

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

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 1044 of 2024

With

IA No.:CAN/2/2025

The New India Assurance Co. Ltd.

VERSUS

Sabita Das & Ors.

With

COT 22 of 2025

Sabita Das & Ors.

VERSUS

The New India Assurance Co. Ltd. & Anr.

For the appellant:

Mr. Rajdeep Bhattacharya, Adv.

For the respondent:

Mr. Amit Ranjan Roy, Adv.

Last Heard on: November 24, 2025

Judgment on: December 12, 2025

Biswaroop Chowdhury,J:

The appellant before this court was an opposite party in a claim case under section 166 of the Motor Vehicles Act 1988 and is aggrieved by the

Judgment and Award dated 22-05-2024 passed by the Learned Additional District Judge 3rd court Tamluk Purba Medinipur in MAC Case No 76 of 2021.

The case of the claimants/ Respondents 1 to 4 before Learned Trial Court may be summed up thus:

On 27-12-2020 at about 1:25 am (night) the victim Ganesh Das and Subrata Jana were coming from Nimtouri side and proceeding towards Nanda Kumar Side through the left side of NH 41 by motor cycle WB-30Z/7173. The rider of the said motor cycle very slowly sincerely and cautiously proceeding through extreme left side of the road.

When the said motor cycle reached near Bakhrabad bus stoppage at that time the offending vehicle truck which was coming from Nimtouri side and proceeding towards Nanda Kumar Side was proceeding at excessive speed with zigzag manner. At that place of occurrence the said offending truck WB-45/5579 all on a sudden without raising any alarm rashly overtook the said motor cycle and stopped on the front of side motor cycle to disturb the free flow of the motor cycle, and for that having no other alternative the said motor cycle was bound to dash the back side of the said offending truck and there was a great jerk and both Ganesh Das and Subrata Jana were thrown away on the road from said motor cycle and sustained grievous injuries. The victim died on the spot due to the accidental injuries. Post mortem of Ganesh Das was held at Purba Medinipur District Hospital at Tamluk by MO of the Hospital.

The said accident took place only due to rash and negligent driving of the driver of offending vehicle WB-45/5579 (truck), who was driving the said vehicle endangering human life and safety and violating traffic road rules. The driver of the said vehicle was only responsible for the said accident. The offending truck WB-45/5579 was proceeding with very excessive speed, recklessly and zigzag direction and overtaking the said motorcycle and not showing any signal of overtaking.

The deceased was healthy young man with active habits and he used to earn Rs 15,000/- per month from his said occupation. There was every chance to prosper in future if he was alive. He was the only earning member of his family. All the claimants were dependent on him.

The appellant contested the case by filing written statement. ISSUES were framed and evidence was adduced by the claimants/ respondent no 1 to 4. The Learned Trial Court upon considering the evidence and hearing the parties was pleased to dispose the claim case by observing and directing as follows:

Hence it is ORDERED that the instant MAC Case be and the same is allowed on contest against the O.P. No 2/New India Assurance Co Ltd and ex-parte against OP No 1/Mr Mobarak Khan owner of the offending Truck Bearing registration WB-45/5579 (Truck) but without any order as to costs.

The petitioners do get an award of Rs 11,41,000/- (Rupees Eleven lakh forty one thousand only) along with interest @ 6% p.a from the filing of the

instant claim application till the payment by the O.P No-2/New India Assurance Co Ltd.

The O.P.No-2/ Insurance Company is directed to pay the awarded amount with interest by issuing four (04) A/C Payee Cheques in the name of the petitioners, in the manner herein below:

Cheque amounting to Rs 3,91,000/- [Rs 3,51,000/- + Rs 40,000/- (towards consortium) in the name of the claimant/ petitioner no 1 Sabita Das alongwith interest as ordered. Cheque amounting to Rs 2,50,000/- in the name of claimant/ petitioner no 2 Swapna Das(minor) along with interest as ordered. Cheque amounting to Rs 2, 50,000/- in the name of claimant/ petitioner no 3 Namita Das along with interest as ordered. Cheque amounting to Rs 2,50,000/- in the name of claimant/petitioner no 4 Gobinda Das alongwith interest as ordered.

Claimant/ Petitioner no 1 Sabita Das being the mother and natural guardian of claimant/ petitioner no-2 is directed to receive the cheque issued in the name of the minor petitioner in any Nationalised Bank or Post Office benevolent for the minors within one month of the date of receipt of the cheques. The amount so deposited in the name of the minor shall not be withdrawn/encashed until the minor attains majority or without the permission of the Tribunal in urgent medical purpose.

After sharing proper receipt of depositing of such amount in the name of the minor petitioner, as ordered, the petitioner no-1 Sabita Das will be able to withdraw of her cheque.

The OP No-2/ New India Assurance Co Ltd is further directed to issue aforesaid cheques within one month from the date of this order failing which the awarded amount shall carry further interest @8% p. a from the date of this order till realization of the amount.'

The appellant being aggrieved by the Judgement and Award passed by the Learned Trial Court has come up with the instant appeal. The ground on which the Judgement of the learned trial court is that the Learned Trial Court erred in awarding compensation of Rs 11,41,000/- without considering that the victim was driving motor cycle in drunken condition without valid Insurance Policy and thirdly the compensation awarded is excessive. The claimants/ respondents no 1 to 4 also filed counter objections with regard to the quantum of compensation on the ground that it is inadequate.

Heard Learned Advocate for the Appellate Insurance Company and Learned Advocate for the Respondent no-1 to 4. Perused the evidence adduced.

Learned Advocate for the Appellate submits that the Learned Trial Court erred in awarding compensation when the victim was in a drunken state. Learned Advocate draws attention to the post mortem report wherein it is stated that stomach had contents of alcoholic smell. Learned Advocate further

submits that the motor cycle in which the victim was travelling was not insured and thirdly the compensation awarded is excessive.

Learned Advocate for the claimant/respondents no 1 to 4 submits mere alcoholic smell from the stomach of deceased person will not be a ground to refuse compensation. Learned Advocate submits that under Section 185(A) of the Motor Vehicles Act whoever while driving or attempting to drive a motor vehicle has in his blood alcohol exceeding 30 mg per 100 ml of blood detected in a test by a breath analyser shall be punished. Learned Advocate for the claimant/respondent no-1 to 4 submits that unless the conditions provided under section 185(A) of the Motor Vehicles Act is fulfilled it cannot be said that the driver has committed offence. In the instant case as the victim is dead and cannot defend himself the plea of drunkenness cannot be taken, to refuse compensation. Learned Advocate further submits that the plea of the motor vehicle which the victim was travelling was not insured cannot be taken as the dispute is not with the Insurance Company where the motor cycle is insured but with the Insurance Company Appellant where the offending vehicle was insured. Learned Advocate also submits that the Learned Judge erred in considering the income of the victim as Rs 5000/- per month instead of accepting contention of claimants where the claimants deposed that the monthly income of the victim was Rs 15,000/- per month.

Upon hearing the Learned Advocate and considering the facts of the case this court is of the view that when a person drives the vehicle in drunken

condition in violation of a condition under Section 185(A) of the Motor Vehicles Act, he may be prosecuted under law and when he meets with an accident that may be a ground of contributory negligence, but when the person who met with an accident is dead and alleged to be drunk the heirs of the said victim cannot be deprived of compensation because the said person was the fit person if alive to defend his case as to whether he was in drunken condition and violated section 185A of the Motor Vehicles Act 1988 but when he is dead there is no such scope thus the plea cannot be taken. With regard to the stand taken by the Appellant Insurance Company that the motor cycle in which the victim was travelling did not have a valid Insurance policy this Court is of the view that as there was no contract between the owner of the motor cycle and Appellant but a contract existed with the Appellant and the owner of offending vehicle being WB-45/5579 it is only with breach of policy condition by the owner of vehicle being WB-45/5579 can be raised with whom there is a contract of Insurance.

However it is also sad to note that some vehicles are on the road without valid insurance policy and it is time that the Insurance Companies which finds from the record that policy of Insurance has expired with regard to a vehicle and inspite of reminders in writing the policy is not renewed, the Transport Authorities be informed by them as it involves public interest and public safety.

Now with regard to the income of Rs 5,000/- per month which the Learned Trial Court took into consideration is not at all unreasonable. As the

claimants failed to prove the income of the victim by examining the employer Learned Trial Court rightly took into consideration Rs 5,000/- per month to compute the compensation. Thus there is no infirmity in the Judgement and Award passed by the Learned Trial Court. Hence the appeal should be dismissed.

Hence FMA-1044 of 2024 and COT of 22/2025 stands dismissed. The Judgement and Award dated 22-05-2024 passed by the Learned Additional District Judge 3rd Court Tamluk Purba Medinipur in MAC Case No- 76 of 2021 is affirmed. Claimants/ Respondents are entitled to withdraw the awarded sum including interest accrued if any upon compliance of all formalities.

The trial Court Records be sent back.

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.)