

**IN THE HIGH COURT AT CALCUTTA
Circuit Bench At Jalpaiguri**

Present:

The Hon'ble Justice Biswaroop Chowdhury

FMA 17 of 2025

Smt. Muni Lohar & Ors.

VERSUS

National Insurance Company Ltd. & Ors.

For the appellants:

Mr. Gobinda Saha , Adv.

Mr. Tamal Kr. Sen, Adv.

Ms. Priyanka Das, Adv.

Mr. Milan Ch. Laskar, Adv.

Mr. Srija Bhowmik, Adv.

For the
respondent
/Insurance
Company:

Mr. Supriya Singh, Adv.

Last Heard on: December 18, 2025

Judgment on: December 22, 2025

Biswaroop Chowdhury. J:

The appellants before this Court were the claimants in an application under Section 166 of the Motor Vehicles Act 1988, and is aggrieved by the Judgment and Award dated 27th day of March 2024 passed by Learned Additional District Judge 1st Court Siliguri Darjeeling in MAC Case No. 106(8) of 2014.

The case of the claimants/appellants before the Learned Trial Court may be summed up thus:

On 28/06/2014 at about 2.30 P.M. the victim Gulshan Lohar and

another namely Sablu Kerketta was coming from Hansqua Tea Garden towards his home in his motor bike bearing no. WB-74M 8876 and when they reached Saraswati Hindi High School Rajiyate the offending vehicle being a Scorpio vehicle being no. WB-74X 3053 which was being driven in rash and negligent manner hit the back side of the motor bike as a result of which the victim sustained severe injuries. The victim was shifted immediately to Navajiban Hospital, Gayaganga on the same day and then shifted to NBMCH where he received treatment upto 02-07-2014. That on 03-07-2014 he was shifted to SSKM Hospital Kolkata but due to shortage of bed he was again shifted to Calcutta National Medical College and Hospital (Chittaranjan) for better treatment but he succumbed to his injuries on 03.07.2014. The deceased was the sole earning member of his family so the petitioners being the parents and minor daughter of the deceased are suffering both pecuniary and physical/mental agony. The deceased was aged 34 years at the time of his death and he used to earn Rs. 9,000/- per month from his occupation as a Mason. The petitioners prayed for compensation of Rs. 12,33,500/-.

Pursuant to the filing of the claim case notice was issued upon the respondents. Respondent No-1 National Insurance Company Ltd. filed written statement and contested the case.

By Judgment and Award dated 27th day of March 2024 Learned Additional District Judge 1st Court Siliguri was pleased to dispose the claim case by observing and directing as follows:

Hence it is

ORDERED.

That the MAC case be and the same is allowed on contest against the OP No. 2 National Insurance Company Limited and exparte against OP No-1 Uttam

Basu.

The petitioner 1. Munni Lohar 2. Lalchand Lohar, 3. Diya Lohar do get just compensation of Rs. 4,12,500/- (Rupees four lakh twelve thousand five hundred only) from the OP No. 2. National Insurance Company Limited being the insurer of the offending vehicle bearing Regd. No. WB-74X 3053.

O.P No. 2 National Insurance Company Limited is directed to pay Rs. 4,12,500/- (Rupees four Lakh twelve thousand five hundred only) to the petitioners as just compensation together with interest @ 6% per annum from date of filing i.e. 27.08.2014 till payment to the petitioner by way of issuance of three (3) A/C payee cheques of Rs. 1,37,500/- in the name of each of the aforesaid three petitioners within two months from the date of this order, failing which the petitioners will be at liberty to put the award into execution.

Petitioner no. 1 and 2 are directed to ensure that the claim amount of Rs. 1,37,500/- of the minor petitioner no. 3 Diya Lohar is kept in fixed deposit account in the name of Diya Lohar in the Post office or in any Nationalized Bank till petitioner no. 3 attains her majority. However, Petitioner no. 1 and 2 are given liberty to use any monthly interest to be received by them on account of their such deposit in the name of the minor petitioner no. 3, Diya Lohar for the welfare and the well being of Petitioner no. 2.

Petitioners are directed to deposit the DCF, if any, before withdrawal of the compensation amount.'

The Appellants being aggrieved by the Judgment and Award passed by the Learned Trial Judge has come up with the instant appeal.

The grounds on which the Judgment and award of the Learned Trial Court is assailed is that the Learned Trial Judge erred in considering the monthly income of the victim as Rs. 3,000/- instead of Rs. 9,000/-, secondly

no future prospect is taken into consideration while computing compensation. Thirdly, the Learned Trial Judge instead of awarding interest @ 9% per annum has awarded interest @ 6% per annum.

Heard Learned Advocate for the Appellant and Learned Advocate for the respondent no-1 National Insurance Company Limited. Perused the evidence adduced and materials on record.

Learned Advocate for the Appellant submits that the Learned Trial Judge erred in taking into consideration the monthly income of the victim as Rs. 3,000/- instead of Rs. 9,000/- although evidence was adduced.

Learned Advocate relies upon State Government Circular dated 02/07/2014 where Minimum Rated of Wages for Semi Skilled Worker in Zone B is Rs. 7018/- per month. It appears from the circular that Mason comes under the category of semi-skilled Worker. Learned Advocate further submits that the Learned Trial Judge erred by not taking into consideration the future prospect. Learned Advocate also submits that the rate of interest ought to be 9% per annum and not 6% per annum. Learned Advocate for the Respondent no-1 National Insurance Company Limited submits that the claimants/Appellants could not prove income thus the Learned Trial Court was justified in proceeding on the basis of Notional Income of Rs. 300/- per month.

Before proceeding to decide on the issue it would be reasonable to see as to whether the claimants/appellants could prove that the victim was a mason. Upon perusal of the evidence of P.W.1 it appears that in cross examination P.W. 1 stated that his son used to work as mason but he could not file any document in that regard. Secondly, P.W. 3 specifically stated that he along with other masons worked under the victim for the last 5 years. There is nothing in cross examination which will dispute the employment of the victim as a mason.

Thus the claimants/appellants were able to prove that the victim was a mason. Although the claimants/appellants were able to prove that the victim was mason but the income was not proved. The Governmental Circular with regard to minimum wages of Mason was not submitted before Learned Trial Court by either of the parties thus there was no scope for the Learned Trial Court to arrive at a finding upon considering the circular regarding Minimum Wages of Mason.

In a Motor Accident claim case where it is proved that the victim was engaged in a particular occupation but there is no proof with regard to income the Government Circular with regard to minimum wages in respect of such employment should be taken into consideration. In the event there is no such circular the market rate which in the opinion of the Court prevails with regard to such employment and the income reasonably required to maintain a family may be taken into consideration, by fixing notional income. It is true that in the year 2009 Notional Income was fixed by the Hon'ble Supreme Court to be Rs. 3,000/- but subsequently there are Judicial decisions of the Hon'ble Supreme Court by which notional income fixed is higher.

In the case of Shaikh Sadik Shaikh Rafique VS Reliance General Insurance Company Limited and Ors reported in 2025 INSC. 673 the Hon'ble Supreme Court observed as follows:

'5. Ramachandrappa vs. Manager, Royal Sundaram Alliance Insurance Company Limited 1 determined an income of Rs.4,500/- per month in the year 2004 for a coolie. A Constitution Bench in National Insurance Company Limited vs. Pranay Sethi and Others found that there would be an incremental

increase in the income which according to us would be reasonable if fixed at Rs.500/- per month for every successive year.

In the present case, the accident occurred in the year 2015, 11 years after 2004 and going by the principles stated in the afore-cited decisions the appellant, an unskilled worker would be entitled to claim monthly income of Rs.10,000/-. In the present case, the claimant has asserted an income of Rs.9,000/- which can be safely adopted. The multiplier in the case of a 25 year old as held in *Pranay Sethi* would be 18 and not 17 as taken by the High Court. The following award according to us would be 'just compensation' in the above case:

Nos.	Particulars	Amount in Rs.
1	Loss of future income	$9000 \times 12 \times 140\% \times 18 =$ Rs.27,21,600/-
2	Medical expenses	Rs.2,70,000/-
3	Aggregate amount for pain and suffering, loss of amenities etc.	Rs.6,00,000/-
	Total	Rs.35,91,600/-

Although the circular relied upon by the Learned Advocate for the Appellant/claimant relates to the period after the accident but even if the exact wages mentioned in the said circular may not be taken into consideration but definitely a reasonable amount in this regard should be treated as notional income.

Upon considering the judicial decision and the Government Circular

relied upon by the Appellants, and upon considering the income which is reasonably required to maintain a family for which a person takes up an employment, this Court with due respect to the findings of the Learned Trial Judge is of the view that it would be just and reasonable to consider the notional income of the victim to be Rs. 6,000/- As 40% of future prospect is Rs. 2,400/- the future prospect being added monthly income comes to Rs. 8,400/- $1/3^{\text{rd}}$ should be deducted on account of personal expenses. As $1/3^{\text{rd}}$ is Rs. 2,800/- the same being deducted the monthly income comes to Rs. 5600/-. The annual dependency loss is Rs. 67,200/-. The multiplier to be applied is 16. The total dependency loss comes to Rs. 10,85,200/-. The claimants/appellants are also entitled to Rs. 70,000/- as general damages on account of loss of consortium loss of estate, and funeral expense. Thus Rs. 11,55,200/- is the total compensation which the claimants/appellants are entitled to from the Respondent no. 1 National Insurance Company Ltd.

Hence this Appeal stands disposed. The Judgment and Award dated 27th March 2024 passed by Learned Additional District Judge 1st Court Siliguri Darjeeling in MAC case No. 106(8) of 2014 stands modified to the extent that the Appellants claimants are entitled to compensation of Rs. 11,55,200/- (Rupees eleven lakh fifty five thousand two hundred from respondent no-1) along with interest @ 6% per annum from the date of filing till today. Such payment shall be deposited within 5 weeks from the date of communication of this order.

In the event the amount awarded by the Learned Trial Court is already paid the balance amount shall be deposited before Registrar Circuit Bench Jalpaiguri Calcutta High Court.

(Biswaroop Chowdhury, J.)