West Bengal Form No.3701
HIGH COURT FORM NO. J(2)

HEADING OF JUDGMENT IN ORIGINAL SUIT/CASE

District : Calcutta

In the 4th Bench of City Civil Court at Calcutta

Present: Ataur Rahman (WB00700)
Judge, Bench IV
City Civil Court, Calcutta

MAC Case No. 505 of 2018

(CNR: WBCC 01-005645-2018)

Date of Judgment:

THIS SATURDAY, THE 18th DAY OF APRIL, 2026
4th Baisakh, 1433 B.S

Smt. Gondala Laxmi. . . . . Applicant

VS

1. Mr. Ashim Saha . . . . OP No. 1
2. Oriental Insurance Co. Ltd………...OP No. 2

(1) Give date or dates 27.03.2026 in the presence of

Prabaha Raj Roy	Advocate(s) Applicant(s) __________for________ Pleader(s) claimant(s)
Smt. Sarbani Dey Ghosal	Advocate(s) OP(s) __________for___________ Pleader(s) Opposite Party(s)

And having stood for consideration to this day, the court delivered the following Judgment: -

JUDGMENT

1. This is an application under section 166 of the Motor Vehicles Act 1988 initiated by the claimant, Smt. Gondala Laxmi alleging that on 21.09.2018 at about 12:55 p.m., the offending bus bearing no. WB-25C/6656 (Route No. 34C) was moving along B.T Road in a very rash and negligent manner, endangering human life, and thereby dashed into one bus bearing no. WB-07J/1297, as a result, the petitioner, who was the passenger of the victim bus, was injured. The accident occurred due to the driver of the offending vehicle's rash and negligent driving. Accordingly, based on the complaint of the petitioner, Chitpur P.S. Case No. 232 dated 21.09.2018 was registered for proper action. Accordingly, the claimant has claimed compensation to the tune of Rs. 1,50,000/- from the opposite parties by filing this case.

2. After receiving notice both the O.P No.1(owner) and O.P No.2/insurance company appeared before this Court. O.P No.2 filed W.S and denied the petitioner's case and took the plea that when the alleged accident occurred on 21.09.2018, the driver had no valid driving license for driving the bus. The O.P further stated that the driving license was not valid, and as such, as per the rules of the insurance company, the accident shall not be covered by the insurance company as the driver in the bus had no authenticated driving license and as the O.P No.2 is not responsible to pay the claim amount and prayed for dismissal of the claim application. On the other hand, O.P No.1 did not file any objection.

3. Based on the pleadings of both sides, my predecessor in chair framed the following issues: -

1. Is the instant claim case maintainable in its present form and in law?
2. Whether there is any cause of action to file the instant claim case?

3. Whether the motor vehicle bearing registration no. WB-25C-6656 (Bus) was involved in the road traffic accident, causing injury to the victim, and if so, whether the said vehicle was under the coverage of a valid insurance of the O.P No.2 on the date of the road traffic accident?
4. Did the traffic accident occur due to rash and negligent driving of the driver of the said motor vehicle?
5. Whether the claimant is entitled to get any compensation on account of such injury of the victim, and if so, what should be the quantum of compensation payable and by whom it shall be payable?
6. To what other relief/reliefs, if any, is the claimant entitled?

4. During the trial, the claimant, Smt. Gondala Laxmi herself deposed as P.W.-1. She has also examined Swapan Kr. Hati as P.W.-2 and Dr Binoti Das, as P.W-3. Apart from the same, the claimant has also admitted into evidence several documents, which have been marked as Exhibits as follows:

1	Certified Copy of formal FIR, in connection with Chitpur PS case no 232/18 dated 21.09.18 IPC	**Exbt.1**
2	Certified Copy of MCR of Chitpur PS being 148/2018 dated 21.09.2018	**Exbt. 2**
3	Photocopy of registration certificate of the offending vehicle	**Exbt. 3**
4	Photocopy of the insurance policy certificate of the offending vehicle issued by the Oriental Insurance Co. Ltd.	**Exbt. 4**
5	Photocopy of Aadhaar Card of P.W-1	**Exbt. 5**
6	The five original O.P.D patient cards of Dr. R Ahmed Dental College and Hospital	**Exbt.6 Collectively**

7	Authenticated photocopy of the Voter identity card of P.W-2	**Exbt. 7**
8	Certificate dated 10.03.2025 issued by P.W-3	**Exbt. 8**
9	Certified copy of the charge-sheet	**Exbt. 9**
10	Certified copy of Seizure List dated 21.09.2018 in connection with Chitpur PS case no 232/18 dated 21.09.18 IPC	**Exbt. 10**

5. On the other hand, OP No 2 has examined one witness, namely Tanmoy Ghosh, as DW-1 and one authorization letter issued by licensing authority PVD Department Kolkata and one original report dated 01.12.2025 of the licensing authority PVD Kolkata, along with an attested copy of the portal-generated searching page in respect of driving license no. WB-0120070509578 are marked as Ext. A and B (collectively)

6. During the argument, Ld. Advocates of both sides submitted in favour of their respective cases. Ld. Advocate for the claimant has submitted that the petitioner/claimant has been able to prove the facts as narrated in the claim application by oral and documentary evidence. As such, the claimant is entitled to get the compensation amount, she claimed.

7. As against the submission of the Learned Advocate for the claimant, Ld. Advocate for the OP/Insurance Company has contended that the accident did not occur due to rash and negligent driving on the part of the driver of the vehicle, and the driver did not have a valid driving license at the time of the accident. He has argued that the victim has not suffered any permanent partial disability, and the victim has failed to prove her income as claimed by the claimant. As such, he claims that the Insurance company is not liable to pay any compensation amount, as prayed for by the claimant.

Decision with reasons: -

8. <u>Issue Nos. 1 & 2</u> – Both these issues are taken up together for consideration and discussion as they are interlinked with each other in the present facts and circumstances of this proceeding, as well as for the sake of convenience and brevity and for avoidance of unnecessary repetitions.

So far as the question of maintainability of the instant proceeding and presence of cause of action in favour of the claimant is concerned, though the OP has tried to challenge the same vaguely in its WS, it has not at all pressed the same either at the time of recording of evidence and/or during the course of advancement of argument. I have carefully scrutinized the contents of the claim application in the given facts and circumstances, as well as in the context of the entire evidence on record – both oral and documentary. From the same, it is abundantly clear that the claim of the claimant is quite tenable, not only based on materials on record but also in the eyes of the law, while she also has the requisite cause of action to bring the instant proceeding against the OPs as the injured victim herself.

For all these reasons, it can be safely opined that the instant proceeding is perfectly maintainable both in law and on fact while the claimant has sufficient cause of action to bring the same against the OPs.

Issues nos. 1 and 2 are accordingly answered in the affirmative and decided in favour of the claimant.

9. <u>Issue Nos. 3 & 4:</u>

Both these issues are taken up together for consideration for the sake of convenience, as they are interlinked with one another. Now the determining factor is whether due to rash and negligent driving of the driver of the offending bus bearing registration no. WB-25C-6656, the claimant met with an accident on 21.09.2018 at about 12:55 p.m. at B.T Road (near Tala Post office bus stop on Tala bridge), and thereby the petitioner sustained injury, and a further determining factor is whether the offending vehicle was under the coverage of a valid insurance policy at the time of the accident.

The petitioner Smt. Gondala Laxmi, as PW1, corroborated the fact laid down in the plaint/petition. Moreover, from her evidence, it appears to me that due to the rash and negligent driving of the driver of the offending vehicle, she caused an accident and sustained severe injury to her facial region. PW-2 Swapan Kr. Hati corroborated the P.W-1. Moreover, formal FIR vide Ext. 1, C.S vide Ext. 9 supported the evidence of P.W-1 and PW-2.

Considering the aforesaid facts and circumstances, it appears to me that the petitioner Smt. Gondala Laxmi has proved the fact that she sustained injury on 21.09.2018 due to a road traffic accident, followed by the rash and negligent driving by the driver of the offending vehicle bearing registration no. WB-25C-6656.

On the other hand, it appears from Ext. 4, viz Motor Insurance Certificate cum policy schedule, that insurance of the offending vehicle bearing no. WB-25C-6656 was valid from 15:45 on 29.01.2018 to midnight of 28.01.2019. It further appears that the accident occurred on 21.09.2018. So it can be said that the offending vehicle was under the coverage of valid insurance on the date of the incident. So, considering the aforesaid facts and circumstances, it appears to me that the petitioner was involved in an accident on 21.09.2018 due to the rash and negligent driving of the driver of the offending vehicle bearing registration no. WB 25C-6656, which was under the coverage of a valid insurance policy.

Hence, issues nos. 3 and 4 are decided in the affirmative in favour of the petitioner.

10. <u>Issue nos. 5 & 6:</u> -

Both issues are taken together for the convenience of my discussion. I have already been decided that the offending vehicle was involved in the accident and that the accident occurred due to rash and negligent driving of the driver of the offending vehicle, and the offending vehicle was under the coverage of a valid license. Now the question is whether the petitioner is entitled to get any relief as sought. To arrive at such a decision, some other aspects, like the nature of the injury, age of the victim, income of the victim and whether the driver was carrying a valid driving licence at the relevant time, are also required to be determined carefully; otherwise, substantial justice may not be dispensed with properly.

So let us look at such aspects one after another. So, first of all, I will examine the nature of injury sustained by the victim/ claimant.

To prove the injury, the petitioner/claimant has proved the OPD card, though no medical officer of the concerned hospital appeared before this Court to prove such an injury report. However, the petitioner has examined one Dr Binoti Das as PW-3, and she produced a certificate issued by her, which is marked as Ext. 8. On her evidence, she has stated that as per OPD tickets of R.G Kar Medical College & Hospital, the patient suffered from a road traffic accident with a cut injury to the inner surface of the lower lip and loss of teeth. She has also stated that after clinical examination of the patient and examination of her medical document, she has the opinion that the patient suffered permanent partial disability to the extent of 33% due to disfiguration of the face on account of swelling of the inner lips with biting difficulty with incisor teeth, hypersensitivity and mobility malocclusion of front teeth with speech difficulty. Now the question is how far this tribunal will rely on the Ext. 8, i.e., the certificate issued by PW-3. Ld. Advocate for the O.P objected to the said report on the ground that the injured did not face any medical board to determine the nature of the injury or the percentage of disability, and submitted for the certificate to be disbelieved. I have carefully perused the testimony of PW-3 along with Ext. 4. It appears to me that the O.P objected to the certificate relied on by the claimant. Indeed, the injured did not face any medical board to ascertain her percentage of disability. If the Board assessed the disability of the claimant, the tribunal would rely on the certificate totally in regard to the percentage of disability, if not otherwise defective. However, I cannot totally discard the Ext. 8 in the context of Ext.6 series, which are the treatment sheets of the injured/claimant, which simply show the facial injury of the claimant. Therefore, this tribunal can reduce the percentage of disability of the claimant as 23% instead of 33% as mentioned in the Ext. 8, because if she had to face the board, the percentage of disability would have changed. In view of the foregoing observation, I think no injustice will occur if I consider that the claimant became disabled to the extent of 23% by such an accident. So, considering all the facts and circumstances, I can hold that the claimant sustained injury on her person due to such accident, and the percentage of the disability is 23% in view of the aforesaid observation.

Now the question is what will be the amount of compensation. So, this tribunal shall determine the age of the claimant. As per the petition, the claimant is aged 24 years. As per Ext. 5, i.e., Aadhaar Card, the date of birth of the claimant, Gondala Laxmi, is 1994. As per the claim application, the accident occurred on 21.09.2018. The opposite party had also not objected to this point. So, undoubtedly, she was aged 24 years on the date of the accident, and the multiplier will be 17.

Now this Court will determine the income of the claimant/injured. As per the claim application, the claimant has claimed that her monthly income is about 5000/-; however, she did not disclose her source of income. Her evidence also failed to prove her income by producing any documents. So, a question may arise whether the claimant is a lady having no income? Law does not support such a view, but rather approves that every person earns as per his/ her capacity to lead a normal human life with dignity. At present day in our society, a court can easily believe or hold that a man of the ordinary earning group can also earn Rs. 5000/- per month to lead his/her daily life with dignity. Considering this aspect, I have no hesitation in holding that the claimant earned Rs. 5000/- per month while her accident occurred. Moreover, it is a well-settled principle of law that a deceased or injured, if a self-employed or fixed-salaried person (ruling reported in 2017 [4] 6739 SC]), in respect of future prospects of the injured/claimant, 40% be added as income. Therefore, to sum up, the annual income will be Rs. 5000/- X 12 = Rs. 60,000/-+ 2000(40% increased) = Rs. 62,000/-. So, in a simple formula, the compensation amount will be Rs. 62,000/- x 17(Multiplier) X 23% (disability)=2,42,420/- + Rs. 10,000/-(for pain and sufferings) =Rs. 2,52,420 (rupees two lakh fifty-two thousand and four hundred and twenty only.) In addition, the claimant is also entitled to interest @ 6 % on Rs. 2,52,420 /- from the date of filing the claim application, i.e. from 14.11.2018, in view of provisions contained in section 171 of The Motor Vehicles Act, 1988.

But in this case, it appears to me that the claimant has claimed Rs: 1,50,00/-, but as per the assessment of this tribunal, it is found that the claimant is entitled to get more than the claim amount. So, a question may arise: can the claimant get more than the claimed amount, or can the tribunal award more compensation than the claimed amount of the claimant? The apex court of the country, in so many cases, held that there is no restriction that the tribunal cannot award compensation exceeding the claim amount, since the function of the tribunal under section 168 of MV Act,1988, is to award just compensation. Moreover, the MV Act is a beneficial and welfare legislation. So the claimant can get compensation more than the claimed amount mentioned in the claim application.

The other aspect, which is ventilated by the Ld. advocate of the opposite party insurance company, is that the driver of the offending vehicle had no valid licence at the time when the accident occurred. It is argued that the non-existence of any valid licence constitutes a fundamental and willful breach of the essential terms and conditions of the insurance policy, which expressly requires the vehicle to be driven only by the authorized person holding a valid and effective driving licence as mandate under section 150(2)(a)(ii) of the Motor Vehicle Act, 1988 and due to such breach of rules, the insurer shall not be liable to pay any sum to the claimant.

On the other hand, to refute the argument advanced by the Ld. advocate for the opposite Party. Ld. Advocate for the claimant argued that our Hon'ble Apex court, in various judgments, has held on the fake driving licence. If the driving license is fake, or invalid, or a driver was driving without a valid document at the relevant time of the accident, the insurance company cannot avoid the liability; the insurer shall have to pay the award amount to the third-party claimant and recover the same from the owner of the vehicle.

Heard both sides on this point carefully. From the oral testimony of DW-1 Tanmoy Ghosh, MV Inspector, it appears that the driver of the offending vehicle had no valid licence on that very particular date, and one report is marked as Exhibit B. No contradictory evidence is available on record. Therefore, there is doubt to believe that the driver had a valid licence while he was driving the offending vehicle and met with an accident, whereby the applicant sustained injuries. So, it is clear to me that the provision of section 150(2)(a)(ii) of the Motor Vehicle Act, 1988 has been infringed. However, from the ruling reported in 2018 (1 TAC 360 (SC) and referred by the applicant, it appears to me that in view of such facts and circumstances, for the ends of justice, the tribunal can direct the insurer to pay the claim amount to the claimants in the first instance, with liberty to recover the same from the owner of the vehicle in accordance of law. So, this tribunal has no hesitation to hold that the claimant is entitled to get relief in view of the foregoing observation, and the Insurance company shall make such payment, and the company shall recover the said amount from the owner in due process of law. As a result, the claim application succeeds.

Hence, issue no. 5 and 6 are disposed of in favour of the applicant.

All the issues are disposed of accordingly in favour of the claimant.

Hence, it is

O R D E R E D

that the M.A.C. Case No. 505 of 2018 be and the same is allowed on contest against the O.P. No.2/ The Oriental Insurance Co. Ltd. and exparte against O.P. No.1 (owner of the offending vehicle), but without any order as to costs.

The claimant is entitled to get compensation of Rs. 2,52,420 /- (Rupees Two Lakh Fifty-Two Thousand Four and Twenty only) from the O.P.2. The O.P. No.2, Oriental Insurance Co. Ltd., being the insurer of O.P. No. 1, is directed to issue an account payee cheque in the name of the claimant, Gondala Laxmi for an amount of Rs.**2,52,420 /-** (Rupees Two Lakh Fifty Two Thousand Four and Twenty only) along with interest at the rate of **6%** per annum from the date of filing of this claim case, i.e. **14.11.2018,** till payment within three months thereof, failing which the claimant may realize the awarded amount by execution. Liberty is also given to the OP-2 to recover the same amount from the owner of the vehicle (OP-1) in accordance with the law.

Let a copy of this judgment be given free of cost to the claimant and O.P. No.2 through their Learned Advocates for doing the needful. One copy of this judgment shall be handed over to the petitioners only after payment of the deficit court fees as per Rule 331 of the WBMV Act.

Let the judgment shall take effect after payment of the deficit court fees as per law.

D/C be me,

Sd/-	Sd/-
Judge 4th Bench City Civil Court, Calcutta	Judge 4th Bench City Civil Court, Calcutta