

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS

FMA 49 of 2024
BIJULI KONWAR & ANR.
Vs
NATIONAL INSURANCE CO. LTD.
With
FMAT (MV) 102 OF 2024
NATIONAL INSURANCE CO. LTD.
Vs
BIJULI KONWAR & ANR.

For the appellant

(In FMA 49 of 2024)

: Mr. Gobinda Saha, Adv.

For the respondent

(In FMAT (MV) 102 of 2024)

Ms. Srija Bhowmik, Adv.

Ms. Priyanka Dey, Adv.

Mr. Milan Chandra Laskar, Adv.

Mr. Shanghai Choudhury, Adv.

For the Appellants

(In FMAT (MV) 102 of 2024)

(In FMA 49 of 2024)

: Mr. Hirak Barman, Adv.

Mr. Chandan Roy, Adv.

Reserved On

: 20.08.2026

Judgement On

: 15.09.2026

Uploaded On

: 15.09.2026

CHAITALI CHATTERJEE DAS, J.:-

1. Both the claimant and the Insurance Company have assailed the award passed by the Learned Judge, Motor accident claim Tribunal on 31st day of July, 2024. Since both the parties are same and the appeals filed assailing are against the same judgement, for the sake of convenience and brevity both the appeals are taken up together and heard analogously and this court is passing the common judgement which is as follows.

Brief fact of the case

2. One Dehi Kunuar @ Dehi Ram Konwar aged about 54 years working at the Post of Ex Fire Man grade -I, under M.E.S, non-industrial staff of 585 ENGR SUB PARK C/099 APO faced a road traffic accident on December 20,2014 at about 5 P.M. near Dhara Basti District Darjeeling near. After being seriously injured he was taken to Bagdogra PHC and from there to North Bengal Medical College and Hospital and from there transferred to Dr. Malay's Nursing, Home, Siliguri and lastly he succumbed to his injuries at Morigaon Civil Hospital, Assam. The claimant being the legal representative of the victim filed a claim application on May 11, 2015 before the Motor Accident Claim Tribunal at Jalpaiguri claiming an amount of Rs. 30, 27,700/- together with 6% interest per annum from the date of filing application till the date of payment or realization. The claim case was contested by the Insurance Company and after hearing both the parties and analyzing the evidences adduced before the

tribunal the learned Tribunal passed an award directing the Insurance Company to pay Rs. 27,79,124 to the claimants in equal shares.

Submissions

3. The Learned Advocate representing the appellant/claimant challenged the award mostly on the ground that the Learned Tribunal did not consider the spousal consortium and parental consortium of Rs. 40,000 each in accordance with the decisions of the Hon'ble Supreme Court. In this regard he relied upon the decision of ***Magma General Insurance Company Vs. Nanuram @ Chururam¹*** and ***V. Pathmavathi Vs. Bharti Axa General Insurance Company Co. Limited reported in²*** The second limb of argument of the Learned Advocate is that the Learned Tribunal failed to consider the interest from the date of filing as envisaged under Section 171 of M.V. Act In this regard relied upon the decision of ***Kohinur Begum VS. New Assurance Company Limited³***, and ***Niva Devi Vs. New Assurance Co. Limited⁴***.
4. The dispute raised before the Tribunal by the Insurance Company was noninvolvement of the vehicle, and it was implanted. According to the submission of the Learned Advocate of the appellant/claimant the Insurance Company did not summon the driver and owner of the offending vehicle before the Tribunal to prove that the vehicle was not involved and the alleged vehicle was implanted. It is his contention that in spite of taking leave under Section 170 of Motor Vehicles

¹ AIR Online 2018 SC 1249

² 2026 (1) TAC 705 (SC)

³ AIR 2018 (Cal) 84

⁴ 2014 (2) TAC 864

ACT the Insurance Company withheld the vital witnesses like driver and owner of the offending vehicle to produce before the tribunal to infer that the offending vehicle is not involved in the alleged accident. In this regard put reliance in the decision of **(a) Ashalata Suryakant Patil and Ors. Vs. New India Assurance Company Limited⁵ (b) the New India Assurance Company Limited Vs. Mita Sahanbi⁶ (C) Insurance Company Company Limited Vs. Pratima Barick and Ors.⁷** .

5. The Learned Advocate further made his submission over the delay in lodging the written complaint as assailed by the Insurance Company which has got no force in the eye of law since this point is dealt with in number of cases since the issue is no more res integra. In this regard relied upon the decision reported in **Ravi Vs. Badri Narayan and Ors.⁸ (b) National Insurance Company Limited Vs. Pratima Barick⁹** accordingly submitted that the award passed by the Learned tribunal should be modified after incorporating the spouse consortium and parental consortium as well as by granting interest at the rate of 9% per annum from the date of filing of the claim application that is from May 11, 2015.

6. Per contra the submission of the Insurance Company made through the Learned Counsel pivots round the involvement of the vehicle in the accident. It is contended before this Court that the claimants are not entitled for any compensation as they failed to prove that the offending vehicle as alleged was

⁵ 2023 (2) TAC 725 (SC).

⁶ 2010 (1) TAC 343 (Cal)

⁷ 2018 AJC 77

⁸ 2011 (1) TAC 867 (SC)

⁹ 2017 TAC 466

involved with any accident and the present vehicle has been implanted in collusion of the owner. The stand taken by the Learned Advocate that nothing was done by the investigating Officer to seize the offending vehicle no. WB 74Z 0966 or any notice was issued by its owner for proceeding further with the investigation or assigned any reason to discharge him from the case. The subsequent complaint dated April 13, 2015 as made by the respondent no. 1 allegedly received from Rana Dey , after four months of the accident only to implant the motor vehicle no. WB 74-K-3889 belonging to respondent no. 3 of Jalpaiguri town. It is further submitted that the said complaint was never proved or exhibited before the Trial Court and was not considered by the Learned Tribunal and the appellant claimant has incorporated the said document in his paper book which had got no evidentiary value.

- 7.** It is his contention that the claimants failed to produce any independent eye witness to prove death of the deceased and nexus of the alleged vehicle WB 74K 3887 (Motor Cycle) and the person claiming to be eye witness as deposed before the Court was not a charge sheeted witness. Therefore pursuant to Section 114 (G) of the Evidence Act an adverse presumption may be drawn up for non-production of material witnesses. In addition the claimants were unsuccessful to produce any document on the date to alleged accident i.e on December 20, 2014 Viz inquest report, medico legal certificate, case diary of the Bagdogra P.S. case no. 363/2014 showing the death of the deceased and the nexus of the alleged vehicle No. WB 74K -3887 (Motor Cycle). Therefore from the evidence and for non-citing the vital witnesses whose name can be found in the written complaint as

well as in the evidence of the claimant it is glaringly visible that the alleged vehicle no WB 74K – 3887 was implanted for unlawful enrichment and the vehicle was illegally tagged with Bagdogra P.S. case no. 363/2014.

8. The Learned Advocate put reliance on the decision which are as follows:-

(a) (Supreme Court) Usha Devi vs. New India Insurance Company Limited¹⁰

(b) Raj Kumar Das vs National Insurance Company Ltd. And Anr.¹¹ (c)

Kulsum Begam Molla and Ors. Vs Shriram General Insurance Company

Ltd.¹² (d) Sithara N.S. & ors vs Sai Ram General Insurance Co. Ltd¹³ and

lastly **New India Insurance Company Limited Vs. Ashalata Suryakant Patil and Ors. (Supra)** It has been also relied upon by the Learned Advocate claimant.

Analysis

9. Heard the submissions of both the Learned Advocates. The motor accident claim case was filed by the wife and son of Dehi Konwar @ Dehi Ram Konwar who met with the accident on December 20,2014 at about 17:00 hours. In the claim application the number and type of the vehicle was mentioned as WB74K 3887 (Motor Cycle) and the injured died on 20.12.2014 with multiple injuries. The claimants claimed an amount of Rs. 30, 27,700/- as the deceased was an ex fireman Grade-1 under MES, non-industrial staff and his monthly income was Rs. 27,250 per month.

¹⁰ 2020 (1) TAC 41

¹¹ 2023 (1) TAC 656 (Calcutta)

¹² 2024 ACJ 1791 (Calcutta)

¹³ 2025 INSC 1425

10. In order to prove the case claimant deposed as before P.W. 1 and one Subrata Sarkar, P.W. 2 as eye witness and P.W. 3 Sunil Kuman Verma who was posted under 585 ENGR SUB PARK C/O 99 APO in her capacity of Junior Administrative Assistant. No witness was adduced on behalf of the Insurance Company. The materials on record reveals that Bagdogra P.S. case no. 303/14 dated 22.12.2014 under Section 279/338 IPC was started on the basis of a complaint lodged before the Bagdogra P.S. by the present P.W. 1 being son of the deceased on December 22, 2014.

11. In the written complaint Indrajit Kumar gave the number of the vehicle as WB-74Z -0966 being a motor cycle as offending vehicle and his father was brought by one Rajendra Singh fire man to Bagdogra Hospital where he was admitted for first aid treatment where from he was referred to North Bengal Medical College and Hospital on the same day. He was under medical treatment since December 20, 2014 to December 28, 2014. The formal FIR was lodged on the basis of that complaint against driver of motor cycle bearing registration no. WB-74Z-0966. Therefore it is apparently visible that the P.W. 1 being the son mentioned about a motor cycle bearing no WB74Z-0966 and the formal FIR was drawn on the basis of such complaint against the driver of the said vehicle but in the claim application the number of the vehicle involved in the accident was WB74K -3887 which was also in the charge sheet was filed after completion of investigation. The Learned Tribunal considered the evidence adduced by the eye witness and the charge sheet submitted against the offending vehicle was found that the vehicle bearing no. WB74K-3887 dashed the victim as a result of which the victim

sustained injuries and later succumbed to injuries. The Insurance Company took the stand that the person deposed as eye witness ought not to have been considered since he was not cited as a witness in the charge sheet and secondly he himself stated that he was at a distance of 50 yards from the spot and rushed to the spot immediately after the accident. Since a doubt has been raised about the credibility of the witnesses, the evidence of such witness needs to be scanned.

12. The P.W. 1, the son of the deceased stated in his examination-in-chief that the motor cycle bearing no. WB74-K 3887 was coming at high speed dashed down his father as a result he sustained serious injuries on his person. He mentioned about the complaint lodged by him but remain silent about the incorrect number of vehicle mentioned by him in his written complaint. He produced the certified copy of FIR, written complaint ,the seizure list, the post mortem report, photocopy on insurance policy the driving licence , R.C book of the of the offending vehicle , Voter Card of the deceased and Aadhar Card of the petitioners. During his cross-examination he deposed that he did not witness the accident and had no idea how the accident took place. He lodged a complaint after two days as he came to know from Rana Dey about the offending vehicle and he denied that the vehicle no. WB74K-3887 was not involved in the accident and WB74Z-0966 was actually involved in the accident. The testimony of P.W. 2 Subrata Sarkar who claimed to be the eye witness of the incident , disclosed that he was standing near Dhara Basti to avail the bus on December 20, 2014 at about 17:00 hours when one motor cycle bearing no. WB-74K-3887 (Motor Cycle) coming at a high speed dashed down the deceased as a result he sustained severe injuries on his person

and later on the injured died. He specifically stated that the accident occurred due to rash and negligent driving on the part of the driver of the offending vehicle bearing number Wb74K-3887 Motor Cycle. This witness did not receive any notice from the court to depose the case and the petitioner requested him to depose the case. He was not interrogated by police in connection with the accident which took place on December 20, 2014 at about 5 P.M. He also stated about Rana Dey who was with him, an employee of ITPA. The witness further deposed that he was standing 50 meters away from the spot and after the accident he and the other local people rushed to the spot and found the victim lying on the road.

13. In this case the charge sheet has been exhibited. The charge sheet contains the list of witness being the claimant, Rana Dey , Rakesh Singh, Sanjib Roy, Biswajit Sarkar other than the mechanical expert the doctor and the police personnel. The name of P.W. 2 Subrata Sarkar is not found in the list of witnesses. The charge sheet also disclosed that as per complaint the motor cycle bearing Registration no WB74Z-0966 was met with an accident with the father of the complainant who sustained grievous injuries and shifted to NBMC Hospital and later on died.

14. In course of investigation he found that the complaint submitted another complaint that the actual motor cycle bearing no. WB74K/3887 was offending vehicle as stated by the eye witness one Rana Dey and the said offending motor cycle was seized being Hero Honda Splender along with all document produced by accused Kaushik Biswas. The accused was released on P.R. Bond the original power of attorney executed by Sanjib Roy in favour of Dipankar Sarkar in

connection with this case was also seized . The I.O. examined the offending motor cycle by the medical expert and found the said vehicle was involved with the accident. The filing of second complaint by the complainant on 13.04.2015 is not found either in the claim application or in the evidence adduced by the claimant. The second complaint is found to be received on April 13, 2015 when the first complaint was lodged on December 22, 2014 and the Bagdogra P.S. case started on October 22, 2014 and the charge sheet was submitted on October 30, 2016.

15. The above nature of evidence univocally suggest that initially the different vehicle number was mentioned by the complainant on the basis of which the investigation started and enough cloud of doubts have been raised regarding involvement of the present vehicle .

In the decision of ***Usha Devi and ors (supra)*** the initial version given in the FIR the accident had occurred due to rash and negligent driving of the driver of a “Jeep” was involved in the accident but no explanation came as to how the claimants came to know about the other Jeep was involved instead of the number of the Jeep mentioned initially .It was observed by the High court that the claimants were required to examine the witness who gave the incorrect number at the time of lodging of FIR and how he came to know of that number so that the owner and the Insurance Company could have examined such witness hence an adverse inference is liable to be drawn against the claim. The Hon’ble Supreme Court did not interfere with such finding.

16. In the case of ***Raj Kumar Das (supra)*** the Learned Single Bench found that no independent witness was examined on behalf of the claimants and the

registration number of the vehicle differs and refused to interfere with the order refusing to allow the prayer of the claimant. Similarly in the case of **Kulsum begum Molla and ors (supra)** the Order of Tribunal Refusing the claim application was not interfered with the Learned Single Bench on the ground that the claimants failed to prove the involvement of offending vehicle .

17. In the case of **Sithara N.S & Ors. vs Sai Ram General Insurance Company Ltd.**¹⁴ two separate claim petitions were filed by the Legal Representatives of the deceased and the Insurance company raised the question of involvement of the offending vehicle and rash and negligent driving which is a *sine qua none* for maintainability of petition under Section 166 M.V Act. The Tribunal meticulously examined the evidences and found contradiction in the testimonies of the witnesses. The Hon'ble Supreme Court held that the omission to the vehicle Registration number in the complaint cannot be viewed in isolation, but in conjunction with other infirmities. Further observed that in absence of eye witnesses there is nothing to indicate the basis upon which it was drawn up or whose statement formed its foundation and that however the principles of law cannot be set aside on the ground of sympathy alone.

18. In the decision as relied upon on the contrary by the claimant **National Insurance Company vs Smt. Pratima Barick (supra)** the car was mentioned in the policy as 'Premier Padmini' but in the complaint mentioned 'Fiat Car's and no intimation was given to the Insurance company by the police about the accident. The eye witness gave the registration number of the vehicle and no information

¹⁴ 2025 INSC 1425

was given by the owner or driver of car to Insurance Company about the accident but held that that is not sufficient to hold that no accident took place involving the vehicle.

19. In the case of ***Ashalata Suryakant Patil and Ors (supra)*** no details of the offending vehicle was mentioned in FIR and in course of investigation, the vehicle was identified and charge sheet had been filed, the driver had not appeared .Held Claimants had discharged their initial burden of proof .The High Court set aside the order of Tribunal where it was held in favour of the claimant .The Hon'ble Supreme Court set aside the order with the observation that the Insurance company has discharged their initial burden ,the MACT had held that the accident occurred due to negligence of the driver who did not appear and the company also did not take any steps to secure and examine the said driver with regard to the accident .

20. The Learned Tribunal after considering the pleadings framed several issues including that the reason of such accident was occurred due to rash and negligent driving of the driver of offending vehicle being WB74K 3887 (motor cycle) but did not frame any issue to ascertain about the involvement of the above vehicle when in the complaint when separate number was mentioned in the complaint. It is not in dispute that at the time of lodging FIR there is possibility of putting incorrect number of the offending vehicle since he did not witness the accident but obviously the question comes as to how a specific number of a vehicle was mentioned in his written complaint. The complaint was lodged on December 22,2014 and the accident took place on December 20,2014 so the

complaint was not the immediate outcome after the accident. He took the name of Rajinder Singh Fireman who brought the injured from the spot .The defacto complainant further ascribed reasons for delay in lodging the FIR due to medical treatment of his father /injured. In his cross he took the name of Rana De from whom he came to learn about the offending Vehicle that is WB-74K 3887 .Rana De though cited as witness in the charge sheet did not adduce evidence. The Learned Tribunal while analyzing the case did not discuss the glaring inconsistency in giving the number of the offending motorcycle when the entire case rest on the chargesheet submitted by the investigating officer on the strength the of the written complaint and Formal FIR lodged by the Defacto complainant where the number of the motor cycle was WB-74Z 0966. A document has been annexed in the Paper Book appears to be a complaint lodged on 13.4.2015 by the son of the deceased, P.W. 1 where he stated that the number mentioned in his previous complaint was incorrect and subsequently came to learn about the involvement of the present vehicle and it has been confirmed by Rana De .The charge sheet was submitted on 30.10.2016 on the strength of FIR dated 22.10.2014 and the charge sheet is absolutely silent about the subsequent complaint and it was never produced during trial. The defacto complainant - claimant also did not utter a single word in his examination in chief regarding lodging of any subsequent complaint. The owner of the present vehicle appeared and filed written objection admitting the involvement of the vehicle but only denied that there was any rash and negligent driving. The owner thereafter did not turn up to adduce evidence and hence the written statement was not proved.

21. This court is conscious about the scheme of the Act and that the standard proof required is preponderance of probabilities not beyond doubt. But the Hon'ble Supreme Court has held in plethora of decision that the claimant must establish the specific identity of the vehicle and the driver with cogent and reliable evidence.

Section 166 of M.V Act reads as follows;

“166. Application for compensation. - (1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made-

(a) by the person who has sustained the injury; or

(b) by the owner of the property; or

(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

[Provided further that where a person accepts compensation under section 164 in accordance with the procedure provided under section 149, his claims petition before the Claims Tribunal shall lapse.]

[(2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:

*[***]*

[(3) No application for compensation shall be entertained unless it is made within six months of the occurrence of the accident.]

(4) The Claims Tribunal shall treat any report of accidents forwarded to it under [section 159] as an application for compensation under this Act.]

[(5) Notwithstanding anything in this Act or any other law for the time being in force, the right of a person to claim compensation for injury in an accident shall, upon the death of the person injured, survive to his legal representatives,

irrespective of whether the cause of death is relatable to or had any nexus with the injury or not.]”

In this regard this Court refers to the observation made by the Apex Court that fraudulent claims not only impose financial burden upon Insurance companies and the system but ultimately affect genuine consumers, who may have to been higher insurance premium because insurers must maintain viability.

22. Therefore the foundational test of accident and the victim suffered grievous injury due to an accident is not disputed but the said accident happened where the instant vehicle being WB- 74K 3887 was involved is not established .It was held in the case of **Sithara N.S & ors. (supra)** that the pain of losing young lives (in that case) in their prime is immeasurable. However the principle of law cannot be set aside on the grounds of sympathy alone .Liability under Motor Vehicle Act must be established through credible evidence.

Conclusion

23. Therefore upon cumulative assessment of the entire evidence and taking into consideration all the aspects and the law laid down in this regard, after applying preponderance of probability this court is of the considered view that the claimant has failed to prove that the Motor cycle bearing no. WB-74K 3887 is the offending vehicle and or involved in the said accident as the evidence of P.W. 1 and 2 failed to inspire the confidence and not trustworthy and hence the award passed by the Learned Tribunal is not sustainable in the eye of law since claimants are not entitled to this claim and is liable to be set aside.

24. In view of the above the appeal filed by the Claimant is liable to be dismissed.

25. Hence FMAT (M.V) 102 of 2024 filed by the Appellant/Insurance Company is hereby allowed. The award dated 31st day of July, 2024 passed by the Learned Tribunal is hereby set aside.

26. FMA 49 OF 2024 filed by the claimant is hereby dismissed.

27. The compensation amount if any deposited by the Insurance Company in this court be refunded to Appellant Insurance Company.

28. Pending applications if any be disposed of.

29. Urgent certified copy if applied by any of the parties to be supplied subject to observance of all formalities.

[CHAITALI CHATTERJEE DAS,J.]