



**In the High Court at Calcutta
In The Circuit Bench at Jalpaiguri
Appellate Side**

Present:

The Hon'ble Justice Biswaroop Chowdhury

FMA 54 of 2025

Bina Rani Mahanta & Ors.

Vs.

National Insurance Co. Ltd. Anr.

With

FMAT (MV) 52 of 2025

National Insurance Co. Ltd.

Vs.

Bina Rani Mahanta & Ors.

**For the Appellant in FMA/54/2025 & respondent in FMAT
(MV)/52/2025**

: Mr. Gobinda Saha, Adv.

: Ms. Priyanka Dey, Adv.

: Mr. Milan Chandra Laskar, Adv.

: Ms. Srija Bhowmik, Adv.

Heard On : 19.03.2026

Judgment On : 25.03.2026

Biswaroop Chowdhury, J.

The above appeals arise out of Judgment and Award dated 28th January 2025 passed by Learned Additional District Judge Fast Track 1st Court Jalpaiguri in MAC Case No-58/2018. The National Insurance Company Limited being opposite party in the said claim case before Learned Trial Court and Bina Rani Mahanta, Mousumi Mahanta and Kunal Mahanta being claimants in the



said case have preferred 2 separate appeals being FMA-54 of 2025 and FMAT (MV) 52 of 2024 being aggrieved by the Judgment and Award passed by the Learned Trial Court. The case of the claimants before the Learned Trial Court may be summed up thus:

On 24-01-2018 at about 9.45 p.m. the victim Jagdish @ Jagdish Mahanta was standing by the road side near Naba Bichitra club under P.S. Tufanganj, Dist: Cooch Behar then one Alto bearing no-WB-70C-0548 coming at a high speed from the side of Tufanganj dashed down the said Jagdish @ Jagdish Mahanta and as a result he died on the spot. Subsequently P.M. was done at MNJ Hospital Cooch Behar.

He was an employee of L/NK, 37 RR Bn Punjab C/O 56 APO from where he used to earn Rs. 60,000/- per month as salary.

Regarding this accident Tufanganj P.S. Case No. 35/2018 dated 29-01-2018 was started u/s-279/304 AIPC. In course of investigation involvement of the offending vehicle bearing registration No-WB-70C-0548 was found and established and accordingly charge sheet was submitted.

The accident occurred due to rash and negligent driving by driver of vehicle bearing no. WB-70C-0548 (Alto).

Pursuant to the filing of the same case notice was issued upon the Opposite Party vehicle owner and Opposite Party Insurance Company. Opposite Party vehicle owner did not contest the case. However Opposite Party National



Insurance Co. Ltd. contested the case by filing written statement. Issues were framed and evidence was adduced. Learned Trial Judge if the considering the evidence adduced and upon hearing the Learned Advocates was disposed the claim case by observing and directing as follows:-

'Hence, it is,

ORDERED

That the instant case filed u/s 166 of Motor Vehicles Act, 1988 is allowed on contest as against the O.P. No-2/National Insurance Co. Ltd. and ex-parte against the O.P. No-1/owner.

The Petitioners/claimants Bina Rani Mahanta, Mousumi Mahanta and Kunal Mahanta being the legal heirs and representative of the deceased/vic-tim Jagdish @ Jagdish Mahanta do get an award of Rs. 1,05,80,080/-. (Rs. One Crore five lakh eighty thousand and eighty only) in equal shares subject to payment of DCF if any.

Petitioner no. 2 being the legal guardian of the minor petitioner no.3 namely Kunal Mahanta is given the liberty to receive the cheque for and on behalf of the minor and she is also directed to invest the said share of the minor in fixed deposit scheme before any nationalized bank or post office with a liberty to withdraw the interest accrued thereon and to spend the same for the purpose of welfare benefit of the minor till the minor attains majority.



The National Insurance Co. Ltd. is directed to pay the awarded amount to the above mentioned petitioners/claimants within two months from the date of passing of this order, failing which company will liable to pay the award with interest @6% p.a from date of filing of this case. The petitioners/claimants will be at liberty to put this award in execution in accordance with law if the judgment debtor fails to satisfy the award within the stipulated period.

However, considering the entire aspects this Tribunal passes no order as to cost.'

The appellant National Insurance Company Limited being aggrieved by the order of the Learned Trial Court has come up with the instant appeal. The Claimants/Respondents being also aggrieved have preferred a separate appeal.

Heard Learned Advocate for the appellant and Learned Advocate for the respondent no-1 and 2/claimants, perused the evidence adduced and materials on record.

Learned Advocate for the National Insurance Company Limited submits that the Learned Trial Judge erred in awarding compensation when no eye witnesses were examined by the claimants. Learned Advocate further submits that the vehicle WB-70C-0548 (Alto) is implanted. Learned Advocate also submits that the compensation awarded by Learned Trial Judge is excessive, and the employer of the victim is not examined.



Learned Advocate appearing for claimants Bina Rani Mohanta and others submits that the police Authority upon investigation submitted charge sheet against driver of vehicle being No-WB-70C-0548 and the I.O. was not examined by the appellants Insurance Company. Thus at this stage the plea with regard to non-involvement of vehicle cannot be taken. Learned Advocate for the claimants/respondents submits that the Learned Trial Court erred in not awarding interest from date of filing claim case.

The following decisions are relied upon by Learned Advocates.

Raj Kumar Das VS National Insurance Company Ltd. and Anr.

Reported in 2023(1) TAC-656 (Cal).

Reliance General Insurance Co. Ltd. VS Kalipada Mukherjee and ors.

FMA-511 of 2018

With

COT-29 of 2021

Ranjet and Anr. VS Abdul Kayam Neb and Anr.

SLP(C) No. 10351/2019. Supreme Court of India.

Bajaj Allianz General Insurance Co. Ltd. VS Manisha Lahu Kale.

(High Court of Bombay)

First Appeal-2742/2015.

**Sithara NS and ors. VS Sai Ram General Insurance Company Ltd.**

Supreme Court of India.

Civil Appeal No. 14718-14719 of 2025.

Before proceeding to decide on the issue it is necessary to consider the relevant judicial decision on the issue.

In the case of Sithara N.S. and Ors. (Supra) the Hon'ble Supreme Court observed as follows:

'16) This Court is conscious of the settled legal position that in cases of motor vehicle accidents, the standard of proof required is that of preponderance of probabilities. It is also well settled that the absence of vehicle registration number in the FIR or complaint lodged immediately after the accident is not, by itself, fatal to the claim. An FIR is not an encyclopedia and omissions at the initial stage may not be determinative. However, the claimants must establish the specific identity of the vehicle/driver, with the caveat that the connection of the accident with the said vehicle must be established through cogent and reliable evidence.

17) However, in the present case, the omission of the vehicle registration number in the complaint cannot be viewed in isolation, but in conjunction with other infirmities in the evidence. The complaint merely states that a vehicular accident occurred without identifying the offending vehicle. The spot mahazar was admittedly prepared several days after the accident. In absence of any



eyewitness to the accident, there is nothing to indicate the basis upon which it was drawn up or whose statement formed its foundation.

18) Most significantly, the report dated 05.10.2013 of the Motor Vehicle Inspector reveals no damage whatsoever to the alleged offending vehicle. A circumstance that is wholly inconsistent with a collision of such severity as to cause the death of two persons. This report provides no basis for the claim, and the fact that the chargesheet filed after the vehicle was recovered one and a half months post-accident raises concerns about the reliability of the evidence.'

In the case of Ranjeet and Anr. (supra) the Hon'ble Supreme Court observed as follows:-

'4. It is settled in law that once a charge sheet has been filed and the driver has been held negligent, no further evidence is required to prove that the bus was being negligently driven by the bus driver. Even if the eye-witnesses are not examined, that will not be fatal to prove the death of the deceased due to negligence of the bus driver.'

In the case of Reliance General Insurance Co. Ltd. (Supra) the Hon'ble High Court Calcutta observed as follows:

'With regard to the first issue relating to rash and negligent act on the part of the driver of the offending vehicle, it is found that the claimants have adduced the evidence of husband of the deceased (claimant no. 1) as P.W. 1 and also produced the charge sheet marked as Exhibit-3. The learned Tribunal



considering the oral and documentary evidence produced by the claimants and also that no contrary evidence has been produced challenging the negligence on the part of the driver of the offending vehicle held that the driver of the offending vehicle was guilty of rash and negligent act. It is not in quarrel that in an application under Section 166 of the Motor Vehicles Act, the claimants are required to establish the fact of rash and negligent act of the driver of the offending vehicle. Though the initial onus lies upon the claimants to prove the rash and negligent driving of the offending vehicle in an application under Section 166 of the Motor Vehicles Act but such onus shifts when the claimants by leading evidence discharges his initial onus. It is trite law that the approach and role of the Courts while examining the evidence in accident claim cases ought not to be find fault with non-examination of some best eyewitness, as may happen in a criminal trial, but instead should be only to analyze the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true. The standard of proof beyond reasonable doubt as in the criminal trial cannot be applied in claim cases and that claimants are merely to establish their case on the touchstone of preponderance of probabilities.'

Upon hearing the Learned Advocates and considering the facts of the case and the judicial decisions relied upon this Court is of the view that although the claimants did not examine any eye witness but from the charge sheet, and post mortem report the accident due to rash and negligent driving by driver of vehicle bearing registration WB-70C-0548 is proved. The Learned Trial Judge upon considering the relevant documents and evidence of P.W. 1



assigned specific reasons for arriving at the findings of rash and negligent driving by driver of vehicle no-WB-70C-0548.

Thus the said findings cannot be interfered with. It is to be remembered that in all cases it is not possible for family of the victims to find out eye witnesses and examine them and motor vehicle claim legislation being beneficial legislation Courts have discretion to rely upon police report and other materials on record and may award compensation if the police reports inspire confidence in the mind of Court. In the instant case the Insurance Company did not examine I.O. to show that investigation is perfunctory nor the driver of offending vehicle is examined to dispute involvement. Thus the charge sheet submitted by Police Authority cannot be discarded.

Moreover when an accident takes place and involvement of a particular vehicle is alleged in usual practice the Insurance Company carries out its own enquiry to ascertain the involvement of vehicle. In the instant case no enquiry report is submitted by Insurance Company to show non involvement of the vehicle.

With regard to the submission of Learned Advocate for the appellant Insurance Company that the employer of the victim was not examined and the salary slip was considered this Court is of the view that when the salary slip is certified by the Government department it cannot be discarded. Moreover claim tribunals not bound to follow the rules of evidence but follow principles of natural justice. Thus the Learned Trial Judge did not commit any error in



relying upon the certified copy of salary slip. Learned Trial Judge observed that considering the fact that the documents certified copy of the salary slips were produced by the concerned office along with Insurance letter no. 401121/NE and EG/NER/LIB dated 26924 the same cannot be disabled.

In the facts and circumstances the Appeal filed by National Insurance Company Limited being FMAT(MV) 52/2025 and appeal filed by Bina Rani Mahanta and others being FMA-54/2025 both stands dismissed.

Judgment and Award dated 28th January 2025 passed by Learned Additional District Judge Fast Track 1st Court Jalpaiguri in MAC-58/2018 is affirmed.

Urgent certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Biswaroop Chowdhury, J.)