

Form No. J(2)

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 450 of 2025

**National Insurance Company Limited
Versus
Madhusudhan Kaity & Anr.**

With

COT/27/2025

**Madhusudhan Kaity
-Vs.-
National Insurance Company Limited & Ors.**

For the Appellant	:	Mr. Sanjay Paul
For the Respondent No.1 to 4	:	Mr. Jayanta Kumar Mondal Mr. Sayantan Rakshit
Heard & Judgment on	:	1 st August, 2025.

Ananya Bandyopadhyay, J:

1. Both the Learned Advocates representing the appellant/Insurance Company and the respondent No.1 /claimant are present in Court.

2. The instant appeal had been filed against the judgment and award dated 25th July, 2024 passed by the Learned Judge, Motor Accident Claims Tribunal cum Special Court, Durgapur, Paschim Bardhaman in M.A.C. Case No. 8 of 2017 (231/2011).
3. An application under Section 166 of the Motor Vehicles Act had been filed by the claimants on account of the injury sustained by the respondent No.1/claimant in an accident which occurred on 21st September, 2010 at about 18.15 hours at ASP road near UBI Bank within the jurisdiction of Durgapur Police Station with the involvement of the offending vehicle being a truck bearing registration No. WB-37/9294 which having lost its control due to its excessive speed dashed bicycle of the victim. Thereafter, he was shifted to ESI hospital, Durgapur having received severe injuries and subsequently referred to Misson hospital, Durgapur where he evidently succumbed to the injuries.
4. The learned Advocate representing the appellant/Insurance Company submitted apart from the disability certificate marked as Ext.8 the claimants could not produce any documentary with regard to the treatment of the victim in the aforesaid hospitals whereby it could be established that the victim had suffered such disability as a result of the accident incurred by him. More-over, with regard to the age of the victim to be 53 years. The component of future prospect was assessed to the extent of

'15%' instead of '10%'. Certain other benefits have been given to the victim on account of attending charges, driver expenses, future medical expenses etc. which in absence of cogent evidence of the disability to have been suffered conclusion to the occurrence of the accident should not have been granted.

5. The Learned Advocate representing the respondent No.1 /claimant submitted that the victim had lost its job due to his disability to the extent of 80% should therefore considered to be 100%.
6. Since the occurrence of the accident, the driving license, the Insurance policy, the route permit etc. and other ancillary issues have not been disputed by the learned advocate representing the respondent No.1/insurance company, this Court restricts itself only to the extent of issues agitated by the learned Advocates representing the respective parties. The claim application in serial No. 12 and 13 filed on affidavit mentioned the name and address of the medical officer who had attended the victim at the hospital being M.O. of E.S.I. Hospital, Durgapur, M.O. of the Mission Hospital, Durgapur & M.O. of ESI Hospital, Sealdah. The victim had been treated 3rd November, 2010 from 3rd November, 2010, 28th December, 2010 at ESI Hospital, Durgapur and 28th December, 2010 to 31st March, 2011 at ESI hospital, Sealdah as indoor patient and the medical expenditure had been realized by

the ESI authority. The document marked as Ext. 11 endorsed the issuance of the ESI card in favour of the victim as mentioned therein which corroborated the victim to have been enrolled under such facility to have been private by the Employees State Insurance Corporation. Therefore, relevant documents should have been in the custody of concerned hospitalization which might have been excessive by the victim. The contention of the Learned Advocate representing the appellant/insurance company, therefore, could not be considered. Considering the age of the victim the element of future prospect should be considered to be "10%". The impugned judgment and order is modified to the following extent without interfering other heads of accounts assessed by the Learned Tribunal.

7.

Monthly Income	Rs. 8,800/-
Annual Income	Rs. 1,05,600/-
Future Prospect to be added(10%)	Rs. 10,560/-
	<u>Rs. 1,16,160/-</u>
Loss of Earning (80%)	Rs. 92,928/-
Multiplier to be "11"	x 11
	<u>Rs.10,22,208/</u>
General Damages	Rs. 3,50,000/-
Entitlement	<u>Rs.13,72,208/</u>

8. The learned Advocate representing the appellant/Insurance Company submits to have deposited a sum of Rs.

25,43,215/=(Rs. 25,000 + 25,18,215) through two separate cheques as per challan filed by the learned advocate representing the appellant/insurance company.

9. The Learned Advocate representing the respondent Nos. 1 /claimant is entitled to receive the amount of Rs. 13,72,208/- at the rate of 6% per cent per annum from the date of filing of the claim application till the date of actual realization.
10. The office of the learned Registrar General High Court at Calcutta, shall encash the cheques and thereafter disburse the entire awarded amount so deposited with accrued interest directly to the bank accounts of the present respondent Nos. 1/ claimant as mentioned by impugned judgment and order passed by the Learned Judge, Motor Accident Claims Tribunal cum Special Court, Durgapur, Paschim Bardhaman in M.A.C. Case No. 8 of 2017 (231/2011) on proof of proper identification of the respondent No.1/ claimant subject to payment of ad valorem Court fees within four weeks and refund the differential amount if any through a cheque to the learned advocate for the insurance company for the accounts of the insurance company. The office of the learned Registrar General, High Court at Calcutta will instruct the claimant to provide details of his bank account with relevant documentary proof, prior to such disbursal as aforesaid.

11. The instant appeal and cross objection are disposed of accordingly.
12. The pending application, if any, stands disposed of.
13. The interim order if any stand vacated.
14. The TCR be sent down to the concerned tribunal forthwith.
15. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)

C.M. A.R.