S/L 9-10
17.11.2026
Court No.9
Swd

In The High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

FMA 1249 of 2026
With
IA NO: CAN/3/2024

National Insurance Company Limited
Vs.
Pradip Mahato & Anr.

With

COT 74 of 2024

Pradip Mahato
Vs.
The National Insurance Company Limited & Anr.

Mr. Rajesh Singh.
... for the Appellant/Insurance Co.

Mr. Amit Ranjan Roy.
... for the Respondent/Claimant.

1. Learned Advocates for the parties are present.
2. Heard learned Advocates.
3. 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 7th September, 2020 passed by the learned Additional District Judge, Fast Track, 2nd Court, Asansol, Paschim Bardhaman in M.A.C Case No.29 of 2016.
4. The case of the claimants respondents before the learned Trial Court may be summed up thus:

That on 6.10.2015 at about 12.30 PM when the victim was returning to his house Kunustoria Colliery Quarter by foot, at that time on NH-60 near Toipsi Petrol Pump, one Hero Motor Cycle being No.WB 38AF 5001 dashed the said victim from behind in a rash and negligent manner. As a result of such accident, the victim sustained fatal injuries and fell down at the side of the road. The local people shifted him to Central Hospital, Kalla where the doctor declared him brought dead. PM was held on Asansol District Hospital. The accident took place due to driver of the Hero Motor Cycle being No WB-38AF-5001.

5. Pursuant to filing of this case, notice was issued upon the opposite parties. The opposite party vehicle owner did not appear to contest the case. However, the opposite party Insurance Company contested by filing written statement. Issues were framed and evidence was adduced.

6. The learned Trial Judge upon considering the evidence adduced and upon hearing the learned Advocates was pleased to dispose the claim case by observing and directing as follows:

"Hence, It Is,

ORDERED

that the MAC case no. 29 of 2016 (CIS No. 233/16) be and the same is allowed on contest without cost against the OP no.2 The National

Insurance Company Limited and ex-parte against the O.P. no. 1 the owner of the offending Motor cycle being No. WB- 38/AF-5001.

The claimant do get an award of Rs. 16,82,112/- (Sixteen lakh Eighty two thousand One hundred twelve only)in this proceeding subject to deposit of deficit court fee.

The OP no.2 The National Insurance Company Limited the Insurer of the offending vehicle being No. WB-38/AF-5001 is directed to pay the compensation of Rs. 16,82,112/-(Sixteen lakh Eighty two thousand One hundred twelve only) to the claimant Pradip Mahato by account payee cheque through the Tribunal within two months here of with the interest at the rate of 6% per annum on the amount of compensation from the date of filing of application till realization in full, subject to deposit of deficit court fee.

Let a copy of this order be handed over to the representative lawyer of the respective parties for information and necessary action."

7. The appellant The National Insurance Company Limited being aggrieved by the judgment and award passed by the learned Trial Court has come up with the instant appeal. The claimant respondent being also aggrieved by the quantum of compensation awarded by the learned Trial Court has filed cross-objection.

8. Heard learned Advocate for the appellant Insurance Company and learned Advocate for the claimant respondent. Perused the evidence adduced and the materials on record.

9. Mr. Singh, learned Advocate for the appellant Insurance Company submits that there was delay of 25 days in lodging FIR which makes the case of the claimant doubtful. Mr. Singh further submits that the driver of the offending vehicle was involved in four other cases in the self-same year relating to rash driving, which will go to show that there is collusion between the claimant and the vehicle owner.

10. Mr. Singh further submits that the evidence of the witness of the claimant being PW3, who stated that blood was oozing from his head and the evidence of the doctor OPW 1, who said that there was no injury of the head will go to show that the statements made by PW 2 is false. It is also submitted that the driver of the offending vehicle was having two separate licenses, which is unlawful.

11. Mr. Roy, learned Advocate for the respondent claimant submits that the variation in the evidence of the doctor and PW 3 is not fatal. As PW 2 has stated that he has seen blood and the doctor also stated that there was blood in the chest, the statement cannot be disbelieved.

12. Learned Advocate further submits that the learned Trial Judge erred in not taking into consideration the future prospect, simply on the grounds that the family of the victim will get compassionate appointment. Learned Advocate also submits that the compensation awarded should be enhanced.

13. With regard to first submission of learned Advocate for the appellant regarding delay in lodging FIR, it is to be remembered that in different judicial pronouncements, it is held that the families of the victim of accidents do not rush to police station but to hospital, thus delay in lodging FIR is not fatal always. In the instant case also, after losing near relation of the family, delay in lodging FIR is not unnatural. Hence delay in lodging the FIR cannot be said to be fatal.

14. With regard to the submission of collusion between the driver of the offending vehicle and the claimant and that driver was holding two driving licences, such fact was not brought before the learned Trial Court by adducing evidence. Thus this issue cannot be taken into consideration.

15. With regard to the contradiction of the submission regarding the statement of PW 2 and that OPW 1 doctor, it appears that PW 2 stated

as to how the accident took place. Further, PW 2 is also a charge-sheet witness of the police authority.

16. Upon perusing the evidence of PW 2 and the doctor, although there is slight contradiction with regard to the blood, but the evidence of PW 2 regarding seeing the road accident cannot be disbelieved. As in motor vehicle claim cases, claimants are not required to prove the case beyond the reasonable doubt but on the touchstone of preponderance of probability, the case of the claimant should not be disbelieved.

17. Upon considering the evidence adduced, the materials on record and the judgment of the learned Trial Court, this Court is of the view that interference with regard to the finding of rash and negligent driving as arrived by the learned Trial Court interference is not necessary.

18. However, with regard to the quantum of compensation it is true that as per the decision of the Hon'ble Supreme Court in the case of ***National Insurance Company Ltd Vs. Pranay Shetty*** reported in ***AIR 2017 SC 5157*** there is mention of future prospect thus the appellants claimants are entitled to compensation on account of future prospect.

19. Thus, in the event, the monthly income of the appellant is taken as Rs.18,774/-. The annual

income comes to Rs.2,25,288/-, 15% future prospect being added, which is Rs.33,793/-, the total annual income comes to Rs.2,59,081/-. One-third being deducted on account of personal expenses being Rs.86,360/-. The annual dependency loss comes to Rs.1,72,721/-. The multiplier of 13 applied, the total dependency loss comes to Rs.22,45,373/-. Further, the claimants are entitled to general damages of Rs.30,000/-. Thus, total compensation comes to Rs.22,75,373/- by arithmetical calculation. However, this Court is of the view that compensation of Rs.22,00,000/- is just and reasonable.

20. Hence, this appeal **F.M.A. 1249 of 2026** along with **COT 74 of 2024** stands disposed. The judgment and award dated 7th September, 2020 passed by the learned Additional District Judge, Fast Track, 2nd Court, Asansol, Paschim Bardhaman in M.A.C Case No.29 of 2016 stands modified to the extent that the claimant respondent is entitled to Rs.22,00,000/- from the appellant National Insurance Company Ltd. along with interest @ 6% per annum from the date of filing claim case till today.

21. The appellant National Insurance Company Ltd. shall deposit Rs.22,00,000/- along with interest @ 6% per annum. Such deposit shall be made

within a period of 8 weeks from the date of communication of this order.

22. In the event, compensation awarded by the learned Trial Court is already deposited, the balance deposit be made. The claimant respondent will be entitled to withdraw the compensation upon compliance of necessary formalities and upon payment of the deficit court fees, if any.

23. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(**BISWAROOP CHOWDHURY, J.)**