IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 1050 of 2024

INDUSIND GEN. INS. CO. LTD.

(Erstwhile Reliance Gen Ins Co Ltd)

VERSUS

Jaya Dey & Ors.

For the Appellant/Insurance Co.: Mr. Gopa Das Mukherjee, Adv.

For the Respondent/Claimant: Mr. Saidur Rahaman, Adv.

Last Heard on: July 29, 2026

Judgment on: August 11, 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 13.03.2024 passed by Learned Additional District Judge 2nd Court Islampur Uttar Dinajpur in MAC Case No-125/2021.

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

On 18/12/2020 at about 11.30 P.M. the victim Vivek Dey was returning home at Baneswar more under Bhaktinagar Police Station from his place of business i.e. from Pradhannagar after closing his shop through the left side of Iskon Temple road by driving his Motor Cycle bearing No. WB-74AS/7755 in moderate speed. When he reached near Annapurna TVS stock yard World Ford more in the mean time one Dumper truck bearing No. WB-76-A/8884 was coming from the opposite direction with over speed reckless negligent manner and at the P.O. the driver of the said Dumper truck lost the control over his vehicle went to the wrong side of the road and directly dashed on the motor cycle of the victim Vivek Dey with great force. As the effect of the said accident he was thrown up on the road from his Motor cycle and sustained severe bleeding injuries on his head and other limbs of his body. Just after happening of the accident the local people rescued him in serious condition and took him to Anandaloke Hospital Pvt. Ltd Siliguri. He was admitted there for treatment and during treatment he expired in the said nursing hime on 23/12/2020. The post Mortem of Vivek Dey was held at North Bengal Medical College and Hospital Siliguri Darjeeling Vide Bhaktinagar P.S. U/D. Case No-103/20 dated 23/12/2020.

The accident took place due to high speed reckless and negligent driving on the part of the driver of the offending Dumper truck bearing No. WB-76A/8884. He was sole responsible for the alleged accident. There was no fault on the part of the deceased Vivek Dey.

Pursuant to filing of this 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 upon considering the evidence adduced and upon hearing Learned Advocates was pleased to dispose the claim case by observing and directing as follows:

'Hence it is ORDERED that the instant MAC Case No. 125 of 2021 be and the same is allowed on contest against opposite party no-2 and ex-parte against opposite party no. 1 however without costs.

The claimants/petitioners namely Jaya Dey and Goutam Dey do get an award of Rs. 38,82,520/- (Rupees thirty eight Lakhs eighty two thousand five hundred twenty only) as just compensation along with interest thereon @ of 5% per annum to the petitioners/claimants aforesaid within thirty days hereof failing which the claimants/petitioners will be at liberty to proceed in accordance with law.'

The appellant Reliance General Insurance Co. Ltd being aggrieved by the Judgment and Award passed by Learned Trial Judge has come up with the instant appeal.

Heard Learned Advocate for the appellant Insurance Company and Learned Advocate for the respondents/claimants. Perused the evidence adduced and materials on record.

Learned Advocate for the appellant submits that FIR was lodged after 4 days of accident thus the case of the claimants is doubtful. Learned Advocate further submits that the Fitness Certificate was not valid, and Pollution Under Control Certificate valid till 20/06/2021. It is also submitted by the Learned Advocate that death is caused due to head injury hence there is contributory negligence as the victim was riding motor cycle without helmet. With regard to consideration of the income of the victim the Learned Advocate relies upon the following judicial decision:-

Rashmirekha Tripathy and Anr. VS The Branch Manager (Legal claims). Shriram General Insurance Company Limited and ors.

SLP(C) No-27220 of 2024.

Supreme Court of India.

Learned Advocate for the claimants/respondents submits that no evidence was adduced by the Insurance Company with regard to contributory negligence. Thus the plea cannot be taken at this stage.

Learned Advocate further submits that the claimants produced Income Tax Return of 6 years and the last year income prior to death is taken. Learned

Advocate also submits that Judgment and Award passed by Learned Trial Court should not be interfered with.

With regard to the first submission of Learned Advocate for the appellant regarding delay in lodging FIR it is held in different Judicial Pronouncements that in Indian Society families of injured rushes to hospital and not to Police Station. In the instant case accident took place on 18/12/2020 and FIR was lodged by father of the victim on 22/12/2020. Thus 4 days delay in lodging FIR is not fatal.

With regard to the validity of fitness certificate as submitted by Learned Advocate for the appellant it appears that the year of manufacture of the truck was in 2010, and last inspection was made on 30th July 2019, and the validity was till 27-08-2020. Although validity of driving license and permit are grounds for consideration as to whether Insurance Company should be absolved from liability but it is not so in case of validity of fitness certificate.

Moreover from the charge sheet it appears that as per report of Mechanical expert there is no mechanical failure found at the time of examination. On the basis of report of mechanical expert and in the absence of report that the offending vehicle was unfit to be driven, the Insurance Company cannot be absolved from liability of payment of compensation.

Now with regard to the issue of contributory negligence that the victim was not wearing helmet no evidence was adduced in this regard and no argument is advanced before Learned Trial Court. Learned Court in its findings observed as follows:-

'The most vital witness remains for the opposite party/Insurance Co. is the P.W. 2 who has claimed to be an eye witness of the accident. But during Cross-examination of P.W. 2 who has claimed to be an eye witness of the accident. But during cross-examination of P.W. 2 nothing has come out to indicate that the victim Vivek Dey was responsible in any manner for causing the accident.'

Thus upon considering the evidence adduced and the observation of Learned Trial Judge, the plea of contributory negligence cannot be sustained. Now with regard to the income of the victim as the claimants relied upon Income Tax Return of the victim it is necessary to consider the decision of Rashmirekha Tripathy VS The Branch Manager. (Legal Claims). Shriram General Insurance Company Ltd. (supra) where the Hon'ble Supreme Court observed as follows:-

'*19. When it comes to self-employed / individuals carrying out their own business, in our view, the average of the income specified in the ITRs of up to the previous three years is to be taken as a reference point for assessment of annual income from their business. There may also be a scenario where only one or two ITRs have been filed. Given such scenarios and the fluctuation of income in these professions, surrounding circumstances are also to be taken into consideration. These would include:*

a) The nature of the business (including geographic location, category etc.);

b) Growth pattern of the business and impact of death on the business;

c) Potential growth of business (for instance certain businesses are capital intensive at the outset and are profitable at scale/in the future);

d) Negative income (certain businesses may require losses in the initial years, which may not reflect the true financial standing); and

e) Any other relevant factor relating to the business.

20. The date when the ITRs are filed would also become a relevant consideration, as there may be scenarios where inflated income is showcased after death/injury. In these circumstances, the surrounding factors of the business would become more relevant. However, if sufficiently supported by financial statements, such ITRs may also be taken into consideration.

21. Coming to the facts at hand, the claimant-appellants have brought on record two ITRs for AY 2017-18 and AY 2018-19, whereby the annual income of the deceased is Rs. 11,59,882/- and Rs.15,06,571/- respectively.'

Upon considering the decision of the Hon'ble Supreme Court and the facts of this case it appears that the income of the victim comprised both Salaries, as well as income from business. Learned Trial Judge upon considering the income tax return from 2015-10, 2016-17 and 2018-19, and considering the income tax return of 2018-19 and refusing to accept return of the victim after his death considered annual income of Rs. 3,20,380/-. Thus considering the nature of business of the victim, and the reasons assigned by the Learned Trial Judge this Court is of the view that the Learned Trial Judge did not commit any error with regard to determining the total compensation of Rs. 38,82,520/- by arithmetical calculation. However in the view of this Court compensation of Rs. 38 lakhs is just and reasonable.

Hence this Appeal FMA-1050 of 2024 stands disposed. Judgment and Award dated 10-03-2024 passed by Learned Additional District Judge 2nd Court Islampur Uttar Dinajpur stands modified to the extent that the claimants/respondents are entitled to Rs. 38 lakhs from the date of communication of this Order. The appellant/Reliance General Insurance Co. Ltd. shall deposit Rs. 38 lakhs along with interest @5% per annum from date of filing claim case till deposit. Such deposit shall be made within 8 weeks from the date of communication of this order before Registrar General High Court Calcutta. In the event compensation awarded by the 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 with accrued interest be returned to the appellant.

As Appellant Reliance General Insurance Company is merged to Indusind General Insurance Company Ltd. the Term Reliance General Insurance

Company Limited will be read as Indusind General Insurance Company Limited in the order.

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.)