(2026) 01 CAL CK 1357

In the Calcutta High Court

Case No : F.M.A. 386 Of 2022

United India Insurance Company Limited APPELLANT

Vs

Mome Bhattacharjee & Ors. RESPONDENT

Date of Decision : 22-01-2026

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2026) 01 CAL CK 1357

Hon'ble Judges : Biswaroop Chowdhury, J

Bench : Single Bench

Advocate : Rajesh Singh, Krishanu Banik, Tathagath Banik, Sukumar Bhattacharyya, Tanushree Ghosh

Final Decision : Dismissed

Judgement

Biswaroop Chowdhury, J

The appellant before this Court was an opposite party in a case under Section 166 of the Motor Vehicles Act 1988 and is aggrieved by the Judgment and Award dated 6th March 2021 passed by Learned Judge VIIIth Bench City Civil Court Calcutta in MAC case No. 397 of 2017.

The case of the respondent no-1 and 2/claimants before the Learned Trial Court may be summed up thus:

On 22-03-2017 around 11.30 hrs victim Somnath Bhattacharjee age of 42 years (since dead) was travelling by a Motor cycle from Chandannagar to Masat Side along by the left side of Ahallabai Road (Route no.26) and reached at Kalchara More under Chanditala Police Station of District Hooghly meanwhile a truck bearing Regd.no WB-41C/2696 that was coming from some direction at a very high and excessive speed with rash and negligent manner and the offender driver reaching to the victim lost his control over the vehicle and thereby dashed him with his motorcycle. As a result he fell down on the metal road and received grievous injuries to his person. Local people soon after the accident took him to nearby Chanditala Rural Hospital where he was declared dead. On the effect of such accidental death the police from Chanditala Police Station started u/d Case No-22/17 dated 22-03-2017. Accident was caused due to rash and negligent driving to the driver of aforesaid offending vehicle involved in accident. FIR was lodged on the day before Chanditala Police Station against the driver of the vehicle in accident.

Somnath Bhattacharjee the deceased was only 42 years of age at his death. He was a Railway employee and prior to death he was posted at Liluah, Howrah Railway Workshop as Office Superintendent and as per pay slip his salary was of Rs. 52,000/- only per month. The claimants prayed for a compensation of Rs. 76,16,000/- under Section 166 of the Motor Vehicles Act, along with interest from the date of filing of the case.

Pursuant to the filing of the case notice was issued upon the appellant Insurance Company and respondent no-3/vehicle owner. The opposite party vehicle owner although filed written statement but did not contest the case Appellant Insurance Company filed written statement and contested the case. Issues were framed and evidence was adduced by the claimants and Appellant Insurance Company.

Upon considering the evidence and hearing the parties Learned Trial Court was pleased to dispose of the claim case by observing and directing as follows:

'Accordingly, it is ORDERED that the MAC case vide No. 397 of 2017 be and the same is allowed on contest in part against the O.P., United India Insurance Co. Ltd. and ex-parte against the owner of vehicle bearing no. WB-41C 2696, however without any order as to the costs. Claimants do get award of Rs. 68,88,000/- (sixty-eight lakh eighty-eight thousand) only along with interest @6% p.a. accrued thereon for the period commencing from 23-06-2017 till the date of realization thereof and claimant no-1shall get of loss of consortium of Rs. 25,000/- and cost of funeral expenses of Rs. 10,000/-.

Insurer is hereby directed to pay the said amount by issuing two A/C payee cheques of Rs. 34,74,000/- and of Rs. 34,49,000/- to the claimant no. 1 and 2 respectively along with interest @6% per annum from 23-06-2017, to till the date of realization thereof.

Claimant no. 1 is hereby authorized to receive the cheque of claimant no-2 on execution of bond on condition that she would go on making deposit of the amount contained in the cheque in favour of the minor claimant in any long term deposit in any nationalized bank or post office for the period till the date minor attends majority and she will be entitled to draw any kind of loan from the fixed deposit amount.

Further she at liberty to withdraw the interest accrued thereon from time to time which shall be utilized for the welfare of the minor (claimant no.2) maintenance education etc.

With this observation and order this claim application is thus disposed of.'

The appellant United India Insurance Company Limited being aggrieved by the Judgment and Award passed by the Learned Trial Judge has come up with the instant appeal. The respondent no. 1 and 2 also being aggrieved by the Judgment and Award of the Learned Trial Court has filed a cross objection.

It is the contention of the appellant Insurance Company that the salary of the victim was Rs. 8076/- as per Investigator of the Insurance Company thus the Learned Trial Court erred in proceeding on the basis of last monthly salary of Rs. 48,000/-.

It is the contention of the respondent no. 1 and 2 that the Learned Trial Judge ought to have proceeded on the basis of monthly income of Rs. 51,800, or Rs. 51, 850/- and not Rs. 48, 000/-.

Heard Learned Advocates for the Appellant United India Insurance Company Ltd., Learned Advocate for the respondent no. 1, and 2 and Learned Advocate for the Railway Authority. Perused the materials on record. During pendency of Appeal as a dispute arose with regard to income of the victim the matter was remitted to the Learned Trial Court to take evidence with regard to income of victim by examining the employer of the victim and the Income Tax Authority.

The Officer of Railway Authority being P.W. 3 on showing Exhibit-7 Salary Slip deposed that in December 2016, gross pay of the deceased Somnath Bhattacharjee was Rs. 51,085/- and professional tax deducted was Rs. 200/- In January 2017, gross pay was Rs. 50,470/- and professional tax of Rs. 150/- was deducted from his pay. In February 2017 his gross pay was Rs. 43,641/- and profession tax of Rs. 200/- was deducted from his pay. He further stated that the amount of professional tax is deducted in each month from the pay of an employee automatically as set up in the system in CRIS. (Center for Information system New Delhi) under Ministry of Railway. The variation in the amount of deduction of professional tax of deceased Somnath Bhattacharjee in Exhibit 7 series was also decided by the system maintained by CRIS.

P.W. 4 Koushik Chakraborty Income Tax Officer Ward No. 54(2) in his examination in chief has stated that gross pay of the deceased in the month of December 2016 was Rs. 51,085/- and profession tax of Rs. 200/- was deducted from his pay. Gross Pay in the month of January 2017, was Rs. 50,470/- and profession tax of Rs. 150/- was deducted from his pay, and gross pay for the month of February 2017 was Rs. 43,641/- and professions tax of Rs. 200/- was deducted from his pay.

Mr. Singh Learned Advocate for the appellant Insurance Company draws attention to the pay slips and submits that from the pay slips it cannot be ascertained as to the basis on which the Learned Trial Judge considered the income and income tax and awarded compensation. The Railway Authority in their affidavit has annexed TDS/Form. 16 of the Assessment year 2016-17 to which Mr. Singh submits that Form No-16 relates to one quarter thus deduction for the year is not available.

Mr. Banik Learned Advocate for the claimant/respondent no.-1 and 2 submits that upon considering the income tax deducted at source the income of the victim comes to Rs. 51,850/-.

Upon considering FORM 16 which is submitted it appears that it is for the period 1st April 2015 till 31st March 2016, one quarter thus the income tax deducted at source for the year 1st April 2016 till 31st December 2016 is not available. However, the copy of return dated 13-02-2016 for the assessment year 2015-2016 submitted shows that Income Tax deducted was Rs. 11,767/-and total income Rs. 3,98,998/- Learned Trial Judge upon considering the income to be Rs. 52,000/- and Rs. 51,000/- per month considered the Income Tax payble for the year in accordance with law to be Rs. 20,000/- and monthly Income Tax to be Rs. 2,000/-. Thereafter Rs. 2,000/- was deducted from Rs. 50,000/-. Hence the monthly income of Rs. 48,000/- was taken into consideration for awarding compensation. Thus considering the approach adapted by the Learned Trial Judge with regard to Income and Income Tax this Court is of the view that the process adapted was just and reasonable. Although deduction on account of Income Tax ought to have been Rs. 1,666/-per month but as the difference is minor and the compensation awarded on account of Total dependency loss is of Rs. 68,88,000/- is just and reasonable interference is not necessary in this regard.

Upon considering the facts this Court is of the view that total compensation awarded which includes consortium, and funeral expenses is just and reasonable thus there is no scope for interference.

Hence both the Appeal FMA-386/2022 along with COT-51/2024 stands dismissed.

The Judgment and Award dated 6th March 2021 passed by Learned Judge VIIIth Bench City Civil Court Calcutta in MAC-No-397/2017 is affirmed.

The Trial Court Record be sent Back.

The respondent no-1 and 2/claimants are permitted to withdraw the awarded sum deposited along with interest accrued 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.

