IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 119 of 2024

United India Insurance Co. Ltd.

VERSUS

Mosammad Anowara Molla & Ors.

For the appellant/Insurance Co.: Mr. Sucharita Paul, Adv.

For the respondents/claimants: Mr. Achintya Kumar Banerjee, Adv.
Mr. Subhankar Sen, Adv.
Ms. Indumouli Banerjee, Adv.

Last Heard on: September 24, 2026

Judgment on: September 29, 2026

Biswaroop Chowdhury, J:

The appellant before this Court was an opposite party in a case under Section 166 of the Motor Vehicles Act and is aggrieved by the Judgment and Award dated 11th day of August 2023 passed by Learned Additional District Judge 1st Court Burdwan Purba Burdwan in MAC Case No. 14/77 of 2015.

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

On 10.11.2012 the accident occurred due to rash and negligent driving by the driver of the Maxi Truck bearing No. WB-41D/3433 and as a result the deceased died. Due to such death of Laltu Molla his family has not only suffered mentally but also going by a financial stringency.

Pursuant to the filing of the case notice was issued to 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 petitioners do hereby get an award of Rs. 17,83,600/- plus interest @7% from the date of filing claim application till date of payment, towards compensation for accidental death of deceased Laltu Molla in the accident in question. The opposite party No-2 (United India Insurance Company Ltd.) is directed to pay Rs. 17,83,600/- plus interest @7% from the date of filing till the date of payment to the petitioners by issuing four account payee cheques one cheque will be of Rs. 4,75,900/- plus interest @7% from the date of filing till the date of payment each in favour of rest three petitioners. Namely Sabnam Khatun (minor) Molla Nechhabibi and Sattar Molla within one hundred twenty days from the date of this order, in default the petitioners will be at liberty to recover the amount through Court.

Petitioner no.1 is directed to make fixed deposit of the amount awarded to minor petitioner no.2 namely Sabnam Khatun till her attaining majority in any Bank after receiving the cheque in the name of the minor and to submit compliance report. After compliance of the direction the cheque of petition no-1 will be delivered.'

The Appellant Insurance Company being aggrieved by the Judgment and Award passed by 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 evidence adduced and materials on record.

Learned Advocate for the Appellant/claimant submits that the FIR will go to show that there was contributory negligence of the victim thus the Learned Trial Judge erred in not taking into consideration the contributory negligence. Learned Advocate further submits that the claimants failed to prove the income of the victim and the trade license was not renewed thus there is doubt with regard to income. Learned Advocate also submits that interest awarded is excessive.

Learned Advocate for the opposite party claimants submits that the Insurance Company did not argue on the merits of the case with regard to accident before Trial Court but only with regard to quantum of compensation, thus at this stage the plea of contributory negligence cannot be taken.

Learned Advocate further submits that as the victim is dead and unable to defend his case the plea with regard to non-renewal of trade license cannot be taken. Learned Advocate also submits that the learned Trial Judge upon considering the evidence, awarded the compensation thus the same should not be reduced.

Now with regard to the first submission of the Appellant regarding contributory negligence it appears from the Order of Learned Trial Judge that the said point was not argued before the Learned Trial Judge and argument was confined with regard to quantum of compensation. The observation of the Learned Trial Judge in this regard is as follows:-

'On the other hand, Ld. Advocate for the OP/Insurance Co. submitted that he is not raising much dispute about the merit of the case of the petitioners, but the petitioners failed to prove income of the deceased.'

Thus upon perusal of the observation of the Learned Trial Judge it is clear that the Appellant Insurance Company decided not to argue about the merits of the case. Thus the plea of contributory negligence cannot be raised at this stage. Moreover the Appellant/Insurance Company did not adduce evidence to prove contributory negligence neither does charge sheet reflect about contributory negligence.

Now with regard to non-renewal of certificate as the victim is dead and cannot defend his case with regard to this issue, the said plea cannot be taken.

Learned Trial Judge while considering the trade license was pleased to make the following observation.

'One Trade License (Exhibit-4) has been produced by the petitioners. Although on perusing the Exhibit-4 it appears that the same was valid till March 2012, and the incident occurred on 10-11-2012, but in course of cross-examination of P.W. 1 the existence of business of the deceased has not been specifically challenged.'

Section 116 of West Bengal Panchayet Act 1973 provides the requirement to obtain license to do business declared by the State Government by notification to be offensive or dangerous. The license shall be renewable annually granted by the Panchayat Samity subject to such terms and conditions as the Panchayet Samity may think fit to impose.

Upon perusal of the license it appears that the said license was issued first on 5/12/05 and was valid for 2005 till March 2006. Similarly the date of renewal which appears in the document is 26/07/2011 was valid till March 2012 and it further appears that from 2006 to 2012 it was renewed from time to time. Although license is valid till March in every year in 2011 it appears that it was renewed in July. Moreover condition of license shows that license is liable to be cancelled in the event of contravention of condition. No where it provides that non-renewal attracts penalty.

A business which is running cannot stop for non-renewal of license, on the date fixed unless there is specific provision in the statute. In the instant

case the Insurance Company was not able to adduce any evidence to show that business of the victim was stopped due to non-renewal of license. Thus the plea of non-renewal of license cannot be sustained.

With regard to the monthly income of the victim although the claimants could not furnish any documents to prove income of the victim but considering the oral evidence learned Trial Judge assigned reasons to consider the monthly income of the victim to be Rs. 8,000/-. Upon perusing the reasons assigned by the Learned Trial Judge and upon considering the nature of business this Court does not find any reasons to interfere with the findings of Learned Trial Judge.

Hence this Appeal FMA-119 of 2024 stands disposed. Judgment and Award dated 11th August 2023 stands affirmed so far the Principal Compensation is concerned. However the interest awarded is reduced to 6%. The appellant Insurance Company shall deposit Rs. 17,83,600/-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 trial Court is deposited no further deposit be made.

The claimants/respondents are permitted to withdraw the compensation upon compliance of necessary formalities. In the event any amount is withdrawn during pendency of appeal necessary adjustment be made. Balance amount if any be returned to the Appellant with accrued interest.

Deficit Court fees be paid within 4 weeks.

TCR be sent by special Messenger lost to be put in by the claimants 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.)