

13.05.2026
Court No.5
D/L No.14-15
S. Gayen

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI**

FMAT(MV) 7 of 2025

**Smt. Moumita Mitra @ Moumita Mitra Kundu
& Ors.**

Versus

**Roshan Khalka Chhetri & Anr.
with**

FMA 14 of 2025

Reliance General Insurance Co. Ltd.

Versus

Moumita Mitra (Kundu) & Ors.

Mr. Uday Sankar Sarkar

...for the Appellant in FMAT(MV) 7 of 2025
and Respondent in FMA 14 of 2025

Mr. Partha Bhowmik

Mr. Abir Biswas

...for the Respondent in FMAT(MV) 7 of 2025
and Appellant in FMA 14 of 2025

1. The claimants as well as the Insurance Company both being aggrieved and dissatisfied with the award passed by the learned Motor Accident Claims Tribunal in MACC No. 323 of 2029 dated October 3, 2024 have filed the present appeals.
2. Learned counsel for the claimants have filed the appeal on the ground that the deceased was the surveyor and used to file the income tax return and lastly has filed the income tax return for assessment year 2015-2016 wherein the annual income was 2,97,070/- and the deceased paid the income tax of Rs. 3000/- on April 9, 2016 but the

learned Tribunal while considering the income of the deceased by awarding the compensation has taken into consideration of the annual income of the deceased is Rs.2,45,000/- instead of 2,97,070/-.

3. It is the further contention of the learned counsel appearing for the claimants that the learned Tribunal has awarded lesser interest @ 6% per annum instead of 9% per annum. He further submits that the interest awarded by the learned Tribunal is also conditional one. In the award it is mentioned that if the Insurance Company fails to pay the awarded amount of Rs. 39,28,750/- within two months from the date of passing the award, then only the Insurance Company is liable to pay the interest @ 6% from the date of filing of this case but the learned Tribunal ought to have granted interest @ 9% per annum from the date of filing application.
4. The claimants further submit that it is the choice of the parties against whom they will proceed to claim compensation due to the death of victim. He submits that it is the specific case of the claimants that due to the negligence on the part of the truck driver, the victim died and thus the claimants have filed the claim petition against the Insurance Company under which the truck was insured.

5. The Insurance Company has filed the appeal challenging the award on the ground that it is the case of the claimants that the truck involved in the accident was parked in a non-parking area without any indicator and the car of the victim dashed against the standing truck from behind, in which, the deceased was travelling and the deceased died in the said accident. He submits that the police has initiated case against the drivers of both the vehicles, thus, there is a case of contributory negligence on the part of both the drivers but the learned Tribunal has taken into consideration of the negligence on the part of the driver of the truck without considering with regard to the contributory negligence on the part of the driver of the car in which the deceased was travelling.

6. Learned counsel for the Insurance Company further submits that the claimants had the knowledge that the police has initiated the FIR against the drivers of both the vehicles but the claimants have not made the Insurance Company of the car as party respondent in which the deceased was travelling. Learned counsel for the Insurance Company submits that the learned Tribunal has also failed to consider that the claimants have filed the claim petition under

Section 166 of the Motor Vehicles Act. Thus the claimants have to prove the negligence against the truck but the fact remains that the police has initiated case against both the drivers and without considering the same, the learned Tribunal has come to the conclusion that there is negligence on the part of the truck driver. The learned counsel for the Insurance Company further submits that the learned Tribunal has rightly considered the annual income of the deceased of Rs. 2,45,000/- as the claimants failed to produce any documents with regard to the income of the deceased. Thus, the learned Tribunal has rightly considered the average income for the year 2013-2014, 2014-2015 and 2015-2016 as Rs. 2,45,000/-.

7. Heard the learned counsel for the respective parties. Perused the award passed by the learned Tribunal which is impugned in both the appeals and the documents and evidence relied by the parties during the trial.
8. The claimants have filed the claim application claiming compensation on the ground that the deceased was travelling in the car but the truck was parked in the non-parking area without any indicator light, due to which the incident was occurred and due to the said accident the deceased died. The claimants have filed the claim

application under Section 166 of the Motor Vehicles Act. Thus, the claimants have to prove with regard to the negligence driving on the part of the truck driver. In the case in hand, it is not the case that only the FIR or investigation has been carried out by the police against the truck driver. It is admitted case that the police has initiated the FIR against both the drivers and on completion of the investigation, police submitted the chargesheet against both the drivers and both cases are pending for adjudication.

9. The Insurance Company in the written statement in paragraph 7 has categorically stated that the police authorities have also filed criminal case against the owner and driver of the car. It is also admitted that the deceased was the owner of the car bearing Registration No. WB -74-AE-6663. In paragraph 14 of the written statement, the Insurance Company has denied that the accident was occurred due to parking in the non-parking area without giving any signal. After considering the pleadings of the parties, the learned Tribunal has framed altogether eight issues which are as follows:-

“1. Is the case maintainable in its present form and law ?

2. Is there any cause of action to file this case ?

3. Was the vehicle bearing no. WB 71A-8783(dumper) was involved in this accident ?

4. Was the accident caused by rash and negligent driving on the part of the driver of the vehicle bearing Reg No. WB 71A-8783(dumper) ?

5. Was the vehicle bearing Reg No. WB 71A-8783(dumper) under the coverage of valid insurance policy at the relevant point of time ?

6. Is the case bad for non joinder of necessary party.

7. Are the claimants entitled to get any compensation in this case as prayed for? If so, then to what extent?

8. To what other relief or reliefs, the petitioners are entitled to ?”

10. The learned Tribunal has taken the issues Nos. 3 to 8 together for decision. Issue No. 3 is whether the vehicle bearing No. WB 71A-8783 (dumper) was involved in this accident and issue No. 6 is the case bad for non joinder of necessary party. Though the learned Tribunal has taken up issues Nos. 3 to 8 for decision but has not taken any decision with regard to the said issues whether the vehicles bearing No. WB71A-8783 (dumper) was involved in the accident or whether the claim

petition filed by the claimants is bad for non joinder of necessary party. The learned Tribunal in page 10 of the award has taken into consideration that *“Though Charge sheet was filed against both the vehicle but it is the choice of the petitioner against who he will proceed to claim compensation due to demise of the victim. In the case in hand it has been established that the vehicle bearing number WB 71A-8783 was standing on the National Highway at a place which was not a parking zone and due to such negligent act of the driver of the said vehicle the accident took place. In the charge sheet it has been mentioned that due to negligent act of the driver of the dumper the accident took place. The documents filed by the claimants leads this tribunal to hold that the victim Arunava Mitra since deceased, expired on the fall out of a road traffic accident that occurred on 19.10.2016 due to rash and negligent act on the part of the driver of the vehicle bearing Reg No. WB 73A-8783 being driven by the accused driver Silbanus Oraon and accordingly charge sheet was submitted against him as well as the driver of the victim vehicle”*.

11. Learned Tribunal has come to the conclusion that accident occurred due to rash and negligent act of the truck drivers only referring to the

chargesheet submitted by the police. The learned Tribunal also recorded that chargesheet was also submitted against the drivers of the victim's vehicle but has not discussed about the chargesheet filed against the drivers of the victim's vehicle. In the chargesheet, i.e., Exhibit 3, it is also mentioned that the driver, Pradip Sen, driver of vehicle No. WB 74AE-6663 may be excessive speed and may cause to loss of control of the Mahindra car dashed on the back of the another involved vehicle. The learned Tribunal has not considered the other aspect of the matter.

12. Learned Tribunal failed to appreciate that the claim of the claimant is under Section 166 of the Motor Vehicles Act. PW2, Mr. Bholanath Karmakar who is the eyewitness of the incident during his examination-in-chief stated that when he reached near Simulata Petrol Pump, at that time one dumper being No. WB71A-8783 which was standing on the no parking zone without giving any signal, suddenly the Mahindra QUANTO dashed the back side of dumper with force, as a result, the deceased died at the spot.

13. This Court finds that the learned Tribunal without considering the chargesheet filed by the police against the driver of the car in which the

victim was travelling and the evidence of PW2 has passed the impugned award.

14. Accordingly, the impugned award passed by the learned Tribunal dated October 3, 2024 is set aside and quashed. The MACC No. 323 of 2019 remanded back to the Motor Accident Claims Tribunal, A.D.J. 1st Court, Jalpaiguri to decide the issue i) whether there is any negligence on the part of the driver of the vehicle in which the victim was travelling; ii) whether there is any negligence on the part of the driver of the truck, iii) whether the Insurance Company of the vehicle in which the deceased was travelling is necessary party; and iv) whether there is any contributory negligence on the part of both the drivers of the vehicles.
15. The incident was occurred in 2016 and considering the age of the case, the learned Tribunal is directed to dispose of the said MACC No. 323 of 2019 as expeditiously as possible without granting any unnecessary adjournment to either of the parties, preferably within a period of six months from the date of receipt of this order.
16. Both parties are at liberty to take appropriate steps, if any, for proper adjudication of the case either by way of amendment or addition of parties.

17. Accordingly, **FMAT(MV) 7 of 2025** and **FMA 14 of 2025** are **disposed of**.

18. Records of the learned Tribunal along with a copy of this order be transmitted back immediately to the learned Tribunal.

19. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

20. Urgent Photostat certified copy, if applied for, be given to the parties upon compliance with all formalities.

(Krishna Rao, J.)