

**IN THE HIGH COURT AT CALCUTTA
CIVILAPPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

F.M.A. 1543 of 2017

National Insurance Company Ltd.

-Vs-

Shyamal Halder & Anr.

With

COT 72 of 2017

Shyamal Halder

-Vs-

National Insurance Company Ltd. & Anr.

For the Appellant/
Insurance Company : Mr. Rajesh Singh

For the Respondent No.1/
Claimant : Mr. Krishanu Banik
Mr. Tathagata Banik

Heard on and Judgment on : 08.05.2025

Ananya Bandyopadhyay, J.:-

1. The instant appeal was heard earlier and judgment was reserved.
However, the matter was listed under the heading 'For Hearing' for further clarification.
2. The Learned Advocates representing the respective parties are present.
3. The claimant, Shyamal Halder, filed an application under Section 166 of the Motor Accident Claims Tribunal, 7th Court, Alipore, South 24-Parganas, being MAC Case No.03 of 2010, seeking compensation to the tune of Rs.10,00,000/- along with interest and costs on account of

grievous injuries sustained in a motor accident which occurred on 21.08.2007.

4. The case of the claimant was that on 21.08.2007 at about 6:30 P.M., while he was waiting for a bus near Mallickbazar (Park Street) Bus Stop, a mini bus bearing registration No.WBY-2830, being driven at an excessively high speed in a rash and negligent manner, struck him from behind. As a result, he fell on the road and sustained severe injuries all over his body including a critical injury to his left leg which was later amputated above the knee due to the severity of the damage.
5. The victim was initially taken to C.N.M.C. Hospital with the help of police personnel and local people and was later shifted to AMRI Hospital, where he remained admitted for 25 days. Despite undergoing prolonged treatment, his left leg had to be amputated. The injuries rendered him permanently disabled, leaving him unable to work or perform daily tasks without assistance. He had since suffered extreme physical pain, mental agony and a significant loss of amenities while also facing acute financial hardship.
6. The claimant attributes sole responsibility for the accident to the rash and negligent driving of the driver of the said mini bus bearing registration No.WBY-2830. Accordingly, he filed the present application praying for compensation.
7. Following the accident, a criminal case was initiated at the Park Street Police Station being Park Street P.S. Case No.239 dated 02.12.2007 under Sections 279/338 of the Indian Penal Code. Subsequently, a charge-sheet was filed against the driver of the offending vehicle, Ramesh Singh, vide

Charge-sheet No.166/2008 dated 16.09.2008 for offences under the said Sections.

8. The owner of the offending vehicle did not contest the case and the case proceeded *ex parte* against him.

9. Shriram General Insurance Company Ltd. contested the aforesaid MAC case.

10. The Learned Tribunal as aforesaid disposed of the issues framed considering the oral as well as documentary evidence and awarded a sum of Rs.10,74,400/- as well as interest of 6% from the date of filing the case till the realization of the amount.

11. The Learned Advocate representing the appellant-Insurance company submitted the offending vehicle being a mini bus wherein registration no. WBY-2830 was not involved in causing the accident. It was submitted by the Learned Advocate representing the appellant-Insurance Company that the accident occurred on 21st of August, 2007 in the presence of a Sergeant of Police being present at the relevant spot of accident.

12. The Learned Advocate representing the appellant-Insurance stated as follows:-

a) The accident took place on 21.08.2007. The award confirmed that a Sergeant of Police (Rajiv Bose) was present at the spot of accident. Admittedly, the said Sergeant had stated in the G.D. Extract dated 21.08.2007, that an unknown vehicle had dashed the victim and fled. Surprisingly, in spite of being present at the spot of occurrence, the said Sergeant did not lodge any First Information Report. The G.D. Extract spoke there were other police personnels present at the spot, being

one ASI and a constable of police. It was strange that none of the police personnel lodged the FIR or written complaint against the offending vehicle.

- b) The wife of the injured victim filed a written complaint on 09.10.2007 against the alleged involved Mini Bus no. WBY-2830, i.e. nearly one month and 18 days after the accident wherein for the first time the number of the alleged offending Mini Bus was mentioned. The First Information Report was lodged on 02.12.2007 by the police supplied the number of the offending vehicle to the claimants. It was strange that the said eye-witness (PW2) to the accident, in spite of knowing the number of the alleged offending vehicle, chose not to provide the same to the police personnels present at the spot of accident.
- c) The above chain of events raised doubt regarding the involvement of the alleged offending Mini Bus no. WBY-2830. On the basis of the above discussion, the appellant submitted the vehicle in question was not involved in the accident and was subsequently implicated in the claim case only to gain an unlawful advantage from its insurance company, being the appellant hereinabove.
- d) The victim was working at Bengal Park Chambers Housing Development Ltd. as an Assistant Manager. Admittedly, the victim had rejoined his services after his accident. Such fact was confirmed by the victim while deposing as PW1 and also

by his wife (DW1). Thus, admittedly the victim did not suffer any pecuniary loss.

e) It was a fact that the claimant's left leg above knee was amputated as a result of accident. However, in absence of any loss of income, the multiplier method could not be applied. The claimant was not entitled to any amount on the head of pecuniary damages. The Tribunal erred in assessing the compensation by applying the multiplier method.

11. The Learned Advocate representing the respondents-claimants submitted the victim-claimant to be entitled to compensation on account of loss of earning and earning capacity with additional pecuniary and non-pecuniary damages and relied on the following decisions:-

- a) *2024(2) TAC 706(SC) Roshan Lal Vs. New India Assurance Company Ltd.*
- b) *R. D. Hatangadi Vs. Pest Control (India) Pvt. AIR 1995 (SC) 755=1995(1) TAC 557 (Para-9).*
- c) *Govinda Yadav Vs. New India Assurance Company Ltd. 2012 ACJ 28=2012(1) TAC 1(SC) (Para-15).*
- d) *New India Assurance Company Ltd. Vs. Gajendra & Ors. 2017 ACJ 2834 (Para-8).*
- e) *Reliance General Insurance Company Ltd. Vs. Aninditya Kusari & Anr. 2021 ACJ 523.*
- f) *Ropa Vs. Divisional Manager, New India Assurance Company Ltd. 2024 ACJ 2358.*
- g) *Gauribai Vs. Sabita Devi and Others 2024 ACJ 2017=2024(2) TAC 18.*

12. With regard to the delay in filing the complaint, the Learned Advocate representing the respondents-claimants relied on the following decisions:-
- a) *Ravi Vs. Badrinarayan and Others 2011(1) TAC 867 (SC)=2011 ACJ 911.*
 - b) *National Insurance Company Ltd. Vs. Pratima Barik 2018 ACJ 77=2017(2) TAC 466.*
13. With regard to the point of involvement of the offending vehicle, the Learned Advocate representing the respondents-claimants relied on the following decision cited in *New India Assurance Company Ltd. Vs. Mita Samanta and Others (Cal HC) 2010 ACJ 2212=2010(1) TAC 343.*
14. Considered the rival contentions of the Learned Advocates representing both the parties.
15. The Learned Tribunal in deciding a case under the Motor Vehicles Act cannot act strictly as a Trial Court to take into account the veracity of the documents and consider the same to be unimpeachable without the assistance of the prosecution as well as the documents filed by the Investigating Agency through the Public Prosecutor.
16. In the instant case, there are limitations on the part of the Learned Tribunal to rely on the documents placed before it without the jurisdiction to order or direct further investigation to verify or authenticate the role of and/or overt act on the part of the driver of the offending vehicle as well as the owner of the same.
17. The Learned Advocate representing the appellant-Insurance Company initially referred to the G.D. extract whereby it was stated that an unknown vehicle was responsible for causing the accident indicating false implication of the offending vehicle allegedly as an afterthought for the

sake of extracting money from the insurance company after lodging a delayed complaint resulting in institution of a criminal case through formal registration of the F.I.R.

18. PW-2, the wife of the victim-complainant, stated to have filed the complaint on 09.10.2007 after a considerable gap since the accident occurred on 21.08.2007. PW-2 stated to have been engaged with the treatment of her husband which consumed time to lodge the complaint. PW-2 further stated her husband joined his service. The charge-sheet marked as Exhibit-1 mentioned the involvement of the offending vehicle which *prima facie* case liability on the insurance company since the Learned Tribunal could not have travelled beyond its jurisdiction to direct a separate investigation to unravel the veracity otherwise.

19. Considering the facts and circumstances of the case and the disability to the extent of amputation of both the legs of the victim, the impugned judgment and order is modified to the following extent:-

1.	Monthly income be assessed as Rs.5,000/-	Rs.5,000/-
2.	Annual income be assessed as (Rs.5,000/- x 12)	Rs.60,000/-
3.	Future prospect be assessed 25%	Rs.15,000/-
4.	Total	Rs.75,000/-
5.	80% loss of income	Rs.60,000/-
6.	Multiplier as per age of 13 (Rs.60,000/- x 13)	Rs.7,80,000/-
7.	Medical expenses	Rs.6,00,000/-
8.	Future medical bill	Rs.2,00,000/-

9.	Pain and suffering	Rs.2,00,000/-
10.	Artificial leg	Rs.1,00,000/-
11.	Other non-pecuniary damages	Rs.2,00,000/-
12.	Total	Rs.20,80,000/-

20. The Learned Advocate representing the appellant-insurance company submitted to have deposed a sum of Rs.16,88,991/- as per challan filed by the Learned Advocate representing the appellant-insurance company. The Learned Advocate representing the appellant-insurance company further submitted that in compliance with the order dated 30.11.2017 passed by a Co-Ordinate Bench of this Court. The respondent/claimant had withdrawn 50% of the awarded amount, i.e. Rs.10,74,400/- together with interest at the rate of 6% per annum as mentioned in the impugned judgment and order.
21. The Learned Advocate representing the appellant-insurance company is to deposit the balance amount of compensation within twelve weeks along with interest at the rate of 6% per annum from the date of filing of the claim application till the date of its realization.
22. The Office of the Registrar General, High Court, Calcutta shall encash the said cheque and thereafter disburse the same along with accrued interest to the respondent No.1/claimant as mentioned in the award passed by the Motor Accident Claims Tribunal, 7th Court, Alipore, South 24-Parganas, being MAC Case No.03 of 2010 on proof of proper identification of the respondent No.1/claimant subject to payment of *ad valorem* Court's fees.
23. The instant appeal and connected cross-objection are disposed of accordingly.

24. The Trial Court records shall be sent down to the concerned Tribunal forthwith.

25. Copy of the order be sent to the department as well as concerned Tribunal for information.

(Ananya Bandyopadhyay, J.)