

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

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 111 of 2024

National Insurance Co. Ltd.

VERSUS

Sunayana Mondal & Ors.

For the appellant/Insurance co.: Mr. Deb Narayan Ray, Adv.

For respondents/claimants: Mr. Saidur Rahman, Adv.

Last Heard on: November 18, 2025

Judgment on: November 27, 2025

Biswaroop Chowdhury,J:

The Appellant before this Court was opposite party in a claim under Section 166 of the Motor Vehicles Act 1988 and is aggrieved by the Judgment dated 29-03-2023 passed by Learned Additional District Judge Fast Track 2nd Court Malda in MAC Case No-94 of 2019.

The case of the Respondent no-1/claimant before the Learned Trial Court may be summed up thus:

On 16-09-2017 at about 08.40 hrs while the victim Susanta Kumar Mondal was going towards his school by one motor cycle and, when he reached near Baharal Petrol Pump suddenly one Motor Cycle bearing No-WB-66L/6682 which was coming from opposite direction with very high speed and excessive speed and negligent manner could not control over the vehicle and directly dashed the victim. The victim fell down on the road. As a result of that accident the local people shifted the victim to Araidanga Hospital and the attending Doctor of Malda Medical College and Hospital declared him dead. After the death of the victim the Post Mortem Examination was done by the Doctor of Malda Medical College and Hospital. The accident happened due to absolute rashness reckless and negligent driving of the driver of the offending Motor Cycle bearing No. WB-66L/6682.

Due to abrupt termination of the life of the victim the petitioners/claimants have been suffering acute financial loss and also suffers from mental pain and agony and also suffers family fabrics. The deceased was the only bread earner of the family.

Over the incident complaint before police Authority was lodged and a specific case was made against the driver of the Motor Cycle bearing No-WB-66L/6682. The claimants prayed for compensation of Rs. 52,72,000/- with 12% interest from the date of filing of the claim till realization.

The Appellant/opposite party filed written statements denying the allegations made therein. The ISSUES were framed and the Learned Trial Court

upon considering the evidence and hearing the parties was pleased to dispose the claim case by observing as follows:

Hence it is Ordered that the claim application filed by the claimants u/s 166. M.V. Act 1988 is allowed on contest against the O.P. No. 2 the National Insurance Co. Ltd. and on ex-parte against the OP. No. 1.

The claimant no.1 Sunayana Mondal being wife of the victim susanta Kumar Mondal is entitled to get an amount of Rs. 17,78,774/-(Rupees Seventeen Lakh Seventy Eight Thousand Seven Hundred Seventy Four) only with interest @6.5% p.a. on that amount w.e.f. the date of filing of the claim application on 01-06-2019 till the date of issuance of cheque.

The other two claimants, claimant No.2, and 3 namely Sayak Mondal and Sulekha Mondal being son and mother, respectively of the victim Susanta Kumar Mondal, do get an award of Rs. 17,34,773/- (Rupees Seventeen Lakh Thirty Four Thousand Seven Hundred Seventy Three) only each with interest @ 6.5% p.a. on that amount w.e.f. the date of filing of the claim application on 01-06-2019 till the date of issuance of cheque.

The owner and the Insurance Company are jointly and severally liable for payment of amount.

The Insurance Company is hereby directed to issue three separate cheque in the name of the three claimants relating to the amount awarded against their names with interest till the date of issuing such cheques in favour

of the three above named claimants/petitioners within two months from this date.

A plain copy of this judgment be given to the OP No. 2 The National Insurance Co. Ltd. through its Learned Advocate on record free of costs forthwith for necessary compliance.'

The Appellant National Insurance Company Limited being aggrieved by the Judgment and Award dated 29-03-2023, has come up with the instant Appeal.

The grounds on which the Judgment of the Learned Trial Court is assailed is non-deduction of income tax from income of the victim before assessing compensation, allowing excessive interest @6.5% per annum instead of 6%, and the ground of contributory negligence on the part of the victim.

Heard Learned Advocate for the Appellant and Learned Advocate for the Respondent no-1. Perused the materials on record.

Learned Advocate for the Appellant submits that the Learned Trial Court erred in assessing compensation without deducting income tax from the income of the victim. Learned Advocate further submits that the interest awarded is excessive. Learned Advocate also submits that there was contributory negligence on the part of the victim.

Learned Advocate for the respondent no-1 disputes the submission of the Learned Advocate for the Appellant. Learned Advocate submits that the award is just and reasonable.

Upon perusing the oral evidence and the documents it is clear that the claimant/respondent no-1 was able to prove death of the victim due to rash and negligent driving by driver of vehicle No. WB-66L/6682. Although the ground of contributory negligence is raised but there is nothing in the cross examination by the Appellant which will go to show that there is contributory negligence nor did the Appellant adduce any evidence in this regard.

With regard to the submission made by Learned Advocate that Income Tax was not deducted it appears upon perusal of order of Learned Trial Court that both Income Tax and Professional Tax amounting to Rs. 300/- was deducted before proceeding to compute compensation.

Thus the compensation awarded in the opinion of this Court is just and reasonable. With regard to the interest this Court is of the view that interest awarded is not excessive.

Thus this Appeal fails and the same is dismissed. The Judgment of Learned Additional District Judge Fast Track 2nd Court Malda in MAC case No-94 of 2019 is affirmed. Respondents no. 1, 2, and 3 are permitted to withdraw the amount deposited upon compliance of all 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.)