IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 1187 of 2025

The Oriental Insurance Company Ltd.

VERSUS

Kumkumi Dhara & Ors.

With

COT 104 OF 2025

Kumkumi Dhara & Ors.

VERSUS

The Oriental Insurance Company Ltd. & Anr.

For the appellant/insurance company.:	Mr. Anjan Chakraborty, Adv. Ms. Avantika Chakraborty, Adv.
For respondents/claimants.:	Mr. Amit Ranjan Roy, Adv.

Last Heard on: November 13, 2025

Judgment on: December 01, 2025

Biswaroop Chowdhury,J:

The Appellant before this Court is an opposite party in a claim case under Section 166 of the Motor Vehicle Act 1988 filed by the Respondent no. 1, 2, 3, and 4 and is aggrieved by the Judgment and Award dated 30-08-2024 passed by Learned Additional District Judge 5th Court Nadia Krishnanagar in MAC case No-75 of 2023. The Respondent no-1, 2, 3, and 4 have also filed a counter objection to the Appeal.

The case of the Respondent no. 1, 2, 3 and 4/claimants may be summed up thus:

On 13-01-23 at about 10:00 AM while the victim was returning home from Harishpur at that time he was dashed by a bus being no. WB-51A/0022.

He was severly injured and local people took him to Nadia District Hospital and from there he was transferred to NRS Medical College and Hospital. During treatment he died there on 17-01-23.

The family members lodged complaint before police Authority. The accident took place due to rash and negligent driving by driver of offending vehicle being WB-51-A/0022. There was no fault on the part of the victim in course of the accident.

The said case was contested by the Appellant Oriental Insurance Company Ltd. by filing written statement. ISSUES were framed. Upon considering the evidence adduced and upon hearing the parties Learned Trial Judge was pleased to dispose the claim case by observing and directing as follows:

'Hence it is ORDERED that the instant claim application U/S-166 of the MV Act is allowed on contest and the OP. No. 2 (The Oriental Insurance

Company Ltd) being the insurer of the offending vehicle bearing no. WB-51A/0022 is liable to pay the entire amount of compensation of Rs. 6,90,750/- (Rupees Six Lakh Ninety Thousand Seven Hundred and Fifty only). So the OP no.2 (The Oriental Insurance Company Ltd) is hereby directed to pay the compensation amount of Rs. 6,90,750/- (Rupees Six Lakh Ninety Thousand Seven Hundred and Fifty only) to the petitioners Viz. 1. Kumkumi Dhara, 2 Kartick Dhara 3, Madhabi Dhara and 4. Sarathi-Dhara by issuing four separate account Payee cheques to the tune of Rs. 1,80,750/- in favour of petitioner No.1 and to the tune of Rs. 1,70,000/- each in favour of Petitioners No. 2, 3, and 4 respectively after deducting the amount of compensation if any already paid U/S 140 of the M.V. Act within 3(three) months from the date of receipt of the copy of this Judgment along with the interest @ 6% per annum from the date of the filing of the claim application till the date of realization of the compensation amount.'

The Appellant being aggrieved by the Judgment and Award passed by the Learned Trial Court has come up with the instant appeal. The Respondent No. 1, 2, 3, and 4have also filed a cross objection being aggrieved by the said Judgment and award.

The ground on which the Judgment of the Learned Trial Court is assailed by the Appellant is that 15% future prospect ought not to have been granted as the victim was a day labour of 58 years. Secondly the evidence adduced does not support the case of the claimants, and thirdly the Award passed was excessive.

The cross objection is filed on the ground that the income of the victim was not properly considered while passing the award.

Thus both Appeal and the cross objection are taken up together for their interconnectiveness.

Heard Learned Advocate for the Appellant and Learned Advocate for the Respondent no. 1, 2, 3 and 4. Perused the evidence adduced.

Learned Advocate for the Appellant Oriental Insurance Company Ltd. submits that the Learned Trial Court erred in considering the future prospect to be 15%. Learned Advocate further submits that the evidence adduced does not support the case of the claimants/respondents no. 1, 2, 3 and 4. Learned Advocate also submits that the Award Passed is excessive.

Learned Advocate for the respondent no-1, 2, 3, and 4 who have also filed cross objection submits that the Learned Trial Court erred in considering the income of the victim to be Rs. 5000/- and by not considering the evidence adduced with regard to income.

Upon perusing the Judgment passed by the Learned Trial Court it appears that the Learned Court upon considering the evidence of eye witness P.W. 2 and documents filed came to the conclusion that death of the victim was due to accident caused by rash and negligent driving by driver of vehicle no-WB-51A/0022. Thus there is no error in such findings. Now with regard to the quantum of compensation as the ground of challenge by respondent no. 1, 2, 3 and 4/claimants is that the Learned Judge failed to consider the evidence with regard to income of the victim, it appears that the Learned Judge observed that the deceased was a temporary worker in a brick field and earning Rs. 300/- per day thus he would not work in all 30 days of the month. It is true that temporary workers on a daily wage basis are not permanent workers as their service can be terminated prior to reaching the age of super-annuation but that does not prove that workers are not engaged for atleast 22 days of the month, 2 days being granted as weekly holidays. The object of engaging workers on daily wage basis is that on the day when workers are not made to work or when workers are absent from duty due to some reasons payment is not required to be made. A manufacturing establishment functions with the help of workers and workers are engaged either on monthly wage basis or daily wage basis but so far as the manufacturing continues service of the workers are usually not discontinued. Although an employer may discontinue the service of a temporary employee but that is not done on an unreasonable basis.

Thus the monthly income of the daily wage employee should ordinarily be considered on the basis of daily wage multiplied by 22 unless contrary is proved.

Hence in the instant case, the monthly income should be Rs. 300 multiplied by 22, which comes to Rs. 6,600/-

Now the point for consideration is whether there should be the future prospect in case of temporary employees.

The decisions relied upon by the Learned Advocate are as follows:-

Kavita Devi and others VS Sunil Kumar and Another.

Reported in 2025 INSC-938.

Preetha Krishnan VS United India Insurance Co. Ltd.

Reported in 2025 INSC-1293.

United India Insurance Co. Ltd. VS Satinder Kaur @ Suturendra.

Reported in AIR-2020 S.C. 3076.

In the case of Satinder Kaur (supra) the Hon'ble Supreme Court observed as follows:

'In Sarla Verma (supra), this Court held:

"24. In Susamma Thomas, this Court increased the income by nearly 100%, in Sarla Dixit, the income was increased only by 50% and in Abati Bezbaruah the income was increased by a mere 7% In view of imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. [where the annual income is in the taxable range, the words 'actual salary' should be read as 'actual salary less tax']. The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardize the addition to avoid different yardsticks being applied or different methods of calculations being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances." (emphasis supplied) In Pranay Sethi (supra), the Constitution Bench evaluated all the judicial precedents on the issue of future prospects including Sarla Verma (supra), and devised a fixed standard for granting future prospects. It was held:

"57. Having bestowed our anxious consideration, we are disposed to think when we accept the principle of standardization, there is really no rationale not to apply the said principle to the self-employed or a person who is on a fixed salary. To follow the doctrine of actual income at the time of death and not to add any amount with regard to future prospects to the income for the purpose of determination of multiplicand would be unjust. The determination of income while computing compensation has to include future prospects so that the method will come within the ambit and sweep of just compensation as postulated under Section 168 of the Act. In case of a deceased who had held a permanent job with inbuilt grant of annual increment, there is an acceptable certainty. But to state that the legal representatives of a deceased who was on a fixed salary would not be entitled to the benefit of future prospects for the purpose of computation of compensation would be inapposite. It is because the criterion of distinction between the two in that event would be certainty on the one hand and staticness on the other. One may perceive that the comparative measure is certainty on the one hand and uncertainty on the other but such a perception is fallacious. It is because the price rise does affect a self-employed person; and that apart there is always an incessant effort to enhance one's income for sustenance. The purchasing capacity of a salaried person on permanent job when increases because of grant of increments and pay revision or for some other change in service conditions, there is always a competing attitude in the private sector to enhance the salary to get better efficiency from the employees. Similarly, a person who is self-employed is bound to garner his resources and raise his charges/fees so that he can live with same facilities. To have the perception that he is likely to remain static and his income to remain stagnant is contrary to the fundamental concept of human attitude which always intends to live with dynamism and move and change with the time. Though it may seem appropriate that there cannot be certainty in addition of future prospects to the existing income unlike in the case of a person having a permanent job, yet the said perception does not really deserve acceptance. We are inclined to think that there can be some degree of difference as regards the percentage that is meant for or applied to in respect of the legal representatives who claim on behalf of the deceased who had a permanent job than a person who is self-employed or on a fixed salary. But not to apply the principle of standardization on the foundation of perceived lack of certainty would tantamount to remaining oblivious to the marrows of ground reality. And, therefore, degree-test is imperative. Unless the degree-test is applied and left to the parties to adduce evidence to establish it, it would be unfair and inequitable. The degree-test has to have the inbuilt concept of percentage. Taking into consideration the cumulative factors, namely, passage of time, the changing society, escalation of price, the change in price index, the human attitude to follow a particular pattern of life, etc., an addition of 40% of the established income of the deceased towards future prospects and where the deceased was below 40 years an addition of 25% where the deceased was between the age of 40 to 50 years would be reasonable.

59. The controversy does not end here. The question still remains whether there should be no addition where the age of the deceased is more than 50 years. Sarla Verma thinks it appropriate not to add any amount and the same has been approved in Reshma Kumari. Judicial notice can be taken of the fact that salary does not remain the same. When a person is in a permanent job, there is always an enhancement due to one reason or the other. To lay down as a thumb Rule that there will be no addition after 50 years will be an unacceptable concept. We are disposed to think, there should be an addition of 15% if the deceased is between the age of 50 to 60 years and there should be no addition thereafter. Similarly, in case of self-employed or person

on fixed salary, the addition should be 10% between the age of 50 to 60 years. The aforesaid yardstick has been fixed so that there can be consistency in the approach by the tribunals and the courts.

59. In view of the aforesaid analysis, we proceed to record our conclusions:

…59.3 While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made.

The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component…" (emphasis supplied)."

Upon considering the observation of the Hon'ble Supreme Court in the case Satinder Kaur with regard to future prospect of self employed persons and persons on fixed salary this Court is of the view that future prospect should also extend to temporary employees. As Wage Revision takes place in most of the manufacturing establishments, and Minimum Wages are revised by Government Authorities and it becomes applicable for both permanent and temporary employees,, and management of different Industrial Establishments on the representation of the workers both temporary and permanent including daily wage workers revise the wages and salary future prospect should also apply to daily wage workers, but in case of daily wage workers who are working on temporary basis and between 50 years to 60 years future prospect should be limited to 10%. Thus in the instant case also future prospect should be 10%.

Upon considering the facts and circumstances discussed above this Court is of the view that compensation to be awarded to the claimants/respondent no. 1, 2, 3, and 4 should be on the basis of monthly income of Rs. 6,600/- of the victim. In the event monthly income is Rs. 6,600/- yearly income comes to Rs. 79,200/-. After adding 10% future prospect total annual income comes to Rs. 87,120/-. 1/4th should be deducted on account of personal expenses. Thus the annual dependency loss comes to Rs. 65,340. As the victim was 58 years multiplier of 9 should be applied. Thus total dependency loss comes to Rs. 5,88,060/-. Although the Learned Trial Judge proceeded to assess compensation on the basis of total dependency loss of Rs. 4,65,750/- instead of Rs. 5,88,060/- but from the judgment and award of the Learned Trial Judge it appears that the Learned Trial Judge also granted consortium of Rs. 40,000/- each to 3 children of the deceased which may not be granted. Thus the total compensation awarded by the Learned Trial Court is just and reasonable and interference is not necessary.

Thus both the appeal being FMA 1107 of 2025 and cross objection COT 104 of 2025 stands dismissed. Order dated 03.08.2024 passed by Learned Additional District Judge 5th Court Krishnanagar Nadia in MAC case No. 75 of 2023 is affirmed. The Trial Court records be sent back. The respondent's no. 1 to 4/claimants are permitted to withdraw the awarded sum deposited by the Appellant Oriental Insurance Co. Ltd. upon compliance of all 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.

(Biswaroop Chowdhury, J.)