

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

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 357 of 2024

With

IA NO: CAN/3/2019 (Old No: CAN/9363/2019),

CAN/4/2023

Bajaj Allianz General Insurance Co. Ltd.

VERSUS

Rajni Singh @ Rajni & Ors.

For the Appellant:

Mr. Rajesh Singh, Adv.

For the Respondent:

Mr. Partha Banerjee, Sr. Adv.
Ms. Sarmistha Ganguly, Adv.

Last Heard on: July 21, 2026

Judgment on: July 28, 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 23rd February 2017 passed by Learned Judge Bench II. City Civil Court Calcutta in MAC Case No. 675 of 2009.

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

At the material time on 23-04-2009, the driver of the offending vehicle No. WB-16H-4181 drove the vehicle in a rash and negligent manner on strand Road endangering life and safety of other users of the said road and thereby dashed the victim Motor Cyclist and as a result he sustained severe bleeding injuries and removed to CMRI where he expired on 23-04-2009.

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 upon considering the evidence adduced and upon hearing the Learned Advocates for the parties was pleased to dispose of the claim case by observing and directing as follows:-

'Hence it is Ordered that the MACC case be and the same is allowed on contest without cost. Claimant/petitioner Rajni @ Rajni Singh is entitled to get Rs. 5,31,000/-. Raj Kumar Singh is found entitled to get Rs. 5,26,000/- with interest @9% per annum from the date of filing till date of payment.

O.P. 2 Bajaj Allianz General Insurance Company Limited is directed to pay two separate a/c payee cheques on stated amount + interest in the names of two claimants within sixty days of this order.'

The appellant Bajaj Allianz General 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 respondents/claimants. Perused the evidence adduced and materials on record.

Learned Advocate for the appellant submits that the involvement of the vehicle is in dispute as the incident took place on 22/04/2009 and FIR was lodged on 01/06/2009 after a period of 37 days, and previous FIR was against unknown vehicle.

Learned Advocate further submits that till 01/06/2009 there was no information to the Police thus the statement is not reliable. Learned Advocate also submits that deposition of D.W. 1 along with bed head ticket will go to show that the victim was dashed by Truck and not by Maruti Zen. Learned Advocate also disputes the quantum of compensation awarded.

Learned Advocate for the respondents/claimants submits that whatever the witnesses deposed is corroborated by FIR. Thus the Learned Trial Judge did not commit any error in allowing the claim case.

Learned Advocate relies upon the following judicial decisions:

Bimla Devi and others VS Himachal Road Transport Corporation and others.

Reported in AIR-2009 (S.C) 2819.

Putul Baksi VS National Insurance Company Ltd.

2018 (1) CHN. 412.

Before proceeding to decide the material in issue it is to be remembered that FIR with regard to road accident may be lodged against known vehicle as well as against unknown vehicle. When an FIR is lodged against known vehicle it is incumbent upon the Police Authority to identify, and trace out the vehicle and proceed in accordance with law. In the event FIR is against known vehicle it is the duty of the Police Authority to verify the allegations made in the FIR and then proceed in accordance with law.

Upon perusal of FIR it appears that the same was instituted suo-moto by Police Authority against unknown vehicle. In the charge sheet it is stated by the Police Authority that at the mutation of the case offending vehicle was unidentified but at the progress of investigation on the letter of complaint of eye witness who identified the offending vehicle the delinquent driver was identified who surrendered before police and was arrested.

Now upon perusal of the representation of Aditya Singh and Pankaj Singh to the Deputy Commissioner of Police Traffic Lalbazar, it will appear that the informant gave necessary particulars as to how the accident took place. He also stated that he recorded the vehicle number in his left palm when the said vehicle was trying to flee. He stated that the victim was taken to Medical

College for immediate treatment. The said informant deposed as P.W. 2, and in his evidence he re-iterated what he stated before Deputy Commissioner of Police in his representation dated 01-06-2009. Nothing has come out in cross-examination which will go to show that he was not present at the accident spot or that he did not record number of the offending vehicle.

Now with regard to the deposition of O.P.W. 3. Dr. Rathin Mukherjee it appears that the said witness stated that the said victim was admitted to Calcutta Medical Research Institute Kolkata at ICU. At the time of admission to the ICU the patient was conscious. He was told by the patient himself that he met with a road traffic accident in the evening on 22-04-2009 by a truck.

Now the point for consideration is whether the statement given by the patient should be relied upon.

Upon perusal of the extracts of General Diary recorded by Police Authority it appears that on 22-04-09 at 21-55 hrs accident took place. Pursuant to receiving information of accident the Police Authority proceeded towards Medical College and Hospital. The patient on being asked by the Police stated that his name as Sikander Singh son of Jagindar Singh 201/9 G.T. Road Gusurree P.S. Malipanehghora District Howrah and he stated that on 22-04-09 around 21.45 p.m. he was riding his MC bearing No. WB-128-6737 Bajaj Pulser on strand Rd. South to North direction and reached in front of 38 strand Road one unknown vehicle dashed him which was moving South to North direction and as a result he received bleeding injury on his left arm. The injured person was unable to say the number of offending vehicle. The elder

brother of injured person was contacted through cell phone and he arrived shortly and he informed that he would remove his brother CMRI for better treatment.

Upon comparative reading of the deposition of O.P.W./D.W. 3. Dr. Rathin Mukherjee and the G. D. extract of Police Authority it will appear that on 23-04-09 the patient was conscious. However at Medical College the Patient gave particulars how accident took place but could not give the number of vehicle nor could state the type of vehicle which caused the accident. However when the patient was shifted to CMRI he stated before doctor that the truck caused the accident but could not say time a place of the accident. Thus at the initial stage pursuant to the accident the patient was in a position to say place and time of accident but as time passed and condition deteriorated and the patient was shifted the patient was not in a position to give time and place of accident. Thus even if the patient stated at 12.05 am which is less than 2 hours before his death that truck was involved the same should not be relied upon. Moreover when a patient is brought to hospital, the case history is recorded upon obtaining statements from persons who bring the patient as well as the patient. In the instant case although the injured was admitted to Medical College and Hospital after the accident but the said records were not called for by the Insurance Company nor the said hospital doctors examined.

Thus without comparative study of records of both hospitals it cannot be concluded that truck was involved when the injured did not mention type of vehicle before Police Authority. Thus the Learned Trial Judge did not commit

any error in not relying upon the statement made by the victim to the Doctor. In the facts and circumstances this Court does not find any error in the Judgment and Award passed by Learned Trial Judge regarding accident and Principal Compensation. However with regard to interest this Court is of the view that interest @6% p.a. is just and reasonable.

Hence this Appeal FMA-357/2024 stands disposed. Judgment and Award dated 23rd February 2017 passed by Learned Judge Bench-II City Civil Court Calcutta in MAC Case No. 675 of 2009 stands affirmed so far Principal compensation is concerned. However interest awarded is reduced to 6% p.a. The Appellant Bajaj Allianz General Insurance Company Limited shall deposit the compensation Awarded by Learned Trial Court along with interest @6% p.a. from date of filing claim case till today before Registrar General High Court Calcutta if not deposited. Such deposit shall be made within 8 weeks from the date of communication of this Order.

The Respondents/claimants will be entitled to withdraw the compensation upon compliance of necessary formalities. Balance amount if any with accrued interest will be returned to appellant Insurance Company.

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.)