IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 868 of 2025

Reliance General Insurance Co. Ltd.

VERSUS

Tasmina Sekh & Ors.

With

COT 149 of 2025

Tasmina Sekh & Anr.

Vs.

Reliance General Insurance Co. Ltd.

For the appellant/insurance co.:	Ms. Gopa Das Mukherjee, Adv.
For the respondents/Claimants.:	Mr. Ashique Mondal, Adv. Mr. S.Alam, Adv.

Last Heard on: 11th November, 2025

Judgment on: 2nd December, 2025

Biswaroop Chowdhury,J:

The Appellant before this Court in FMA-868 of 2025 was a claimant in a Motor Accident claim case under Section 166 of the Motor Vehicles Act 1988, filed by the Respondents nos. 1, 2 and 3 and is aggrieved by the Judgment and Award dated 21st February 2025 passed by Learned Additional District Judge 4th Court Purba Bardhaman in the case being MAC-38 of 2015. The Respondent no-1, 2 and 3 also being aggrieved by the Judgment and Award Passed by the Learned Trial Court has filed a Counter objection being COT-149 of 2025.

The case of the claimants/Respondents no. 1, 2, and 3 may be summed up thus;

On the fateful date and time the victim went to his own cultivation land by walking on NH.2, near Pursa BPHC the offending truck dashed the victim. As a result the victim sustained severe bleeding injuries and the local people admitted the victim to Pursha BPHC then shifted to Burdwan Medical College and Hospital where he died within a very short time.

Rash, reckless and negligent driving on the part of the driver of the offending Truck being no-WB-41E/3733 was sole cause of that pathetic accident. The victim was sole earning member of his family and due to his sudden demise the claimants/petitioners have suffered a great loss beside suffering from pain and mental agony.

The case was contested by the Appellant Reliance General Insurance Co.Ltd. by filing written statement.

ISSUES were framed and evidence was adduced by the Respondents no. 1, 2 and 3 claimants. Upon persuing the evidence and upon hearing the parties Learned Trial Judge was pleased to dispose of the said claim case by observing and directing as follows:

'Hence ORDERED that the instant case is allowed on contest against Opposite Party No. 2.

Accordingly, Rs. 23,20,000/- (Rupees Twenty Three Lakhs Twenty Thousand Only) together with simple Interest @ 6% p. a. thereon from the date of filing the case on 09.07.2015 till the date of realization is awarded in favour of the Petitioners/claimants.

The claimant widow namely i) Tasmina Sekh ii) son SK Nasim Hossain are entitled to get Rs. 11,60,000/- (Rupees Eleven Lakhs Sixty Thousand) each.

The O.P. No. 2 Reliance General Insurance Company Limited is directed to issue two separate a/c payee cheques of Rs. 11,60,000/- (Rupees Eleven Lakhs Sixty Thousand) each together with interest therein in the name of claimants, i) Tasmina Sekh ii) SK. Nasim Hossain within 2 months failing which petitioners will be at liberty to put the order into execution."

The Judgment and Award passed by the Learned Trial Court is assailed by the Appellant @ Reliance General Insurance Co. Ltd. on the ground that the income of the deceased victim ought not to be assessed as Rs. 6,000/- per month from 2 trucks when one truck was in the name of another person and the Learned Tribunal ought not to have relied only on the deposition of P.W. 3 who stated that the monthly income of the victim was Rs. 9,000/- per month, and that the compensation awarded is excessive.

The Respondent no-1 and 2 have assailed the Judgment and Award passed by the Learned Trial Judge on the ground that the Learned Trial Judge instead of adding 40% of income on the ground that the victim was 39 years granted 25% on account of future prospect.

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

Learned Advocate for the Appellant Insurance Company submits that the Learned Trial Court erred in assessing the compensation on the statement of P.W. 3, where the said witness stated the monthly income of the victim as Rs. 9,000/- without further documentary evidence. Learned Advocate further submits that the Learned Trial Judge erred in holding that the monthly income of the victim was Rs. 6,000/- from 2 vehicle when one vehicle was not registered in the name of the victim.

Learned Advocate also submits that the compensation awarded is excessive.

Learned Advocate for the respondents no-1 and 2 claimants and applicants in COT No-149 of 2025 submits that the Learned Trial Court upon considering the evidence of P.W.-3 and the documents of the vehicle owned by the victim rightly assessed the income of the victim to be Rs. 15,000/- per month. Learned Advocate further submits that the Learned Trial Judge erred in adding future prospect of 25% instead of 40% when the victim was 39 years of age. Learned Advocate also submits that the compensation awarded should be enhanced.

Upon persuing the evidence adduced and upon hearing the Learned Advocates this Court is of the view that as the claimants not only filed the certificate by the Proprietor of TATA 'M' BRICK FIECD.' Issued by the proprietor but also examined the son of the proprietor who in cross examination stated that he can file offer and acceptance letter of deceased Jakir Hossain that he was employed in the brick field, the evidence of P.W. 3 should be accepted with regard to deceased working in the brick field as manager and receiving Rs. 9,000/- as monthly salary. Thus the Learned Trial Judge rightly accepted the income of the victim to be Rs. 9,000/- per annum from salary.

Now with regard to consideration of business income of the victim with regard to two vehicles being WB24011924357995, and WB24011924358524, it appears from the Registration Certificates filed by the claimants that vehicle no-WB-24011924357995 was in the name of the victim Jakir Hossain Sekh thus the income with regard to the said vehicle is rightly considered as Rs. 3,000/- in absence of proof of income. However with regard to vehicle No. WB-24011924358524 which is in the name of Hafiz Ali SK, the claimants could not show as to how the victim is related to the said vehicle by examining the vehicle owner Hafiz Ali SK thus income of Rs. 3,000/- with regard to the said vehicle cannot be taken into consideration. Thus the monthly income of the victim ought to be considered as Rs. 12,000/- and not Rs. 15,000/-.

Now the issue of future prospect of 40% as argued by the Learned Advocate for the claimants/Respondents no-1, 2 and 3 is to be taken into consideration.

It is true that the victim was 39 years of age but the victim used to earn from service in the brick field as well as his own business. The percentage of future prospect applicable in case of permanent service is not applicable in case of fixed salary persons or self employed persons. The percentage of future prospect is lower in the category of fixed salary and self employed persons.

In the case of United India Insurance Co. Ltd. VS. Satinder Kaur reported in AIR-2020 S.C. P-3076. 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)."

In the instant matter the victim earned income from salary as well as business. Nowhere in the certificate or deposition of witness it appears that the victim was temporary employee. Thus 30% should be considered as future prospect. The view of the Learned Trial Judge that the victim was temporary employee cannot be sustained.

As the monthly income is considered to be Rs. 12,000/- annual income comes to Rs. 1,44,000/-. Future prospect is considered as 30%. Thus total annual income comes to Rs. 1,44,000/- plus Rs. 43,200/- i.e. Rs. 1,87,200/- 1/3rd should be deducted on account of personal expenses, and the annual dependency loss comes to Rs. 1,24,800/-. As the victim was 40 years of age multiplier of 15 should be applied. Thus total dependency loss comes to Rs. 18,72,000/-. The claimants are entitled to Rs. 70,000/- on account of General loss. Thus total compensation comes to Rs. 19,42,000/-. Hence Rs. 19,42,000/- is the total compensation which comes by the arithmetical calculation. However as just and reasonable compensation should be awarded to the claimants this Court is of the view that Rs. 20 lakh is just and reasonable compensation which the claimants/respondents no-01 and 2 are entitled from the Appellants.

Hence the Appeal FMA 868 of 2025 along with COT 149 2025 stands disposed. The Judgment and Award dated 21st February 2025 passed by the Learned Additional District Judge 4th Court Purba Bardhaman in MAC-38 of 2015 stands modified to the extent that the claimants/respondent no. 1 and 2 are entitled to compensation of Rs. 20,00,000/- along with interest @6% p.a. from the date of filing of the claim case till the date of this order from the Appellant.

The respondent no-1 and 3 namely Tasmina Sekh and SK Nasim Hossain as per Trial Court's Order are permitted to withdraw Rs. 20,00,000/- along with interest @ 6% p.a. from date of filing of claim case till the date of this order from the amount deposited by Insurance Company. The residuary amount lying in deposit be returned to the Appellant Insurance company upon compliance of the 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.)