

Form No. J(2)

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 100 of 2025

**National Insurance Company Limited
Versus
Kaushalya Bajaj & Anr.**

With

COT/19/2025

**Kaushalya Bajaj
-Vs.-
National Insurance Company Limited & Anr.**

For the Appellant : Mrs. Sucharita Paul.

For the Respondents : Mrs. Tandra Karim.

Heard & Judgment on : 24th April, 2025.

Ananya Bandyopadhyay, J:

1. Both the Learned Advocates representing the appellant/Insurance Company and the respondent/claimant are present.
2. The instant appeal had been filed against the judgment and award dated 05.10.2024 passed by the Learned Judge, Bench – IV, City Civil Court, Calcutta in M.A.C. Case No. 268 of 2010.

3. An application under Section 166 of the Motor Vehicles Act had been filed by the mother of the victim who had sustained an accident on 13.09.2009 at about 04:05 hours in front of 83/1, A.P.C. Road, Kolkata when the victim being the passenger of a private car bearing registration no. WB-02Z-0251 was driven by the driver at an exceeding speed rashly and negligently collided with a stationary truck bearing registration no. WB-11-TC-0013. The victim suffered severe injuries and had to be admitted. He was treated at various hospital and was finally assessed to have suffered permanent disablement to the extent of 80% through a medical board constituted at Sagar Datta Medical College and Hospital vide a document marked as exhibit- 8.
4. The learned Advocate representing the appellant/Insurance Company submitted that the learned Tribunal did not consider the opinion of the Medical Board as stated in the document marked exhibit – 8 revealing possibility of improvement to the extent of disability suffered by the victim after ten years and accordingly assessed the disability to the extent of 80% without reducing the same. It was further submitted that the driving licence belonging to the driver of the offending vehicle was not seized and was not produced before the Court and sought for the right to recover the compensation paid to the victim from the owner of the offending vehicle.

5. The learned Advocate representing the victim submitted that the learned Tribunal did not grant compensation under the category of future prospect to the extent of 40% considering the age of the victim to be 27 years on the date of the accident. Moreover, the Tribunal did not consider the amount to be granted towards future medical expenses and a meager amount of Rs.20,000/- was accorded towards pain and suffering sustained by the victim out of the accident and sought for enhancement of the compensation. Moreover, the learned Tribunal had granted interest to be paid from the date, i.e., 01.01.2015 instead of 03.05.2010, i.e. the date of filing of the application under Section 166 of the Motor Vehicles Act.
6. Since the occurrence of the accident, involvement of the offending vehicle, the driving license, Insurance certificate etc. are not disputed by the learned advocate representing the appellant/insurance company, this Court restricts itself only to the extent of issues agitated by the respective learned Advocates. The evidence of P.W.2 being the Assistant Professor of Orthopedic Department of Sagar Datta Medical College and Hospital deposed to have been a member of the medical board which examined the victim and issued the disablement certificate which is marked as exhibit – 8. The aforesaid witness stated "*the patient concerned was declared to be a permanent disabled person to the extent of*

80%". The supposition in the document marked as exhibit – 8 of future contingent improvement in the physical state of the victim is accordingly eradicated. Moreover, the appellant/Insurance Company did not raise the plea that the driving licence was not valid and fake on the date of the accident nor was it ever agitated that the driving licence was not produced or even seized by the Investigating Officer. The issue of the driving licence not being possessed by the driver of the offending vehicle was not argued before the learned Tribunal which did not consider the same and accordingly the plea taken by the learned Advocate representing the appellant/Insurance Company at a belated stage could not be considered. The victim to have suffered such a serious disability with such grave injuries with a lingering effect and impact on his entire life must entitle him to a compensation towards future medical expenditure as well as an enhanced amount to be granted towards pain and suffering contained to a modicum sum of Rs.20,000/-. The learned Tribunal did commit an error in not granting a sum equivalent to 40% towards future prospects.

7. Considering the observations of the Hon'ble Apex Court in National insurance company Ltd. Vs. Pranay Shetty & Anr¹ and

1 2017(4)TAC 673(S.C)

Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr.², the impugned award of Rs. 28,80,000/- is modified as follows:

Annual Income	Rs. 1,47,570/-
Add : Future Prospects(40%)	Rs. 59,028/-

	Rs. 2,06,528/-
80% Loss of income	Rs. 1,65,222/-
Multiplier as per age of 17 (Rs.1,65,222/- X 17)	Rs. 28,08,774/-
Medical Expenses	Rs. 8,42,152/-
Non-pecuniary damages (pain and suffering)	Rs. 3,00,000/-
Future Medical Expenses	Rs. 1,00,000/-

Total Award	Rs. 40,50,926/-

8. The learned Advocate representing the appellant/Insurance Company submits to have deposited a sum of Rs.54,16,992/- as per challan filed by the learned advocate representing the appellant/insurance company.

9. The Respondent/claimant is entitled to receive the amount of Rs. 40,50,926/- along with interest at the rate of 6% per cent per annum from the date of filing of the claim application, i.e., 03.05.2010 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

² (2009) 6 SC 121

entire awarded amount so deposited to the respondent/claimant as mentioned in the impugned judgment of the Learned Judge, Bench-IV, City Civil Court, Calcutta in M.A.C. Case No. 268 of 2010 on proof of proper identification of the respondent/claimant subject to payment of ad valorem Court fees within four weeks from date and refund the balance amount through a cheque to the Learned Advocate for the Appellant/Insurance Company for the accounts of the insurance company.

11. The interest generated on the sum of money deposited by the appellant/insurance company at the office of the Learned Registrar General, High Court at Calcutta which has already been deposited in the nationalized bank by the office of the Learned Registrar General, High Court at Calcutta is to be apportioned and the sum of interest accrued on the aforesaid amount is to be disbursed in favour of the appellant/insurance company for the accounts of the insurance company.
12. The instant appeal is disposed of accordingly.
13. The pending applications, if any, stands disposed of.
14. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)

Srimanta, A.R.(Ct.)