

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

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 1031 of 2025

With

IA No.:CAN/2/2025

Magma HDI General Insurance Company Ltd.

VERSUS

Nurangini Bibi & Ors.

With

C.O.T. 138 of 2025

Nurangini Bibi & Ors.

VERSUS

Magma HDI General Insurance Company Ltd.

For Appellants/claimants:

Mr. Ashique Mondal, Adv.

Mr. Shahmeraz Alam, Adv.

For Respondent No. 1/Insurance Co.:

Mr. Saswata Bhattacharyya, Adv.

Last Heard on: August 01, 2026

Judgment on: August 14, 2026

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 10th April, 2025 passed by Learned Additional District Judge 3rd Court Suri Birbhum in MAC Case No. 317/2019.

The case of the claimants before the Learned Trial Judge may be summed up thus,

The accident occurred due to rash and negligent driving of the truck/vehicle bearing no. WB-45/4583 (Truck) by its driver. Abdul Bakkar and Ruhul Amin were proceeding by Motor Cycle towards Lohapur from Ujirpur. At the same time a vehicle (truck) bearing No. WB-45/4583 running recklessly and negligently with high speed on Panchgram side (same direction) and the negligent driver of the said truck lost his control over his driving and dashed behind the said motor cycle near Ashikandar bridge under P.s-Nalhati, Birbhum. Abdul Bakkar sustained grievous injuries and local people rushed him to Rampurhat Govt. Medical College and Hospital but he died shortly at the said Hospital. The applicants/claimants have been suffering from irreparable loss and injury due to premature death of earning member of their family.

Pursuant to filing of this case notice was issued upon the opposite parties. Opposite party vehicle owner did not contest the case. 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 was pleased to dispose of the claim case by observing and directing as follows:-

'Hence, it is,

ORDERED

That the instant case be and the same is allowed on contest against the OP no.2/insurance company and ex-parte against the OP No.1, owner of the offending truck bearing no. WB-45/4583.

OP no.2/insurance company is directed to issue an account payee cheque amounting to Rs. 1,50,000/- (Rs. One Lac Fifty Thousands only) along with aforesaid interest in the name of Nurangini Bibi and also issue five separate account payee cheques amounting to Rs. 1,14,680/- (Rs. One Lac Fourteen Thousands Six Hundred Eighty only) each along with aforesaid interest in the name of remaining petitioners from the date of filing of this case within sixty days from this day.

Let a copy of this judgment be handed over to the Ld. Advocate for the insurance company (OP no. 2) free of cost for compliance.'

The appellant insurance company being aggrieved by the judgment and award passed by the Learned Trial Court has come up with the instant appeal. The respondents/claimants being also aggrieved by the quantum of compensation awarded by the Learned Trial Judge has filed counter objection.

Heard Learned Advocate for the appellant insurance company and Learned Advocate for the claimants/respondents. Perused the evidence adduced and materials on record.

Learned Advocate for the appellant insurance company submits that there was huge delay in lodging FIR thus case of claimant is doubtful. Learned Advocate further submits that victim was a mason, and Learned Trial Judge awarded compensation which is excessive.

Learned Advocate for the respondents/claimants submits that the delay in lodging FIR is explained. Thus the said delay is not fatal. Learned Advocates also submits that the Learned Trial Judge ought to have considered the monthly income of the victim as Rs. 10,000/- instead of Rs. 6,000/-. Thus the compensation awarded should be enhanced.

Upon hearing the Learned Advocates and upon perusing the materials on record it appears that in the instant case the complaint was lodged before the Magistrate under Section 156 (3) of the Code of Criminal Procedure. It is stated in the said complaint that the Police Authority did not take any steps with regard to the vehicle involved in the accident for which the claimant filed complaint under Section 156 (3) of the Code of Criminal Procedure. Upon considering the explanation given in the complaint this Court is of the view that the delay in lodging the complaint is not fatal. Further upon considering the evidence of the P.W. 2 Asghar Ali who has claimed himself to be the eye witness and the reasons given by the Learned Trial Judge in the judgment this

Court is of the view that the findings of the Learned Trial Judge with regard to rash and negligent driving of the vehicle no. WB-45/4583 should not be interfered with.

With regard to the quantum of compensation it appears from the evidence of the claimant P.W. 1 that the victim was a mason and he used to earn Rs. 10,000/- per month by virtue of the said occupation. In the cross-examination of the claimant P.W. 1 although stated that he has nothing to show that his father used to earn Rs. 10,000/- per month but there is no cross-examination that the victim was not a mason. As the victim was a mason it is not unusual for a mason to earn Rs. 10,000/- per month considering the date of the accident the age of the victim and number of members in family. However this Court is of the view that it would be just and reasonable to consider the monthly income of the victim to be Rs. 8,000/- per month. In the event the income of the victim is considered as Rs. 8,000/- per month future prospect of 10 per cent brings the total monthly income to Rs. 8,800/- $1/4^{\text{th}}$ should be deducted on account of personal expenses which is Rs. 2,200/- the net monthly income comes to Rs. 6,600/-. The annual dependency loss comes to Rs. 79,200/- the multiplier of 11 being applied the total dependency loss comes to Rs. 8,71,200/-. Further the claimants are entitled to Rs. 84,000/- on account of general damages. Thus total compensation comes to Rs. 9,55,200/- by arithmetical calculation. However, this Court is of the view that compensation of Rs. 9,00,000/- is just and reasonable.

Hence this Appeal FMA 1031/2025 stands disposed. Judgment and award dated 10th April 2025 passed by Learned Additional District Judge 3rd Court Suri Birbhum in MAC Case No. 317/2019 stands modified to the extent that the claimants/respondents are entitled to Rs. 9,00,000/- from the appellant Magma HDI General Insurance Company Limited. The appellant Magma HDI General Insurance Company Limited shall deposit Rs. 9,00,000/- along with interest @6 per cent per annum from date of filing claim case till today. Such deposit shall be made within 8 weeks from the date of communication of this Order. In the event compensation awarded by the Learned Trial Court is already deposited the balance deposit be made. The claimants/respondents will be entitled to withdraw the compensation upon compliance of necessary formalities.

The deficit Court fees be paid of within 4 weeks. The Trial Court records be sent by Special Messenger cost to be put in by the respondents/claimants within 1 week.

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.)