**IN THE HIGH COURT AT CALCUTTA**
**Civil Appellate Jurisdiction**
**Appellate Side**

Present:

**The Hon'ble Justice Biswaroop Chowdhury**

***F.M.A. 101 of 2024***

***With***

***IA NO: CAN 2 of 2023***

***CAN 3 of 2023***

***United India Insurance Company Limited***

***VERSUS***

***Barnali Biswas & Ors.***

***With***

***C.O.T. 72 of 2023***

***Barnali Biswas***

***VERSUS***

***United India Insurance Company Limited & Anr.***

***With***

***C.O.T. 89 of 2023***

***Pradip Saha & Anr.***

***VERSUS***

***United India Insurance Company Limited & Ors.***

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| For the appellant in FMA 101 of 2024 and respondent no. 1 in COT 72 of 2023 and COT 89 of 2023: | Mr. Rajesh Singh, Adv. |
| For the respondent no.1/claimant in FMA 101 of 2024, appellant in COT 72 of 2023 and respondent no.3 in | Mr. Ashique Mondal, Adv.<br>Mr. Shahmeaz Alam, Adv.<br><br>Mr. Jayanta Banerjee, Adv.<br>Mrs. Ruxmini Basu Roy, Adv. |

COT 89 of 2023:

For the respondent nos. 2 & 3/claimants in FMA 101 of 2024, respondent no. 3 and 4 in COT 72 of 2023 and appellant nos. 1 and 2 in COT 89 of 2023:

**Last Heard on: August 01, 2026**

**Judgment on: August 18, 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 31-10-2022 passed by Learned Additional District Judge Fast Track 1st Court in MAC Case No-30 of 2016.

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

On 06.06.2014 Sergent Jewel Saha was on his duty at CGR Road with Motor Cycle bearing No-WB-07G/6950. It was around 10.50 A.M. the driver of the vehicle bearing No. WB-19G/1071 drove the same from west to east direction with high speed and zig-zag manner, lost his control and dashed against/behind the Motor cycle and the victim Jewel Saha. As a result the victim sustained severe injuries and was removed to CMR. 1. Where the victim was treated from 06.06.2014 upto 10.06.2014. On 10.06.2014 the victim expired for the said accidental injuries.

The offender driver of the involved vehicle bearing No. WB-19G/1071 was solely responsible for the accident.

Pursuant to the filing of the case notice was issued upon the opposite parties. Opposite party Vehicle owner did not contest the case. However opposite party Insurance Company contested the case by filing written statement. ISSUES were framed and evidence was adduced.

Learned Trial Judge by considering the issues framed and evidence adduced was pleased to dispose of the claim case by observing and directing as follows:-

'ORDERED that the instant claim petition u/s. 166 of the MV Act 1988 is allowed on contest as against the OP No-2/United India Insurance Company Ltd. and ex-parte against the OP No.1/owner with an award for compensation to the tune of Rs. 50,59,560/- along with interest @6% per annum from the date of filing application i.e. 24.06.2016 until payment.

The claimant/petitioners is hereby directed to deposit the deficit Court Fee according to the prescribed rate, within 15 days from the date of this order as per the amount of compensation prayed for. The payees are also granted the liberty to produce their PAN cards before the Insurance Company for TDS if any as per Law.

The OP No. 2/Insurance Company is directed to divide the aforesaid aggregate compensation amount equally among all the three legal representatives/claimants, namely Barnali Biswas (wife), Pradip Saha (father) and Sikha @ Shikha Saha (mother of the deceased victim) and pay the same within two months from the date of this award along with proportional amount of interest computed at the aforementioned rate on each individual compensation amount. The appellant Insurance Company being aggrieved by the Judgment and Award passed by Learned Trial Judge has come up with the instant appeal. The claimants also being aggrieved by the Judgment and Award passed by the Learned Trial Court has filed 2 separate cross-objections.

Heard Learned Advocate for the appellant/insurance company and Learned Advocate for the claimants/respondents. Perused the evidence adduced, and materials on record.

Learned Advocate for the appellant submits that the incident appeared to be a murder as per statement of eye witnesses. Learned Advocate further submits that driver of the vehicle dashed intentionally. Learned Advocate also submits that inspite of scope of overtaking accident was caused thus the act was intentional.

Learned Advocate for the claimants/respondents Pradip Saha and Sikha @ Shikha Saha respondent no-2 and 3 respectively submits that no plea was taken in the written statement about the case of murder and the plea was with regard to driving license thus no issue was framed with regard to murder. Learned Advocate further submits that after investigation charge sheet was submitted under Section 304 (II) of the Indian Penal Code which is a desperate act. Learned Advocate also submits that P.W.-5 did not mention that it was an intentional act.

Learned Advocate for the respondent no-1 submits that the charge sheet was ultimately submitted under Section 304(II) IPC thus the plea of murder cannot be sustained.

Both the Learned Advocates for the respondents submit that the compensation awarded is inadequate on the heads of medical expenses.

Learned Advocates for the respondents rely upon the following judicial decisions;

**Dipa Ganguly and Anr. VS New India Assurance Company Limited and Anr.**

(2010) 2 WBLR (Cal) 251.

**Magma HDI General Insurance Company Limited VS Tahamind Bibi and ors.**

FMA-792 of 2023.

(Calcutta High Court)

**Sarala Verma (SMT) and ors. VS Delhi Transport Corporation and Anr.**

Reported in (2009) 3 WBLR (S.C.) 700.

**National Insurance Company Limited VS Rekha Ben and ors.**

Reported in (2017) 13 SCC. 547.

**New India Assurance Company Limited VS Dolly Satish Gandhi and Anr.**

Special Leave petition (civil) Nos. 18267, of 2025.

(Supreme Court of India).

In the instant case the FIR was lodged with the allegations that dashing of the victim by the offending vehicle was intentional and amounts to murder. Although the FIR alleges murder and case was started against two persons, but the Police Authority submitted charge sheet against 1 person under Section 304(II)/427 IPC.

An FIR may be lodged before police about any accident by rash and negligent driving or intentional dashing of a person by any vehicle. It is upon the Police Authority to investigate and ascertain the truth and then proceed in accordance with law. A dashing of a person by a vehicle may appear to be intentional thus leading to the suspicion of murder but upon investigation by police Authority the same may not appear to be murder. In the instant case the Police Authority in the charge-sheet observed as follows:-

'Investigation revealed that CGR. Road is a very busy road on its both flanks and drivers of vehicles remain very cautious while driving vehicle to avoid any collision with other. In that circumstances accused person S1 No-

(01) had the full knowledge that if he drives his vehicle in such a high speed (as he was driving the same) in that busy road with heavy traffic and if he fit any other vehicle as human being then it would cause heavy damage death of such vehicle/human being. Thus from the charge-sheet it is clear that the driver of the offending vehicle knew that rash driving may cause death without intention of causing death. Now the point for consideration is whether inspite of submitting charge-sheet under Section 304(II) IPC claim for compensation under Section 166 of the Motor Vehicles Act 1988 maintainable.

In order to decide the issue it is necessary to consider some judicial pronouncements.

In the case of Dipa Ganguly VS New India Assurance Company Limited and Anr. (supra) Hon'ble Division Bench of this Court observed as follows:-

'*In the Act, the word "accident" has not been defined. Therefore, we are to interpret the said word as used in the context of the provisions of the Act. The word "accident" according to Oxford Advanced Learner's Dictionary of Current English, Fourth Edition, by A.S. Hornby means "events that happens unexpectedly and causes damages, injury, etc; chance: fortune;" According to the Oxford Universal Dictionary Illustrated, Revised and edited by C.T. Onions, Third Edition, the said word means, an event, esp. an unforeseen contingency; a disaster: chance; fortune; an unfavourable symptom; a casual appearance or effect;*

*The learned Tribunal below proceeded on the assumption that if the event occurs due to an intended act of somebody, the same cannot be described as an accident and in this case, since, the charge-sheet under Section 302 of the Indian Penal Code has been given, it is not a mere accident but intentional act of the murderer. In other words, the Tribunal was of the opinion that in order to invoke the jurisdiction of the Motor Vehicles Tribunal, the incident resulting in injury or death must arise of an act of negligence but not from a positive intended act.*

*We are, however, of the opinion that an accident within the meaning of the Act may occur not only from the negligent act but also from positive or intended act. Our aforesaid view finds support from the explanation added to Section 147(1) of the Act according to which the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.*

*Therefore, according to the said explanation, the accident within the meaning of the Act may cause either due to "omission" or "an act" of a person and in our opinion, such omission or the act need not be unintentional as would appear from the fact that in the proceedings under Sections 140, 163A or 163B of the Act, the Tribunal is not required to consider whether there was rash or negligent driving on the part of the driver of the offending vehicle or whether there was* *contributory negligence on the part of the victim. However, in order to invoke Section 166 of the Act, accident must not cause due to the self-incurred act on the part of the victim. But if the driver of the offending vehicle with the intention of killing the victim deliberately runs over the victim, the case will attract the provision of Section 166. In this connection, we may profitably refer to the following observations of the Supreme Court in the case of Regional Director, E.S.I. Corporation vs. Fransis de Costa reported in 1993 (suppl) 4 SCC 100 while dealing with the undefined word "accident" in the context of Employee's State Insurance Act:*

*"Accident has not been defined under the Act. The popular and ordinary sense of the word 'accident' means the mishap or an untoward happening not expected and designed to have an occurrence is an accident. It must be regarded as an accident, from the point of view of the workman who suffers from it, that its occurrence is unexpected and without design on his part, although either intentionally caused by the author of the act or otherwise. It may also arise in diverse forms and not capable of precise definition. The common factor is somewhat concrete happening at a definite point of time and an injury or incapacity results from such happening.*

*(Emphasis supplied by us).*

*We are, therefore, of the view that in order to maintain an application under Section 166 of the Act, from the point of view of the victim who suffers from it, the event, in order to be accident, must be unexpected and without design on* *his part, although it might be caused intentionally by the author of the act. For the purpose of granting relief under Sections 140 or 163A of the Act or in the cases under the category of 'hit and run', however, even the intentional act of the victim resulting in the accident is inconsequential.'*

In the case of Magma HDI General Insurance Company Limited VS Tahamina Bibi and ors. FMA-792 of 2023. (supra) (High Court at Calcutta) it was observed as follows:-

*'Thus upon considering the facts of the case and the decision of Dipa Ganguly and Anr (supra) this Court is of the view that even if a charge sheet is submitted by Police Authority under Section 302 or 304 IPC against driver of vehicle involved in accident Motor Accident Claim Tribunal shall consider the same as accident, and proceed in accordance with law. It has to be remembered that a charge-sheet may be submitted by Police Authority against driver of a vehicle involved in accident under Section 304 IPC, or 304 A IPC or under Section 302 IPC. By simply submitting charge sheet under Section 302 or Section 304 IPC and Section 304 A IPC against driver of offending vehicle does not make him guilty of offence of murder or culpable homicide or offence of rash driving unless it is proved beyond reasonable doubt before competent criminal court and there is finding to that effect by competent court. Moreover proceedings before Motor Accident claim Tribunal cannot remain stayed till findings is arrived at by Criminal Court, as Motor Vehicle Accident Claim Legislation is a beneficial legislation. Even if there is findings of Criminal Court the same may be*

*challenged in higher forum, thus Motor Accident Claim case should not depend on the result of criminal trial as the proceedings before tribunal are quasi judicial in nature and proof beyond reasonable doubt is not necessary, but simply on preponderance of probability. When driver of a vehicle dashes a person on the road rashly he may have the intention to cause death of the said person or may not have the intention. The Motor Accident claim Tribunal which is adjudicating claim case on death due to accident should consider the death due to rash driving as accident and proceed in accordance with law, irrespective of the intention of the driver, which is to be decided by Criminal Court. In other words unless there is an intentional act of the victim Motor Accident Claim Tribunal should consider the death caused by motor vehicle as accident as observed by the Hon'ble Division Bench of this Court in the case of Dipa Ganguly and ors (Supra.)'*

Thus upon considering the judicial decisions, the charge-sheet submitted by the Police Authority, the evidence adduced this Court is of the view that the Learned Trial Judge did not commit any error in observing that the death of the victim was 'hit and run' accident and thus resulted at least into an accidental, murder as expounded by the Hon'ble Supreme Court if not an outright vehicular road traffic accidental death. Thus the findings of the Learned Trial Judge should not be interfered with.

Now with regard to the quantum of compensation as the medical expenses paid by Mediclaim Policy was not taken into consideration in awarding compensation, the decision of the Hon'ble Supreme Court in the case of New India Assurance Company Limited VS Dolly Satish Gandhi and Anr. (supra) should be considered. The Hon'ble Supreme Court in the said case observed as follows:-

'*9. Having considered judgments of this Court as above, we are of the considered opinion that the answer to the question raised in this appeal is not a matter of Sherlockian deduction. A Mediclaim policy is a policy that is purchased by a person, accounting for the uncertainties of life and preparing a financial base for an unfortunate possible eventuality. The human body is a coming together of intricate systems where there is always a possibility that something may go wrong or may need mending. In today's time when medical expenses are skyrocketing for a variety of reasons, the ability to meet such expenses, suddenly as and when they may arise, is not something that rests with all. It is, as such, a necessary facet of preparation that people undertake. It doesn't specifically deal with accidental coverage only.*

*10. The contractual benefit of reimbursement of medical expenses as a result of this policy is, therefore, independent of any other claim. The provisions of the MVA are only triggered in the unfortunate eventuality if a death or injury arising out of a motor vehicle an accident occurs. That in itself, when it does arise, cannot eclipse the contractual benefit to which a person who has paid premiums, is entitled too. Compensation under MVA while it recognizes reimbursement of medical expenses is distinct from the contractual benefit,* *though it may be with respect to the very same heads. If the view of the High Courts that this would amount to "double benefit" is agreed to by this Court, a peculiar situation will arise. On the one end, it may save compensation from being affected by double benefit, if it can be called that, but on the other, it would denude the claimant of the benefits that arise out of them parting with their hard-earned money in the form of Mediclaim premiums. It would also amount to an undue advantage to the company granting the Mediclaim policy to the claimant if the claimant's claim is extinguished by the award of the MACT having granted medical expenses for, they would have received the premium but would not be required to pay any amount in the event of medical bills having arisen. Similarly, it may amount to an unjust benefit to the insurer of the offending vehicle if they are not required to compensate under one of the heads of medical expenses solely on account of the fact that the claimant had received the benefit of a policy for which they had been paying premiums for years on end. There is yet another aspect. The guiding yardstick in Mediclaim vis a vis MVA is different. In the former, a Mediclaim policy is taken up to a certain amount and if the claim of the policy holder once found to be holding merit go beyond it, the holder has no option but to foot the bill out of pocket however in the latter, because of its beneficial nature the only guide is the broad principle of just and fair compensation. Put differently, the compensation that may be awarded thereunder has no strict monetary limits.'*

Thus upon considering the judicial decision and the order of the Learned Trial Judge this Court is of the view that payment made by Mediclaim Companies cannot be adjusted with the compensation.

However instead of going into further arithmetical calculation this Court is of the view that compensation should be enhanced to Rs. 60,00,000/- which in the opinion of this Court is just and reasonable.

Hence this FMA-101 of 2024 stands disposed. judgment and Award dated 31-10-2022, passed by Learned Additional District Judge Fast Track 1st Court Alipore South 24 Parganas in MAC-Case No. 30 of 2016 stands modified to the extent that the respondents no-1, 2 and 3 claimants are entitled to compensation of Rs. 60 lakh. The respondent no-1 Barnali Biswas will be entitled to Rs. 30 lakhs, respondent no-2 Pradip Saha is entitled to Rs. 15 lakhs and respondent no-3 is entitled to Rs. 15 lakh.

The appellant United India Insurance Co. Ltd. shall deposit before Registrar General Rs. 60 lakh along with 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 Judge is deposited balance deposit be made.

The claimants/respondents will be entitled to withdraw their share of compensation upon compliance of necessary formalities.

Deficit Court fees be paid.

TCR be sent back by special messenger cost to be deposited by respondents/claimants within 3 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.)**