was involved in 8 number of accidents in 5 ½ years in which claim cases were filed.

Learned Advocate for the respondent no. 1 to 3/claimants submits that the grounds raised by the Insurance Company were not raised before Learned Tribunal and no evidence was adduced no question was put to the vehicle owner being OPW-1 thus these grounds cannot be taken at this stage. Learned Advocate further submits that the vehicle owner admitted the involvement of the vehicle thus the claim case of the claimants was rightly allowed. Learned Advocate also submits that Motor Accident claim cases are not required to be proved beyond reasonable doubt but on the preponderance of probability.

The following decisions are relied upon by Learned Advocates for the parties:-

Saroj and ors. VS Het Lal and ors.

Reported in 2011 SAR (Civil) 129.

Mahadeb Roy VS Sekha Das and others.

1999(1) TAC 140 (Cal)

Bazaz Allianz General Insurance Company Ltd. VS Anjali Mondal and Another

2019(1) TAC 33(Cal).

Bimla Devi and ors VS Himachal Road Transport Corporation and ors.

Reported in [2009] 6 SCR.362.

Janabai W D/O Dinkarro Ghorpade and ors VS M/S ICICI Lombard Insurance Company Ltd.

Reported in 2022 SAR (civ) P-865.

ICICI LOMBARD General Insurance Co. Ltd. VS Rajani Sahoo and ors

SLP (c) No-29302 of 2019.

Supreme Court of India.

Anita Sharma and ors VS New India Assurance Co. Ltd. and Anr.

Civil Appeal No-4010-404

(Supreme Court of India)

Sajeena Ikbal and ors VS Mini Babu George and ors.

Civil Appeal No (5) 7881/2024

Before proceeding to decide on the issue at the outset it is to be remembered that claim cases are not required to be proved beyond reasonable doubt but on the touchstone of preponderance of probability.

With regard to the first submission of Learned Advocate for the appellant/insurance company that P.W. 1 being the witness in inquest before Inquest Officer did not mention the registration number of vehicle before the Police Officer conducting inquest this Court is of the view that non-mentioning of the vehicle number before the Inquest Officer is not fatal. In the inquest report recording, description of the dead body and injury if any and cause of death is vital and it is not necessary to mention the name of the person who committed offence or the vehicle number which caused the accidental death. Particulars of vehicle and number is required to be furnished to the Investigating Officer of the case investigating the offence alleged to have been committed. Upon perusal of the statement of P.W. 1 eye witness it appears that the said witness in his cross examination has stated that the offending vehicle was at the P.O. for about 5-6 minutes and thereafter fled. He further stated that when the vehicle dashed the victim he took note of the number of the vehicle and thereafter remained busy attending to the victim. The statements in the cross examination inspires confidence in the mind of the Court and the same cannot be disbelieved.

Upon perusal of the statement of Owner of Vehicle OPW-1 it appears that the vehicle owner admitted of the accident taking place. He further stated that he was informed by his driver of the accident taking place.

Upon perusal of the charge sheet it appears, that on 27-03-2019 Rajesh Kumar Yadav driver of offending vehicle WB40AA5998 came to Police Station and produced one Affidavit duly executed by Atabi Banerjee Notary Durgapur Burdwan West Bengal on 27-03-2019 and found that Rajesh Kumar Yadav made statement that on 18-03-2019 at 12-05 AM he was driving vehicle no. WB 40AA-5998 and met with an accident at Bajrang Kalibari Durgapur.

Thus upon considering the evidence of P.W. 1, OPW-1 and the charge-sheet this Court is left with no other option but to believe that death of the victim took place due to rash and negligent driving by driver of vehicle no-WB-40AA/5988.

In the case of Bajaj Allianz General Insurance Company Ltd. VS Anjoli Mondal and Anr (supra) the Hon'ble Division Bench of this Court observed as follows:-

'32. The Supreme Court in its decision reported in MANU/SC/0577/2009 (Bimla Devi v. Himachal Road Transport Corporation), relied on by Mr. Mondal, has observed that strict proof of an accident by a particular bus/vehicle in a particular manner may not be possible and it would be sufficient if the claimants establish their case on the touchstone of preponderance of probability. We are also reminded of another decision reported in 2011 (2) T.A.C. 1 (S.C.) (Kusum Lata v. Satbir) where caution has been sounded that in a case relating to motors accident claims, the claimants are not required to prove the case as is required to be done in a criminal trial.

33. The father of the victim while disclosing the history of the accident to the doctor referred to the registration no. of a motor bike other than the said bike but later, it did transpire that the said bike was involved resulting in its reference being given in the written complaint as the offending bike as well as in the claim application. In course of investigation by the police, the involvement of the said bike also transpired. That apart, neither could the insurer dislodge the version of PW-1 that the said bike caused the accident, nor did the insurer produce the report of the investigator appointed by it. Having regard to the materials before the tribunal, a conclusion on facts that the said bike was probably the offending bike could have been and was rightly reached.

34. Mr. Singh placed reliance on a decision of the Supreme Court of recent origin, reported in 2018 (1) T.A.C. 355 (SC) (Anil v. New India Assurance Co. Ltd.), to contend that false cases claiming compensation should not be encouraged by the tribunals and the high courts. We have perused the decision and find that on the facts before Their Lordships, the conclusion was inescapable that the tribunal had failed to notice certain "disturbing facts" which the relevant High Court correctly noticed, leading to reversal of the

award of the tribunal. The Supreme Court, agreeing with the High Court, upheld the decision under challenge before it.

35. There was indeed a disturbing fact here but for the reasons discussed above, we have no hesitation to spurn Mr. Singh's contention that the said bike was not involved in the accident.

36. Having answered the first and substantial question arising for our decision thus, and bearing in mind that the said bike was covered by a policy issued by the insurer, we hold that the insurer cannot avoid its liability under such policy; hence, it is liable to bear compensation payable to the claimant.'

In the case of Bimla Debi and ors (supra) the Hon'ble Supreme Court observed as follows:-

'7. The driver and conductor of the bus admitted their presence at the scene of occurrence. Vijay Kumar (RW1) alleged that he had seen the dead body wrapped in a blanket behind the bus when he was still to start the bus. The Tribunal did not support the version of the respondent as he stated that station and the people gathered there stated that someone had been lying dead. He, according to the Tribunal, also could not deny positively that the accident had not taken place because of the use of the bus in question.

It is difficult to believe that the Police Officers would fabricate a case against the respondents. The learned Tribunal opined:

"Therefore, keeping in view the statement of PW, Dharam Pal, the death of Jawala Ram because of injuries, the presence of the Bus of the respondents and place and time of the occurrence and the other circumstances of the case, I am convinced that the death of Jawala Ram took place after being hit by the Bus when it was being reversed in backward directions. Once, it is so held, the respondents, driver and conductor shall have to be held negligent in reversing the bus in backward directions without blowing horn or whistle or giving indication to the persons standing there. Had the driver and conductor of the bus taken care to blow horn or to forewarn the persons standing there before reversing the bus, Jawala Ram, whowas stated to be standing behind the bus would not have been crushed. Consequently, it is held that Jawala Ram had died because of the injuries sustained by him in the course of Bus accident because of rashness and negligence of the respondents, driver and conductor of the Bus."

With regard to the submission of Learned Advocate for Insurance Company that the offending vehicle is involved in 8 other cases for the last five years this court is of the view that as the issue was not raised before trial court and no evidence adduced the said question cannot be raised at this stage. Even if it is accepted that the information about involvement of the vehicle in other cases is during pendency of appeal as no discreet enquiry is conducted in this regard by the Insurance Company by giving the vehicle owner and driver an opportunity of being heard, and further by ascertaining the result of criminal cases and claim cases such plea cannot be entertained at this stage.

In the facts and circumstances this Court does not find any error in the Judgment of trial Judge thus this appeal should be dismissed.

Hence this Appeal FMA-1351/2025 stands dismissed. Judgment and Award dated 19th May 2023 passed by Learned Additional District Judge Fast Track Court Durgapur in MAC Case No. 62/2019 stands affirmed.

The claimants/respondent no-1 to 3 are permitted to withdraw the compensation amount if deposited in this Court. In the event it is not deposited the same be deposited within 8 weeks from date of communication of this order.

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.)