



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

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 396 of 2022

With

IA No.CAN/1/2021 and CAN/2/2022

SBI General Insurance Co. Ltd.

VERSUS

Sandha Pramanik & Ors.

With

F.M.A. 192 of 2021

With

IA No.:CAN/1/2021

SBI General Insurance Co. Ltd.

VERSUS

Shila Adak & Ors.

With

F.M.A. 672 of 2021

SBI General Insurance Co. Ltd.

VERSUS

Santu Polley & Anr.

For the appellant:

Mr. Debanjan Mukherjee, Adv.

For the respondents/claimants:

Mr. Niranjan Maity, Adv.
Mr. Ashique Mondal, Adv.
Ms. Indrani Ghosh, Adv.
Mr. A. Alam, Adv.



Last Heard on: June 29, 2026

Judgment on: July 24, 2026

Biswaroop Chowdhury, J:

The appellant in the instant appeals was an opposite party in 3 cases under Section 166 of the Motor Vehicles Act 1988 and is aggrieved by the Judgment and Award dated 06.10.2020 passed by Learned Additional District Judge Fast Track-Court IV. South 24 Parganas at Alipore in MACC No. 14 of 2016 and Judgment and Award dated 06.10.2020 passed by the said Learned Judge in MACC case No. 15 of 2010 and Judgment and Award dated 30th January 2021 passed by Learned Additional District Judge Fast Track 3rd Court Alipore in MACC Case No. 96 of 2016. The claim cases namely MACC No-14 of 2016 MACC Case No. 15 of 2016, and MACC No. 96 of 2016 instituted before the Learned Trial Court arose out of accident dated 28/09/2014.

In the claim case MACC 14 of 2016 the contention of the claimants may be summed up thus:-

On the material time of accident on 28/09/2014 while the victim Kashinath Adak along with Sivapan Pramanik, Santu Polly and Dipak Bangal was going towards Taratala Side from Behala side near 29, Polly travelling by Santro car being No. WB-03C-9988 a (Truck) coming from the opposite direction being driven rashly and negligently by its driver dashed against the



right side of the drivers cabin of the Santro vehicle by veering to the wrong side of the road. As a result of this the victim and one Swapan Pramanick sustained severe injuries on their person and subsequently succumbed to their injuries. The other occupants of the vehicle were also injured and their injuries resulted in permanent disabilities. The victim was an Electrical Contractor under M/S U.K. Electrical and Company and used to earn Rs. 2,41,480/- annually. The death of the victim caused great financial hardship as the claimants were dependant on the income of the victim.

Pursuant to filing of claim case notice was issued upon the opposite parties. Although opposite party vehicle owner appeared but did not contest the case by filing written statement. Opposite party Insurance Company contested the case by filing written statement. ISSUES were framed and evidence was adduced By Judgment and Award dated 6-10-2020, Learned Trial Judge disposed the claim case being MACC-14/2016 by observing and directing as follows:-

Hence it is Ordered that the MACC Case be and the same is allowed on contest against the OP No.2 and ex-parte against the O.P. No-1.

The petitioners are entitled to get a sum of Rs. 21,88,298/- (Twenty one Lakh eighty eight thousand and two hundred and ninety eight) only from OPs with interest at the rate of 6% per annum calculated simply from the date of filing of the case for the death of the victim Kashinath Adak, due to injuries suffered in the RTA that took place on 28.09.2014.



The specific amount of compensation that is Rs. 21,88,298/- vis-à-vis each applicant is calculated at Rs. 7,56,100/- for the widow and Rs. 7,16,099/- each to the mother and the son of the deceased victim. The calculated interest to the whole amount which accrues is to be added in equal parts to compensation allotted to each applicant.

The O.P. No.2 is directed to pay the said amount along with the interest by Account Payee cheques in the names of the individual claimants. The OP 2 is to make deposit of such cheques within three months of this order failing which the claimants are at liberty to enforce the Order as per Law.'

The appellant Insurance Company being aggrieved by the Judgment and Award dated 6-10-2020 passed in MACC-14 of 2016 by Learned Additional District Judge Fast Track IVth Court Alipore South 24 Parganas has come up with the appeal being FMA-192/2021.

In the case of MACC-15 of 2016 the claimants contentions may be summed up thus:-

On 28.09.2014 at about 1.15 AM the victim Swapan Pramanik along with Kashinath Adak, Sentu Polly and Dipak Bangal were going towards Taratala from Behala through James Long Sarani in a Santro being No. WB-02M-6341, when they reached 29th Pally Behala the offending vehicle being No. WB-03C-9988 (Truck) coming from the opposite direction being driven rashly and negligently by its driver dashed against the right side of the driver's cabin of the Santro vehicle by veering to the wrong side of the road. As a result of this



the victim and one Kashinath Adak sustained severe injuries on their person and they subsequently succumbed to their injuries. The other occupants of the vehicle were also injured and their injuries resulted in their permanent disabilities. The victim was a distributor of Haldiram Products and used to run a partnership business by the name and style of Star Partnership Firm and used to earn Rs. 1,80,000/- annually. The applicants, the mother and the father of the victim claim that death of the victim caused great financial hardship to them as they were dependent upon the victim.

Pursuant to filing of this case notice was issued upon the opposite parties. The opposite party vehicle owner although appeared but did not contest the case by filing written statement. 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 against the OP No. 2 and ex-parte against the OP No. 1.

The petitioner is entitled to get a sum of Rs. 11,15,518/- (Eleven Lakh fifteen thousand and five hundred and eighteen) only from OPs with interest at the rate of 6% per annum calculated simply from the date of filing of the case, for the death of the victim Swapan Pramanik due to injuries suffered in the RTA that took place on 28/09/2014.



The OP No. 2 is directed to pay the said amount along with the interest by Account Payee Cheques in the name of the claimant. The OP. 2 is to make deposit of such cheque within three months of this order failing which the claimants are at liberty to take steps to enforce the order as per law.’

The appellant Insurance Company being aggrieved by the Judgment and Award dated 06-10-2020 passed by the Learned Trial Judge has preferred appeal being FMA-396 of 2022.

In the claim case being MACC Case No. 96 of 2016 before Learned Additional District Judge Fast Track 3rd Court Alipore may be summed up thus;

On 28-09-2014 while the victim Santu Polly along with Kashinath Adak, and Swapan Pramanik, and Dipak Bangal was going towards Taratala side from Behala side near 29, Pally Behala travelling by a Santro Car being No. WB 20M-6341 following the extreme Western side i.e. left side of James long Sarani the driver of offending vehicle being No. WB.03C-9988. (Truck) (Goods Carriage) was coming from opposite direction rashly carelessly and negligently and thereby dashed against the right side driver’s cabin of the said Santro Car by going to the wrong side of the said road with great force as a result the said Santu Polley and others sustained fatal injuries on their person and Swapan Pramanik and Kashinath Adak sustained fatal injuries and died within a short time after the said accident.



Rash, careless, and negligent driving of the driver of the offending vehicle No. WB-03C-9988 (Lorry) was the sole cause of this Pathetic accident.

The Applicants have suffered pecuniary loss besides their perpetual pain shock and mental agony.

Pursuant to filing of this case notice was issued upon the opposite parties. Opposite party vehicle owner although appeared but did not contest the case Opposite Party Insurance Company contested the case by filing written statement. ISSUES were framed and evidence was adduced. Learned Trial Judge by Judgment and Award dated 30th January 2021 was pleased to dispose of the claim case by observing and directing as follows:-

'Hence it is ORDERED that the instant claim petition u/s 166 MV Act filed by the claimant Santu Polley is hereby allowed on contest against the OP No. 2/Insurance Company and ex-party against the OP No. 1/owner without order as to cost.

The OP No. 2 is hereby directed to pay the compensation amount to the tune of Rs. 4,57,646/- (Rupees Four Lakh Fifty Seven Thousand Six Hundred Forty Six) only to the claimant within 30 days from the date of passing of this Order along with interest @6% p.a. from the date of filing of the case i.e. 19.01.2016 till the date of realization in default the claimant is at liberty to claim the same by way of execution in due process of law.'



The Appellant Insurance Company being aggrieved by the Judgment and Award dated 30th January 2021 passed by Learned Trial Judge has come up with the instant appeal being FMA-672 of 2021.

The Appeals FMA-672 of 2021, FMA-192 of 2021 and FMA-396 of 2022 were heard analogously for their inter connectiveness.

Learned Advocate for the Appellant Insurance Company submits that on perusal of the Judgment and Order dated 06-10-2020, passed in MACC 14 of 2016 (Smt. Shila Adak VS Shankar Banerjee and others) it will be evident that the owner of the vehicle Shankar Banerjee received summons and appeared to contest the case but subsequently failed to take steps and did not file Written statement, though no effective order was passed and the case was running ex-parte against opposite party no-1 (Shankar Banerjee).

Learned Advocate further submits that on 28-09-2014, a written complaint was made before officer in charge Behala P.S. by Dipak Kumar Bangal where the complainant has categorically stated that in front of their car, a bike was zig-zagging and in order to save the said bike, the Santro Car was hit by the truck. It is also submitted that though the said bike was seized but no step whatsoever was taken by the Police Authority to implead the owner of the bike as a party in the instant proceedings. In the said complaint it was stated that the number of the said truck could not be collected.

Learned Advocate submits that FIR in respect of said incident was lodged on 28-09-2014, wherein officer in charge of Behala P.S. in his FIR has stated



that the truck hit the back side of the Private car whereas in the written complaint it has been stated that the said private car was hit by a truck while in the charge-sheet as well as in the impugned order the same has gone down that the said truck has hit the right side of the driver's cabin.

It is submitted by the Learned Advocate that Final Report of the Police Authority dated 31-10-2014 states as follows:-

'During investigation the dead body of Kashinath Adak was handed over to Jishu Mondal and the dead body of Swapan Pramanick was handed over to Dipendra Pramanick. Prepared inquest visited the place of occurrence, examined witness.' Both vehicles (Private car and motor cycle) were seized. Several attempts were made to find out the offending vehicle and its driver but to no effect. At this stage, chance of detection is very remote. As such the investigation of the case should be stopped declaring the case as FRT.'

It is submitted by the Learned Advocate that in all 3(three) matters Jishu Mondal has been produced as an eye witness. If the depositions of Jishu Mondal in respect of the instant matters are taken into consideration it will be clear that the dead body of Kashi Nath Adak has been handed over to Jishu Mondal whereas Jishu Mondal has categorically admitted in his statement that he has no relations with the victims. Jishu Mondal in his witness action has also contended that he has never been to hospital.

It is further submitted that Jishu Mondal contended that he informed the number of the offending vehicle to the claimant on the very next day but



surprisingly it took $\frac{1}{2}$ years for the police to get the driver of the vehicle surrender for re-investigation.

It is also submitted that investigation and/or re-investigation done by the Police officials in the instant matter raised serious question of fraud and misrepresentation.

Learned Advocate submits that a Writ Application being WP. 10520 (W) of 2019 has been filed before this Hon'ble Court for directing State. Authority to conduct investigation regarding fraudulent motor accident claims which are subject matter of dispute before this Hon'ble Court.

Learned Advocate for the claimants/respondents submits that although the appellants argued on the issue of FRT but Learned Tribunal has dealt with the issue of FRT and has observed that submission of FRT does not preclude the filing of subsequent charge-sheet on the basis of re-investigation.

Learned Advocate further submits that the Learned Tribunal has recorded and discussed in details all documentary and oral evidence adduced before it.

Learned Advocate also submits that there is no palpable absurdity in the findings of the Learned Tribunal.

It is submitted by the Learned Advocate for the claimants/respondents that the appellant Insurance Company has not adduced any evidence to disprove the version of events which have come forth through the conjoint



appreciation of the FIR, charge sheet other documentary evidences and accounts of eye witnesses.

It is further submitted that inspite of obtaining leave under Section 170 of the Motor Vehicles Act 1988, the appellant/insurance Company failed to do the following:-

- a) Admittedly in spite of having full knowledge of FRT being filed did not get the same exhibited.
- b) Did not examine the concerned investigating officer who filed the FRT as a witness.
- c) Did not examine the concerned investigating officer who filed the subsequent charge-sheet as a witness.
- d) Did not examine the offending driver as a witness whose details appear from charge-sheet.
- e) Did not examine the owner of the offending vehicle as a witness whose details appear from the charge-sheet.
- f) Did not examine Dipak Kumar Bangal who was the author of the written complaint and also an eye witness to the accident.
- g) Did not cross-examine Santu Polley regarding the alleged non-involvement of the insured vehicle when he deposed as P.W. 4 in MACC 15 of 2016.
- h) The appellant/insurance company had admittedly appointed an investigator and hence was a privy to the special knowledge of such



investigator's report yet chose to retain such investigator's report.

Such investigator was never examined as a witness in any of the three cases.

- i) Not a single question was put to the eye witness Jishnu Mondal in cross-examination when he appeared in MAC No. 14 of 2016 and MAC No. 15 of 2016 as P.W. 2 to establish any alleged relationship with the victim Kashinath Adak.
- j) Not a single question was put to Shila Adak who is Respondent No. 1 in FMA-192 of 2021 in cross-examination when she appeared as P.W. 1 in MAC No-14 of 2016 to establish any alleged relationship with the victim Kashinath Adak.

Learned Advocate relies upon the following Judicial decisions:-

N.K. V. Bros (P) Ltd. VS M Karumai Ammal and ors.

(1980) 3 SCC. 457.

Janabui WD/O Dinkarrao Ghorpade. VS ICICI Lombard Insurance Company Ltd.

(2022) 10 SCC. 512.

Anita Sharma and ors VS New India Assurance Company Ltd.

(2021) 1 SCC. 171.

Bajaj Allianz General Insurance Co. Ltd. VS Ruma Sen.



2023 SCC Online Cal-2658.

Bazaz Allianz General Insurance Co. Ltd. VS Anjali Mondal and Anr.

Reported in 2018 SCC Online Cal-15585.

New India Assurance Co. Ltd VS Mita Samanta and ors.

Reported in (2010) I TAC. 343.

C.O. No. 4728 of 2006

Sampa Dutta and ors. VS New India Assurance Co. Ltd and Anr.

(High Court at Calcutta)

Waman VS State of Maharashtra

Reported in (2011) 7 SCC-295.

M. Nageswara Reddy VS State of Andhra Pradesh and ors.

Reported in (2022) 5 SCC-791.

FMA-1640 of 2019

With

COT-112 of 2019.

National Insurance Co. Ltd. VS Samirash Bhaduri.

(High Court at Calcutta)

**12. Mangla Ram VS Oriental Insurance Co. Ltd and ors**

Reported in (2018) 5 SCC. 656.

13. Duluina Fernandes and Ors. VS Joaquim Xavier Grur and Anr.

Reported in (2013) 10 SCC. 646.

14. Parmeshwari VS Amir Chand.

(2011) 11 SCC. 635.

15. Kamlesh Balmiki and ors VS United India Insurance Co. Ltd and Anr.

Reported in 2022 SCC Online Cal-2378.

16. Bimla Devi and ors. VS Himachal Pradesh. Road Transport Corporation and ors.

Reported in (2009) 13 SCC. 530.

Before proceeding to decide on the issue at the outset it is necessary to peruse the complaint/FIR which was lodged on the following day of the accident.

As argument is advanced by the Learned Advocate for the appellant/Insurance Company mainly on the ground that in the FIR vehicle number was not mentioned and FRT was submitted and by subsequent re-investigation the vehicle was implanted it is to be remembered that an FIR with



regard to road accident caused due to rash driving may be lodged against known vehicle or against unknown vehicle. When FIR is lodged against unknown vehicle it is incumbent upon police authority to identify and trace out the offending vehicle and proceed in accordance with law. In the event the FIR mentions vehicle number involved it is incumbent upon police Authority to ascertain the genuineness of the allegation first and thereafter proceed in accordance with law. When investigation is conducted in accordance with law and report submitted such report cannot be discarded on the ground that the investigation is perfunctory or collusive one without examining the Investigating officer. In the instant case the investigating officer was not examined by Insurance Company. FRT with regard to an FIR may be submitted by Police Authority but pursuant to re-investigation being directed and charge-sheet being submitted the same cannot be discarded mechanically without cogent evidence. Moreover in the instant case FRT was submitted not on the ground that no evidence appears against the accused mentioned in FIR or that no offence has taken place but on the ground that offending vehicle could not be traced out. Hence pursuant to direction of re-investigation by Learned Magistrate the investigating officer collected evidence identified the offending vehicle and submitted the charge sheet against the driver of the vehicle being WB-03C-9988 (Truck) Goods Carriage and the driver also surrendered in Court. Learned Trial Judge upon considering the evidence both Oral and documentary in MACC-15 of 2016, was pleased to observe as follows:-



‘Merely stating that there is a collusion between the parties is not sufficient. There is no specific evidence to show the actual collusion between the family of the victim and the owner of the vehicle. There is no evidence to show that the victim was either related to the owner of the vehicle or was known to him. In fact the charge-sheet shows that the owner of the vehicle himself has been arraigned as an accused in the criminal case. It is highly unlikely that a person would collude with another to get himself implicated in a criminal case just to enable same unknown persons to claim compensation from the insurance company by falsely claiming that his own vehicle was involved in an accident.’

Thus upon considering the observation made by the Learned Judge, where Learned Judge upon considering the evidence and upon assigning reasons refused to accept the argument of the Appellant Insurance Company with regard to collusion which in the view of this Court is justified.

Now with regard to the evidence of Jishu Mondal P.W. 2 with regard to rash and negligent driving it appears that the said witness specifically stated how the accident took place.

In cross-examination he stated that on the date of accident he was at place of occurrence for purchasing cigarette from a shop nearby. He mentioned the number of the vehicle and also stated that on the said day it was Chaturthi of Durga Puja. He also stated that as his wife was with him he left the spot and came back on the next day and informed the people of the number of the



vehicle. The specific particulars mentioned in cross-examination inspires confidence in the mind of this Court and makes the evidence believable. With regard to the submission of Learned Advocate for the appellant that there is inconsistency in FIR, Charge-Sheet, and evidence of P.W. 2 regarding dashing Santro vehicle it appears from FIR that it was stated that the truck hit the car and it was not mentioned which portion of the car was dashed by the truck. While submitting charge-sheet the police Authority discussed the facts of the case as appearing from FIR. While recording facts of the case instead of mentioning truck dashing the car only mentioned one motor cycle WB-20M-5632 coming along same road towards north and hit the private car from its back. It is not the findings of Police Authority in investigation but mentioning of the facts in a wrong sequence. Thus mentioning of facts is not fatal as P.W. 2 stated lorry veered on the right and dashed against the Santro. Moreover the Seizure list with regard to Santro being WB-02M-6341 shows that there was mark of damage, on front side and right side and it is fully damaged.

In a motor accident claim facts are not required to be proved beyond reasonable doubt but on the touch stone of preponderance of probability.

In the case of Bimla Devi VS Himachal Road Transport Corporation and ors. reported in (2009) 13 SCC the Hon'ble Supreme Court observed as follows:-

'15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an



accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties.'

In the case of Kamlesh Balmiki and ors. V United India Insurance Co. Ltd. and Anr reported in 2022 SCC Online Cal 2378 this Hon'ble Court observed as follows:-

'17. As held by the Hon'ble Apex Court in the decision in the case of Sunita v. Rajasthan State Road Transport Corporation reported in (2020) 13 SCC 486 : AIR 2019 SC 994 while deciding cases arising out of motor vehicle accidents, the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubts which is followed in criminal cases. On analysing the evidence of P.W. 3 and P.W. 4 this fact, in the light of the standard of proof of preponderance of probability, stands proved that on 22.11.2006 at about 11 : 30 a.m. while the victim was trying to get down from the first gate of the offending bus at Dutta Bagan Crossing bus stoppage on Belgachhia Road, then the driver of the bus started the bus with a high speed and in rash and negligent manner. As a result of which the victim fell down and the rear wheel of the bus ran him over.



Because of this he sustained severe injuries on his person and he succumbed to the injuries.'

Upon considering the evidence adduced in MACC 15 of 2016 and considering the reasons given by the Learned Trial Judge in details this Court does not think fit to interfere in the findings of the Learned Trial Judge. Thus FMA-192 of 2021 should be dismissed.

Now with regard to the claim case MACC-15/2016 and MACC 96/2016 as the FIR, charge-sheet, seizure list submitted in the said cases are common it is not necessary to discuss the same once again but it is necessary to consider the evidence of Jishu Mondal in both the cases.

In MACC Case No-96 of 2016 Jishu Mondal deposed as P.W. 3. He specifically stated how the accident took place. He specifically stated in cross-examination that he went to place of occurrence for the purpose of seeing goddess Durga. He also stated that he reported the said incident to Lalbazar along with lorry number. Nothing could be shaken in cross examination that he did not witness the accident and the offending vehicle.

In MACC 15 of 2016 Jishu Mondal deposed as P.W. 2. He stated specifically as to how the accident took place. In cross examination also he mentioned about purchasing cigarette and visiting pandals at Durga Puja. He also stated that the truck dashed the right side and hit on the drivers side. Learned Trial Judge in both the cases viz. MACC-15/2016 and MACC-96 of 2016 upon considering the evidence and assigning reasons allowed the said



cases by awarding compensation which in the view of this Court is just and proper.

The evidence of Jishu Mondal in all 3 claim cases are similar. There is no such inconsistency to make the case of claimants doubtful. The compensation awarded is also just and reasonable.

Hence these Appeals FMA-396/2022, FMA-172 of 2021, and FMA-192 of 2021 stands dismissed the Judgment and Award dated 06/10/2020 passed by Learned Additional District Judge Fast Track 4th Court South 24 Parganas Alipore in MACC Case No. 14 of 2016, Judgment and Award dated 6-10-2020 passed by Learned Additional District Judge Fast Track 4th Court Alipore South 24 Parganas, in MACC 15 of 2016, and Judgment and Award dated 30th January 2021 passed by Learned Additional District Judge Fast Track 3rd Court in Alipore in MACC 96 of 2016 stands affirmed. The Appellant Insurance Company in all the claim cases shall deposit before the Registrar General High Court Calcutta the compensation awarded by the Learned Trial Court. Such deposit shall be made within 8 weeks from the date of communication of this order. In the event compensation awarded by Learned Trial Court is deposited no further deposit be made.

The claimants/respondents will be entitled to withdraw the compensation upon compliance of necessary formalities.



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.)