IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 1374 of 2021

The National Insurance Company Ltd.

VERSUS

Rita Majhi & Ors.

For the appellant/Insurance Company:	Mr. Sanjay Paul, Adv.
For the respondents/claimants:	Mr. Ashique Mondal, Adv.

Last Heard on: September 29, 2026

Judgment on: October 07, 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 29th day of June 2021 passed by Learned Additional District Judge Fast Track 1st Court Bardhaman in MAC Case No. 53/2016.

The case of the claimants before the Learned Trial Court may be summed up thus;

On the fateful date and time the victim with one Mati Mian was proceeding towards Haripal by travelling in a Motor Cycle bearing no. WB-18F/4843 and while they reached near Purna Cold storage suddenly the offending vehicle bearing no. WB-41B/4905 coming from same direction with high speed rash and negligent manner dashed the motor cycle from behind resulting the victim fell down on the ground and he was run over by the offending truck and the victim sustained severe bleeding injuries on all over his body and died on the spot.

Rash reckless and negligent driving on the part of the driver of the vehicle no. WB-41B/4905 was the sole cause of the pathetic accident.

Pursuant to filing of the case notice was issued upon the opposite parties. Opposite Party vehicle owner did not contest the case. Opposite Party Insurance Company contested the case by filing written statement.

ISSUES were framed and evidence was adduced. Learned Trial Judge upon considering the evidence adduced and upon hearing the Learned Advocates was pleased to dispose of the claim case by observing and directing as follows:-

'Hence it is ORDERED that the instant motor accident claim case be and the same is hereby allowed ex-parte against the OP. No.1 and on contest against the OP No-3, without any order as to costs.

The petitioners do hereby get compensation of Rs. 11,10,000/- (Rupees Eleven Lakh Ten Thousand only) against the OP. National Insurance Company Ltd. together with interest @8% per annum from the date of filing of this application i.e. 22-06-2016 till the date of realization of the entire amount.

Both the OP. National Insurance Company Ltd. and the OP Binod Mondal are jointly and severally liable to pay the said compensation.

Each of the petitioners shall get equal amount of compensation. The OP National Insurance Company Ltd. is directed to make payment of the aforesaid amount of Rs. 11,10,000/- as compensation to the petitioners by account payee cheques within two months from the date hereof and in terms of the finding of this Tribunal, failing which the petitioners shall be at liberty to get the award executed. The shares of the minor petitioners are to be paid through account payee cheques drawn in favour of their mother i.e. the petitioner no. 1 subject to the condition that the shares of the minor petitioners are to be invested in fixed deposits of any nationalized bank till the minors attain majority. Net amount of the accounts shall be paid to the minor petitioners after they attain majority.

The petitioners are directed to deposit appropriate court fee including deficit Court fee within a period of seven days from the date of passing of this Judgment.' The Appellant Insurance Company being aggrieved by the Judgment and Award passed by the Learned Trial Court has come up with the instant appeal.

Heard Learned Advocate for the appellant and Learned Advocate for the respondents/claimants. Perused the materials on record.

Learned Advocate for the appellant submits that the FIR was against unknown vehicle, and the Police Authority seized the vehicle after one month thus the case of the claimants is doubtful. Learned Advocate further submits that as per statement of P.W. 2 he was present at the accident spot but as per FIR no persons were present at the accident spot.

Learned Advocate also submits that the learned Trial Court without proof considered monthly income as Rs. 8,000/- and compensation awarded is excessive.

Learned Advocate for the respondents/claimants submits that FIR was lodged within 1 day thus there is no ground to dispute the case of the claimants.

Learned Advocate further submits that in the written statement of Insurance Company there is no denial of involvement of the offending vehicle, and no charge sheet witness is examined by Police Authority.

Learned Advocate also submits that specific description of accident is given in cross examination by P.W. 2 thus the decision of the Learned Trial Court is justified.

With regard to first submission of Learned Advocate for the appellant that vehicle number was not mentioned in FIR it is to be remembered that FIR

with regard to accident by rash driving may be against known vehicle or unknown vehicle. When FIR is against unknown vehicle it is incumbent upon the Police Authority to identify and trace out the vehicle involved and then proceed in accordance with Law. Where the FIR is against known vehicle it is incumbent upon the Police Authority to verify the allegations and then proceed in accordance with law. When investigation is carried out in accordance with law and report submitted the said report cannot be discarded without examining the I.O. In the instant case the Insurance Company neither examined I.O. nor the vehicle owner. Moreover there is no specific denial of involvement of vehicle no. WB-41B/4905 in the written statement. The evidence of P.W.2 clearly goes to show that accident took place due to rash and negligent driving by driver of vehicle no-WB-41B/4905. Learned Trial Judge upon considering both oral and documentary evidence and by assigning reasons came to the conclusion of rash and negligent driving by driver of vehicle no. WB-41B/4905. Thus there is no scope to interfere with such findings.

Secondly with regard to the monthly income the claimants examined P.W. 3 proprietor of Loknath Feed Centre who stated that he used to pay the deceased wages Rs. 250/- every day and tiffin allowance every day. Upon considering the evidence of P.W.3 learned Trial Judge fixed monthly income of the deceased as Rs. 8,000/- which is justified. Thus there is no ground to interfere with the Principal Compensation awarded.

However with regard to rate of interest the same must be reduced to 6% p.a.

Hence this Appeal FMA No. 1374 of 2021 stands disposed. The Judgment and Award passed by Learned Additional District Judge Fast Track 1st Court Burdwaman in MAC Case No. 53 of 2016 stands affirmed with regard to Principal Compensation awarded. However with regard to grant of interest the same stands reduced to 6% per annum. The Appellant Insurance Company shall deposit before Registrar General High Court Calcutta compensation of Rs. 11,10,000/- alongwith interest @6% per annum from date of filing claim case till today. Such deposit shall be made within 8 weeks from the date of communication of this Order. In the event compensation awarded by Learned Trial Court is already deposited no further deposit be made. The claimants/Respondents will be entitled to withdraw the compensation upon compliance of necessary formalities. Balance amount if any be returned to the Appellant Insurance Company alongwith accrued interest. Deficit Court fees if not paid be paid within 10 days.

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.)