

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

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 750 of 2023

The Oriental Insurance Co. Ltd.

VERSUS

Anwasha Ghosh & Anr.

For the appellant/insurance company: Mr. Rajesh Singh, Adv.

For the respondents: Mr. Krishanu Banik, Adv.

Last Heard on: July 20, 2026

Judgment on: August 01, 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 20-05-2023 passed by Learned Additional District Judge 10th Court Alipore South 24 Parganas in MAC Case No. 869 of 2017.

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

On 05-01-2017 the victim along with his associates were waiting to cross Michael Nagar Road near Shree Punjab. It was around 8.00 P.M. when the victim and his associate saw that there is a red signal for the traffic both of them crossed the road and was walking by the side of said road towards Dum Dum. At that moment the offender driver of the involved Maruti Van being No. WB-52J/4052 suddenly came to the place of accident with excessive speed and in zig-zag manner violating the traffic signal and dashed both the victims from behind. As a result both the victims sustained severe injuries all over their body mainly the victim Subir Ranjan Ghosh sustained severe head injury and lost his consciousness instantly. Even after prolonged treatment the victim did not regain consciousness and finally victim succumbed to on 31-01-2017. The offending driver of the involved Maruti Van being No. WB-52J/4052 drove the same in a jig-jag manner from Michael Nagar towards Dum-Dum and when the said offender driver reached near the place of occurrence he suddenly lost his control over the vehicle turned his vehicle to the extreme wrong side and caused the accident. The offender driver of the involved Maruti Van 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 appear to 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 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 MAC Case No. 869 of 2017 be and the same is allowed on contest without costs against the insurance company being (OP no. 2) and ex-parte against the OP no-1. The OP no. 2 shall pay the amount of Rs. 26,22,579/- (Rupees twenty six lakhs twenty-two thousand five hundred seventy nine) to the claimant Anwesha Ghosh being the only child of the victim.

The OP no. 2 being the Oriental Insurance Co. Ltd. is directed to pay to the claimant Anwesha Ghosh, Rs. 26,22,579/- (Rupees twenty six-lakhs twenty two thousand five hundred seventy-nine) only by account payee cheque together with an interest @8% p.a. as compensation calculated from the date of filing (excluding the period from March 2020, to February 2022 awarding to the pandemic and the period).

The amount above-mentioned must be paid to the claimant within two months of this judgment failing which the claimant shall have the liberty to put the judgment into execution.'

The appellant National Insurance Company Limited being aggrieved by the Judgment and Award passed by the Learned Trial Judge has come up with the instant appeal.

Heard Learned Advocate for the Appellant and Learned Advocate for the Respondent/claimant. Perused the evidence adduced and materials on record.

Learned Advocate for the appellant submits that in the written complaint lodged before the Police Authority the name of the injured victim was not mentioned although vehicle number is mentioned. Thus the case of the claimants is doubtful. Learned Advocate further submits that the victim was discharged from hospital on 28/01/2017 and death took place on 31/01/2017 before filing of charge-sheet and in the charge sheet Section 304A IPC was not added thus it cannot be said that death was due to road traffic accident. Learned Advocate also submits that the employee of ILS hospital deposed that the victim/patient was discharged after recovery thus it is not a death due to road traffic accident. It is submitted by the Learned Advocate that P.W. 3 who is an eye witness has in the cross-examination stated that it is not a fact the accident was caused due to fault of driver of vehicle WB-52J/4052.

With regard to the quantum of compensation learned Advocate for the appellant submits that the compensation awarded is excessive.

Learned Advocate further submits that from the Income Tax Return filed by the claimants it will appear that the yearly income of the victim was 4,16,015 out of which Rs. 74,940/- is interest from investment thus on account of death of the victim the income of Rs. 74,940/- per year is not affected thus the said income should not be taken into consideration to determine the compensation.

Learned Advocate for the claimants/respondents submits that mentioning of the name of the victim in charge sheet is not relevant as in the

instant case the discharge summary mentions road traffic accident. Learned Advocate further submits that the victim was recovered in an unconscious state and due to monetary problem he was discharged. Learned Advocate also submits that FIR is lodged on the same day and as per motor vehicle rules either doctor certificate or post mortem report is to be filed.

It is submitted by Learned Advocate that before death of the victim the fixed deposits were encashed thus the income from other sources should not be excluded.

With regard to the first submission of Learned Advocate for the appellant that the name of the victim was not mentioned in the FIR it appears from the FIR that the same was not lodged by members of the family of the victim, but by a person who was on the street. Moreover in the FIR it is mentioned 2 persons suffered injury and admitted to local nursing home thus non-mentioning of names of the victims is not fatal.

With regard to the second submission of Learned Advocate that the victim was discharged after recovery and thus death is not due to road traffic accident but due to some other cause it is necessary to peruse the 'Discharge Certificate' of the victim.

Upon perusal of the discharge summary it will appear that the victim Subir Ranjan Ghosh was admitted to hospital on 05/1/2017 in an unconscious state and there is mention of road traffic accident. The victim was in hospital for 23 days and it appears from record that during this period

different medicines were administered upon the victim and different treatments were carried out.

With regard to course of treatment and condition of patient at the time of discharge the following observation was made in the discharge summary.

‘Patient was admitted with the above-mentioned clinical complaints, and managed initially much conservatively followed by definitely (external ventricular drainage) under GA. The neurological status of patient did not improve much. In due course patient was on with mechanical ventilation for a long time and finally tracheostomy was done. Dyselectrolytemia and LRTI with XDRKPC are the prime complications developed and managed accordingly. The patient presently is being transferred with Tracheostomy tube and Ryles tube, Silicon Cotheter and IV Cannula in situ.’

Further in the discharge summary the medicines Insulin and eye drop which were to continue were mentioned. The victim/patient died within 3 days from date of discharge from hospital.

Upon considering the discharge summary it will appear that it is not a normal discharge after recovery but transfer with Tracheostomy tube and Ryles tube, silicon caitheter and IV Cannula in patient as condition did not improve much.

Thus the total period of stay in hospital, which is 23 days, the types of treatment meted out, the observation in discharge summary and the death of

the Patient/victim within 3 days from discharge will not create any iota of doubt that the victim pursuant to accident did not recover from injury inspite of 23 days treatment in hospital and finally passed away. Thus death of the victim due to road traffic accident is established.

As the Learned Advocate for the appellant relies upon the cross-examination of Purnima Roy P.W. 3 the same is quoted as follows:-

‘I along with the victim was on the side of the road. We were not on the footpath. It is not a fact that the accident was caused due to the fault of the driver of the vehicle WB-52J/4052. It is not a fact the victim was responsible for the accident. It is not a fact that I did not witness any accident on the alleged date and time.’

As the Learned Advocate refers to reply to the suggestion given by Insurance Company where the witness stated that it is not a fact that the accident was caused due to the fault of driver of vehicle WB-52J/4052, and in the usual practice a denial or, a reply is given to the suggestion put to the witness it is necessary to decide what suggestion was given for the witness to say ‘not a fact that the accident was caused due to fault of the driver of vehicle WB-52J/4052.’ The suggestion for such reply has to be, ‘the accident took place due to fault of vehicle WB-52J/4052’ which is quite absurd to be put by Insurance Company. Insurance Company defending the vehicle owner cannot put suggestion that accident took place due to fault of the vehicle. Either the witness did not understand the question or it was wrongly recorded. Thus

considering the evidence of Purnima Roy P.W. 3 as a whole along with FIR, Charge-sheet and Medical reports it is clear that accident took place due to rash and negligent driving by driver of vehicle no-WB -52J/4052. Learned Trial Judge upon considering the evidence has given specific reasons for arriving at the findings of rash and negligent driving by driver of vehicle WB-52J/4052. Thus this findings should not be interfered with.

With regard to the submission of Learned Advocate for appellant that Income from other sources should not be considered for computing compensation this Court is of the view that in the present case it should be. As P.W. 1 widow of the victim stated that Rs. 800,000/- is spent for medical treatment of victim and there is no cross-examination and the fact that the victim being in legal profession and not government service and there being no scope of exgratia payment or provident fund the widow had to depend on fixed deposits to pay medical expenses and meet the family needs till compensation is received. Thus it would not be proper to exclude income from other sources.

Although Income from other sources may not be lost on the death of the victim but the issue of exclusion will depend upon the facts of each case. Thus the Learned Trial Judge did not commit any error in allowing the claim case and awarding compensation of Rs. 26,22,579/- to the claimant/respondent. Thus this Court does not think fit to interferes with the principal compensation awarded. However with regard to interest the same should be reduced to 6% p.a.

Hence this appeal FMA-750 of 2023 stands disposed. Judgment and Award dated 20-05-2023 passed by Learned Additional District Judge 10th Court Alipore South 24 Parganas in MAC Case No-869 of 2017 is affirmed so far the principal compensation is concerned. However with regard to rate of interest awarded the same stands reduced to 6%. The Appellant shall deposit the compensation as awarded by the Learned Trial Court along with interest @6% p.a. from date of filing claim case (excluding the period March 2020 till February 2022) till today. In the event compensation awarded by Trial Court is deposited, no further deposit be made. The claimant/respondent will be entitled to withdraw compensation upon compliance of necessary formalities. Balance amount if any be returned to the appellant/Insurance along with accrued interest.

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.)