

**In the High Court at Calcutta
In The Circuit Bench at Jalpaiguri
Appellate Side**

Present:

The Hon'ble Justice Biswaroop Chowdhury

FMA 6 of 2024

United India Insurance Co. Ltd.

Vs.

Dulali Dutta & Ors.

With

COT 1 of 2022

Dulali Dutta & Ors.

Vs.

United India Insurance Co. Ltd.

For the Petitioner : Mr. Pasupati Nath, Adv.

For the Respondent/Claimant. : Mr. Subir Banerjee, Adv.
: Mr. Abhijit Raha, Adv.
: Mr. Joyprakash Roy, Adv.
: Ms. A. Ghosh, Adv.

Heard On : **20.03.2026**

Judgment On : **24.03.2026**

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 29-06-2022 passed by Learned Additional District Judge 3rd (Special Court) Jalpaiguri in MAC Case No. 332 of 2021. The respondents no-1 to 3/claimants being also aggrieved by the Judgment and Award dated 29-06-

2022 passed by the Learned Trial Judge has filed a cross objection being COT. No-1/2023.

The case of the Respondent No-1 to 3/claimants before the Learned Trial Court may be summed up thus:

On 03-09-2018 at about 21.30 hrs the victim Dip Dutta (since deceased) was going towards Sadar Hospital from PWD More side by driving Motor Cycle bearing no-WB-72K-7961 at that time one Maruti Alto car being No. WB-74-Q-3440 was coming with high speed in rash and negligent manner and dashed the victim on Pucca road near P.W.D, More in front of Town Club Stadium P.S. Kotwali Dist-Jalpaiguri. As a result he (Dip Dutta) sustained grievous injuries on his person and immediately shifted him to the Jalpaiguri S.S. Hospital and after that shifted him to the NBMC hospital but on the way to hospital he expired.

The accident occurred due to rash and negligent driving on the part of the driver Alto/CMV of the offending vehicle No-WB-74-Q-3440.

The deceased was the only bread earner of his family and due to his sudden death the petitioners have been suffering much loss pain and shock and loss of future earning consortium and love and affection.

Pursuant to the filing of this case notice was issued upon the opposite party vehicle owner and opposite party United India Insurance Co. Ltd. Opposite Party vehicle owner and Opposite Party Insurance Company filed

written statement, denying allegation. However opposite party Insurance Company contested the case. ISSUES were framed and evidence was adduced by the claimants and the Insurance Company.

By Judgment and Award dated 29-06-2022, Learned Trial Judge disposed the claim case by observing and directing as follows:

Hence it is ORDERED that the claim application u/s. 166 of the M.V. Act dated 14-07-2021 is allowed on contest without any cost. The petitioners are thus entitled to get Rs. 42,98,512/- (Rupees Forty Two Lakh Ninety Eight Thousand Five Hundred Twelve) only towards compensation for the road traffic accidental death of victim Dip Dutta.

No interest is awarded as there is no delay on the part of the insurance company.

The OP No.2/The United India Insurance Company Limited is directed to issue three A/C payee cheques out of which two cheques of Rs. 14,19,504/- (Rupees Fourteen Lakh Nineteen thousand Five Hundred Four) only in the name of petitioner no. 1 Dulali Dutta and 3 Mritsha Dutta (minor) and another cheque of Rs. 14,59,504/- (Rupees Fourteen Lakh Fifty Nine Thousand Five Hundred Four) only in the name of petitioner no. 2 Anindita Dutta Saha. It is further ordered that the mother of the minor namely petitioner no. 2 Anindita Dutta Saha is hereby directed to deposit the cheque amount of Rs. 14,19,504/- (Rupees Fourteen Lakh Nineteen Thousand Five Hundred Four) only issued in the name of the minor petitioner no. 3. Mritsha Dutta with any Nationalized

Bank/Post Office or MIS till the allowing of her majority with a liberty to withdraw the interest for the welfare and upbringing of said minor.

The cheque of petitioner no. 2 Anindita Dutta Saha would be handed over to her only after showing deposit of the cheque amount of the minor petitioner i.e. petitioner no. 3 Mritsha Dutta as ordered earlier.

The OP No. 2 is directed to issue the cheques within a period of thirty (30) days from this date, in default of payment of the compensation amount within the stipulated period as stated above the petitioners would be at liberty to execute the same as per law and further the same would carry an interest at the rate of 6% per annum from the date of filing of the claim application i.e. 14-07-2021 till realization of the amount.'

The Appellant United India Insurance Co. Ltd. being aggrieved by the Judgment and Award dated 29-06-2022 passed by the Learned Trial Judge has come up with the instant appeal. The Respondents no. 1 to 3/claimants being also aggrieved by the Judgment and Award passed by Learned Trial Judge has filed cross objection.

The grounds of appeal by the Appellant/Insurance Company is firstly that the vehicle WB-74-Q-3440 was implanted by fraud secondly the earlier investigation resulted in FRT for which naraji petition was filed and on the basis of subsequent investigation the vehicle WB-74Q-3440 was implanted. Thirdly the Learned Trial Judge accepted the income of the victim to be Rs. 20,728/- per month without proof.

The ground of cross objection is that the Learned Trial Judge erred in ascertaining the salary income after taking into consideration all deductions made by the employer from the salary of the victim and secondly the interest ought to have been awarded from date of filing claim case which is not awarded in this case.

Heard Learned Advocate for the appellant and Learned Advocate for the respondent no. 1 to 3 perused the evidence adduced and materials on record.

Learned Advocate for the appellant submits that the Learned Trial Judge erred in awarding compensation when the involvement of the Vehicle WB-74Q-3440 (Maruti Alto) is in dispute. Learned Advocate further submits that the vehicle concerned was not mentioned in the FIR but implanted subsequently. Learned Advocate also submits that the Learned Trial Judge applied the wrong multiplier of 17 when the victim crossed 30 years of age.

Learned Advocate for the respondents no-1 to 3/claimants submits that the vehicle number was not mentioned in FIR but the type of vehicle was mentioned. Learned Advocate further submits that on the basis of nazari petition the subsequent investigation was taken up and the vehicle was identified and charge sheet was submitted. Learned Advocate also submits that the IO was examined by Insurance Company but nothing could be shaken with regard to investigation.

Learned Advocate for the respondents no. 1 to 3/claimants rely on the following judicial decisions:-

Shashikala and others VS Gangalakshmamma and Anr.

Reported in (2015) 9 SCC P-150.

Smt. Sarla Verma and ors. VS Delhi Transport Corporations and Anr.

Reported in AIR-2009 S.C. 3104

With regard to first submission of Learned Advocate for the appellant the vehicle was not named in the FIR and subsequently implanted it is to be remembered that in case of road traffic accident it is not always necessary to mention the vehicle number involved in the accident. In the event the FIR is against unknown vehicle, it is the duty of the Police Authority to investigate the matter identify the vehicle trace it out and proceed in accordance with law. In the first instance although Police Authority filed FRT but pursuant to direction for further investigation the vehicle was identified and charge sheet was submitted against the driver of the offending vehicle. The I.O. of the police case was examined by Insurance company as O.P.W. 1 and he stated that he examined the witnesses during further investigation. He further stated that UD Officer was also examined. He also stated that mechanical examination of offending vehicle was done. From the evidence of I.O. nothing appears that the investigation was perfunctory in nature.

Now from the evidence of P.W. 2 Subrajit Sarkar it appears that the said witness stated how the accident took place. In Cross examination he stated that the accident took place in front of town club and the said place was

illuminated with light and the offending vehicle dashed at the right side of the victim vehicle. He further stated that he could see the number of the Alto vehicle. He also stated that he was examined by the Police in hospital and also in 2021. It further appears that P.W. 2 is also cited by the Police Authority as a witness in the charge sheet. Hence statements made by P.W. 2 in cross examination inspires confidence in the minds of Court of accident taking place and involvement of vehicle being no. WB-74Q-3440. Thus the statement of P.W. 2 and OPW-1 and the materials on record will go to show involvement of vehicle bearing No-WB-74-Q-3440 in the accident, even if the FIR is against unknown vehicle.

Thus this Court does not find any error in the Order of the Learned Trial Judge in arriving at the findings that there was rash and negligent driving by driver of vehicle no. WB-74-Q-3440.

With regard to the consideration of deduction made from salary of the victim by his employer it is well settled that from the salary of the victim only those deductions on account of taxes which go to the State and does not return shall be adjusted from salary of victim. In the instant case the Learned Trial Judge apart from deducting professional tax deducted House Rent Allowance and Medical Allowance thus the salary income was not arrived at only after deducting profession tax and income tax. In the instant case as the victim was not liable to pay income tax only profession tax should be deducted from his

income. Hence upon deduction of professional Tax net income comes to Rs. 22,539/-.

With regard to use of multiplier as the victim was 30 years one month it is to be decided as to whether age of the victim should be 30 years or 31 years.

In the case of Shashikala and others (supra) the Hon'ble Supreme Court observed as follows:-

16. Insofar as appropriate multiplier, the date of birth of the deceased as per driving license was 16-06-1961. On the date of accident i.e. 14-12-2006, the deceased was aged 45 years 5 months and 28 days and the Tribunal has taken the age as 46 years since the deceased has completed only 45 years the High court has rightly taken the age of the deceased as 45 years and adapted multiplier of 14 which is the appropriate multiplier and the same is maintained total loss of dependency is calculated at Rs. 16,82,310/- (Rs. 1,20,165X14).'

In the instant case no document was filed with regard to date of birth of the victim. The Learned Trial Judge upon considering the age of the victim as 30 years from post mortem report rightly applied the multiplier of 17.

Thus the compensation in the instant case should be derived at by considering the monthly income of the victim as Rs. 22,539/-.

As the monthly income of the victim is Rs. 22,539/-, the annual income comes to Rs. 2,70,468/-. The future prospect is taken as 50% and the future prospect being added to Annual income, the said income comes to Rs.

405,702/-, 1/3rd which is Rs. 1,35,234/- deducted as personal expenses the annual dependency loss comes to Rs. 2,70,468/-. The multiplier of 17 applied brings the total dependency loss to Rs. 45,97,956/-. Further the mother of the victim and wife are entitled to consortium of Rs. 40,000/- each and Rs. 30,000/- on account of Loss of estate and funeral expenses thus total compensation which the Respondents no-1 to 3 are entitled comes to Rs. 47,07,956/- by arithmetical calculation. However this Court is of the view that compensation of Rs. 47,00,000/- is just and reasonable.

Hence this Appeal FMA-6 of 2024 along with COT No-1 of 2023 stands disposed. The Judgment and Award dated 29-06-2022 passed by Learned Additional District Judge 3rd Special Court Jalpaiguri in MAC-Case No-332 of 2021 stands modified to the extent that the respondent no. 1 to 3 are entitled to compensation of Rs. 47,00,000/- from the Appellant United India Insurance Co. Ltd. Rs. 47,00,000/-. The appellant United India Insurance Co. Ltd. Shall deposit Rs. 47,00,000/- along with interest @6% per annum from the date of filing of claim case till today.

Such deposit shall be made before Registrar Circuit Bench Jalpaiguri High Court Calcutta within 8 weeks from the date of communication of this order.

However in the event the amount awarded by Learned Trial Court is already deposited the balance amount be deposited within 8 weeks.

Urgent certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Biswaroop Chowdhury, J.)