IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 571 of 2024

With

IA No.: CAN/1/2024, CAN/2/2025

The Oriental Insurance Co. Ltd.

VERSUS

Anima Mondal @ Anima Mandal & Ors.

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

For the respondents/claimants.: Mr. Saswata Bhattacharyya, Adv.

Last Heard on: July 03, 2026

Judgment on: July 17, 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 17.01.2024 passed by Learned Additional District Judge 13th Court Alipore South 24 Parganas in MACC No. 808 of 2021. The case of the respondents/claimants before the Learned Trial Court may be summed up thus:-

On 18.04.2021 at about 23.00 hrs. the driver of the offending pickup van bearing registration No.-WB-97-3754 was proceeding through Namkhana of Diamond Harbour Road in a rash and negligent manner at a high speed by endangering human life and safety and when it reached near Dhaler Khal stoppage its tyre burst all on a stand and it turned twice with a great force. The deceased Birkamal alias Birkamal Mondal and others who were sitting inside the driver's cabin were thrown out of the vehicle and they suffered severe injuries. The deceased was taken to Kakdweep hospital for treatment. Thereafter he was removed to Behala Apex Clinic Pvt. Ltd. where he breathed his last on 19.04.2021. It has been alleged that the accident took place due to rash and negligent driving on the part of the driver of the said pick up van. The deceased was a healthy man with active habits and aged about 37 years at the time of the accident and he used to earn Rs. 9000.00 per month by rendering his services as Khalasi under Nabin Hati Opposite Party no. 1 herein. Pursuant to filing of the claim case notice was issued upon the Opposite Parties. The 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 the Learned Advocates was pleased to dispose the claim case by observing and directing as follows:-

'Hence, it is,

ORDERED

That the instant claim case U/S 166 of M.V. Act is hereby allowed ex-parte against the O.P. No 1/Owner and on contest against the O.P. No. 2/Insurance Company without any order as to cost.

That the claimants get an award of Rs. 17,79,000/- (Rupees seventeen lakh seventy nine thousand only) plus up-to-date interest. Claimant no. 1 namely, Anima Mondal shall get an amount of Rs. 3,94,200/- and the rest of the claimants do get an amount of Rs. 3,46,200/- each.

That the amount of compensation, as awarded, shall carry a simple interest at the rate of 9 (nine) per cent per annum from the date of filing of this case till final realization of entire amount.

That the opposite party no. 2 is directed to comply with this order within 90 days from this date; in default the claimant shall be at liberty to put this award in execution in accordance with law.

Let a copy of this order be supplied sent to the office of the OP no. 2, free of cost, for compliance.'

The appellant Oriental Insurance Company Ltd. being aggrieved by the Judgment and Award passed by the Learned Trial Court has come up with the instant appeal.

Heard the Learned Advocates for the appellant and Learned Advocate for the respondents/claimants. Perused the evidence adduced and materials on record. Learned Advocate for the appellants submits that the FIR was lodged after 77 days and thus the case of the claimant is doubtful. Learned Advocate further submits that the case was due to tyre burst and does not come under the category of negligence in driving a vehicle. Learned Advocate also submits that the owner of the vehicle in cross-examination admitted that accident took place due to burst of tyre and it was the duty of the owner to get the vehicle in roadworthy condition. Learned Advocate relied upon following judicial decision:-

Manjusha and ors. VS United India Assurance Company Limited and Anr.

Special Leave Petition (C) No. 5885 of 2019.

Supreme Court of India.

Minu B. Mehta and Anr. VS Balkrishna Ramchandra Nayan.

AIR 1977 SC. 1248.

New India Assurance Co. Ltd. VS Smt. Mrunal Makarand Patwardhan.

First Appeal No. 1180/2017.

High Court at Bombay.

With regard to quantum of compensation Learned Advocate submits that the Learned Trial Judge without proper proof of income considered the monthly income of the victim as Rs. 9,000/- thus the compensation awarded is excessive.

The Learned Advocate for the Respondents/claimants submits that the accident took place due to rash and negligent driving part of the driver of the offending vehicle which was the sole cause of the accident. Learned Advocate further submits that the driver was driving the vehicle in high speed in a rash and negligent manner and lost control of the vehicle. Learned Advocate also submits that tyre burst may happen even after proper maintenance of and fixing if care not taken in driving vehicle with new tyre. Learned Advocate also submits that there is no violation of the policy of Insurance. With regard to the income of the victim and claim of compensation awarded Learned Advocate submits that the compensation awarded was reasonable and as per the deposition of P.W. 3 the daily wages paid to the victim was Rs. 300/- per day appearing from Exhibit no. 12. It is submitted that in the cross-examination Opposite Party no. 2 admitted that he earns Rs. 30-35 Thousand per month from the said vehicle which includes of incidental expenses and thus payment of Rs. 9000/- per month towards Khalasi is not unusual. It is submitted by Learned Advocate that the compensation awarded to the claimants/respondents is reasonable.

With regard to the submission of Learned Advocate for the appellant that delay in lodging the FIR makes the case of the claimant doubtful it is observed in different judicial decisions that mere delay in lodging FIR about accident is not fatal. In Indian society family members of injured rushes to hospital and not to Police Station. Moreover when there is bereavement in family it takes time for the family members to recover from the grief. In the instant case the complainant being the brother of the victim in the Petition under Section 156(3) CrPC stated that he informed about the accident to local Police Station and Superintendent of Police by registered post thus delay in lodging petition under Section 156(3) CrPC before Judicial Magistrate which was treated to be FIR is explained.

With regard to the submission of Learned Advocate for the Appellant that bursting of tyre is not as a result of rash and negligent driving but due to non maintenance of tyre such submission cannot be sustained for the reason that as per evidence of P.W. 2 vehicle WB-97-3754 (Pick up van) was driven with a high speed and rash and negligent manner. Nothing could be shaken in cross-examination about rash and negligent driving of vehicle WB-97-3754. P.W. 3 owner of the vehicle admitted the accident. The allegation of rash and negligent driving is corroborated in the charge sheet submitted by Police Authority. Thus the instant case involves both rash driving and bursting of tyre. Negligence as is held in different judicial decisions does not only mean negligent driving but also includes negligence in not examining as to whether the vehicle is fit to be taken on road.

In the case of New India Assurance Co. Ltd. VS Smt. Mrunal Makarand Patwardhas (supra) the Hon'ble Court observed as follows:-

'6. It is contention of learned counsel for the appellant that burst of tyre is an act of God and it was not negligence of driver of the offending vehicle. The Dictionary meaning of "act of god" is "an instance of uncontrollable natural forces in operation". It refers to a severe, unanticipated natural event for which no human is responsible. In my view, The bursting of tyre cannot be termed as an act of God. It is an act of human negligence. There are various reasons of bursting of tyre, i.e. High speed, under inflated or over inflated tyres, second hand tyres, temperature etc. The driver or owner of the vehicle has to check the condition of tyre before travelling, burst of tyre cannot be termed as natural Act, it is human negligence.'

In the instant case the Appellant Insurance Company has also not established that the vehicle owner has violated conditions of Policy thus the Insurance Company cannot be absolved from paying compensation.

However with regard to quantum of compensation the claimants have proved the occupation of victim by examining P.W. 3 owner of the offending vehicle. Nothing could be shaken in cross-examination of P.W. 1 and P.W. 3 that victim was Khalasi of vehicle WB-97-3754. As the victim was Khalasi of a vehicle it is not unusual for Khalasi of vehicle to earn Rs. 9,000/- per month. Learned Trial Judge upon considering the evidence of P.W.-1 and P.W. 3 and assigning reason has rightly decided to consider the monthly income of victim to be Rs. 9,000/-.

Thus this Court does not find any error to the principal compensation awarded by Learned Trial Court. However with regard to grant of interest this Court is of the view that 6% interest per annum is just and reasonable.

Hence this Appeal FMA 571 of 2024 stands disposed. The Judgment and Award dated 17-01-2024 passed by Learned Additional District Judge 13^{th} Court Alipore South 24 Parganas in MACC 808 of 2021 stands affirmed with regard to the principal compensation Awarded. However with regard to rate of interest the same stands modified to the extent that the claimants/respondents are entitled to interest on the compensation awarded @6% per annum from date of filing claim case till today. The appellant Insurance Company shall deposit Rs. 17,79,000/- with interest @6% per annum before Registrar General High Court Calcutta 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 respondents/claimants is entitled to withdraw the compensation along with interest upon compliance of necessary formalities. Balance amount if any be returned to the appellant Insurance Company along with accrued interest if any.

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.)