IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 340 of 2009

With

IA NO: CAN/1/2026

Kamal Piyada

VERSUS

United India Insurance Co. Ltd. & Anr.

For the Appellant:	Mr. Niranjan Maity, Adv. Mrs. Indrani Ghosh, Adv.
For the Respondent:	Mr. Rajesh Singh, Adv. Mr. Aniruddha Singh, Adv.

Last Heard on: October 09, 2026

Judgment on: November 19, 2026

Biswaroop Chowdhury, J:

The Appellant before this Court was a claimant in a case under Section 163A of the Motor Vehicles Act 1988 and is aggrieved by the Judgment and Award dated 19-12-2007 passed by Learned Additional District Judge 10th Court Alipore South 24 Parganas in MAC Case No-29/2007.

The case of the appellant/claimant before the Learned Trial Court may be summed up thus:-

At the material time of accident on 03.11.2005 while the victim Kamal Piyada and another Makaddesh Baidya were proceeding towards Diamond Harbour from Kakdwip side by the Western side non-metelled portion of Diamond Harbour Kakdwip Road near Chandipore Bus Stoppage the driver of the offending vehicle No-WB-19C-3010 (Trekker) was proceeding with his vehicle in the same direction rashly and negligently. It dashed against the said pedestrians from behind and as a result they fell down and sustained severe injuries on their persons causing permanent disablement.

Pursuant to the filing of this case notice was issued upon the opposite parties. Opposite party vehicle owner did not contest the case. However opposite party Insurance Company contested the case by filing written statement.

ISSUES were framed and evidence was adduced. Learned Trial Judge upon considering the evidence adduced and upon hearing the Learned Advocates disposed the claim case by observing and directing as follows:-

'Hence it is ordered that the MACC being No-29 of 2007 be and the same is allowed on contest against the OP No-2, United India Insurance Company Limited and allowed ex-parte against the OP. No-1 but without any cost.

The petitioner Sri Kamal Piyada do get an award of Rs. 12,900/- (Rupees Twelve Thousand Nine hundred only) as compensation from the opposite parties. The OP No-2 United India Insurance Co. Ltd. is directed to indemnify OP No-1 and the OP No. 2 the United India Insurance Co. Ltd. is directed to issue an A/C payee cheque to the tune of Rs. 12,900/- (Rupees Twelve Thousand nine hundred only) in the name of the petitioner Kamal Piyada within one month from the date of this order, failing which the awarded money shall carry interest @6% per annum till full payment. It is further ordered that the petitioner is also entitled to interest @6% from the date of institution of this claim case that is on 30.03.06.'

The appellant/claimant being aggrieved by the quantum of compensation awarded by the Learned Trial Court has come up with the instant appeal.

Heard Learned Advocate for the appellant/claimant and Learned Advocate for the respondent/Insurance Company. Perused the evidence adduced and materials on record.

Learned Advocate for the appellant/claimant submits that the Learned Trial Judge erred in awarding compensation of Rs. 12,900/- although the claimant/appellant has suffered disability to the extent of 30%. Learned Advocate further submits that learned Trial Judge awarded very meager compensation on account of medical expenses which should be enhanced. Learned Advocate also submits that as the ISSUE of rash and negligent driving is framed and charge sheet submitted to that effect the claimant/appellant be

granted leave to convert the case into Section 166 of the Motor Vehicles Act 1988.

Learned Advocate relies upon the following judicial decisions in support of conversion of this case from Section 163A of the Motor Vehicles Act 1988 to Section 166 of the Motor Vehicles Act 1988.

Rukmini Devi VS New India Assurance Co. Ltd. and anr.

2009 ACJ-2202.

(High Court at Delhi)

Ravinder and Another VS Subhash Chand and others.

2006 (2) TAC. 803. (Pand H).

Mamta and others VS Happy and others

2024 ACJ-2380.

Sharmila Singh and others VS Rabin Ghosh and Anr.

2010 ACJ-1428.

Learned Advocate for the respondent/Insurance Company submits that the claimant/appellant has failed to explain why despite having instituted claim case in the year 2007 the alleged necessity for conversion from Section 163A to Section 166 was not raised for nearly 19 years and has been raised only in the year 2026. Learned Advocate further submits that in Section 163A

of Motor Vehicles Act the claimant is not required to establish negligence or wrongful act, but in contrast a claim under Section 166 is founded upon principle of fault liability requiring the claimant to establish the actionable negligence. The Award of the Learned Tribunal does not show that Court has come to any finding on 'rash and negligent driving' aspect. Learned Advocate also submits that the victim did not suffer permanent disability as contemplated in Section 163A of the Motor Vehicles Act 1988 thus compensation awarded should not be enhanced.

Learned Advocate relies upon the following Judicial decisions:-

Kanai Manna VS United India Insurance Co. Ltd. and ors.

MANU/WB/0569/2008.

Valsamma Chaeko and ors VS M.A. Titto and ors.

MANU/SC/0829/2025.

Oriental Insurance Co. Ltd. VS Dhanbai Kanji Gadhui and ors.

MANU/SC/0188/2011.

United India Insurance Co. Ltd. VS Sunil Kumar and ors.

MANU/SC/1117/2013.

Deepal Girishbhai Soni and ors. VS United India Insurance Co. Ltd.

MANU/SC/0246/2004.

Upon hearing the Learned Advocates and considering the observation made by the Learned Trial Judge it does not appear that the Learned Judge came to a finding that accident took place due to rash and negligent driving by driver of vehicle no. WB-19-C-3010 but simplicitor accident taking place and injury caused to the claimant/victim. Thus at this stage there is no scope to convert this case into a case under Section 166 of the Motor Vehicles Act 1988.

In the case of Girishbhai Soni and ors VS United India Insurance Co. Ltd. (supra) the Hon'ble Supreme Court observed as follows:-

57. We therefore are of the opinion that remedy for payment of compensation both under Section 163A and 166 being final and independent of each other as statutorily provided a claimant cannot pursue his remedies thereunder simultaneously. One thus must opt/elect to go either for a proceeding under Section 163A or under 166 of the Act but not under both.

58. In Kadala (supra) the contention of the claimant that right to get compensation is in addition to the no-fault liability was thus rightly rejected. In agreement with Kadala (supra) we are also of the opinion that unlike Sections 140 and 141 of the Act the Parliament did not want to provide additional compensation in terms of Section 163A of the Act.

59. The question may be considered from different angles. As for example, if in the proceedings under 166 of the Act, after obtaining compensation under Section 163A the awardee fails to prove that the accident took place owing to negligence on the part of the driver or if it is found as of

fact that the deceased or, the victim himself was responsible therefore as a consequence whereto the Tribunal refuses to grant any compensation would it be within its jurisdiction to direct refund either in whole or in part the amount of compensation already paid on the basis of structured formula? Furthermore if in a case the Tribunal upon considering the relevant materials comes to the conclusion that no case has been made out for awarding the compensation under Section 166 of the Act would it be at liberty to award compensation in terms of Section 163-A thereof.

60. The answer to both the aforementioned questions must be rendered in the negative. In other words the question of adjustment or refund will invariably arise in the event if it is held that the amount of compensation paid in the proceeding under Section 163-A of the Act is interim in nature.

61. It is therefore evident that whenever the parliament intended to provide for adjustment or refund of the compensation payble on the basis of no-fault liability, as for example, Sections 140 and 161 in case of hit and run motor accident, from the amount of compensation payble under the award on the basis of fault liability under Section 168 of the Act the same has expressly been provided for and having regard to the fact that no such procedure for refund or adjustment of compensation has been provided for in relation to the proceedings under Section 163-A of the Act, it must be held that the scheme of the provisions under Sections 163A and 166 are distinct and separate in nature.

62. It is also not of much relevance that in terms of Section 140 of the Act the owner of the vehicle has been fastened with the statutory liability and in Section 163A thereof both the owner as also his authorized insurer has been made so liable.

In the facts and circumstances this Court is of the view that there is no scope of any conversion of the instant case filed and decided under Section 163A of the Motor Vehicles Act 1988 to Section 166 of the statute.

Now the point for consideration is whether the compensation awarded by the Learned Trial Court is just and reasonable.

In the instant case the claimant/appellant has filed disability certificate showing disability to the extent of 30%. Although the disability certificate was not issued by the Board but by private doctor, but the fact disability assessed was less than 40% the disability certificate ought not to be totally discarded. However considering the percentage of disability and the pain and sufferings this Court is of the view that as Motor Vehicle claim Legislation being a beneficial legislation and the claimant/appellant is pursuing this litigation for about 19 years and during this period there are certain amendments with regard to quantum of compensation in case of No fault liability, the appellant should be granted benefits of amendment.

In the case of Mamta VS Happy (supra) the Hon'ble Court observed as follows:-

‘17. As mentioned above in pre-amendment Motor Vehicles Act there were two provisions regarding the grant of compensation to the victims/claimants i.e. Sections 140 and 163-A and now after the 2019 amendment the amount of compensation is also increased and by combining both the Sections i.e. Sections 140 and 163-A, there is only one Section i.e. Section 164. The Court should try to appreciate and see the intention of the legislation before deciding the cases. The litigants place immense trust in the judicial system viewing Judges as symbols of justice. Thus Judges have a duty to maintain the trust by delivering fair and substantive justice to the parties by actually and factually appreciating the evidence/conduct and over all facts and circumstances difficulties faced by the near and dear ones, the gravity of agony and pain.’

Section 164 of the Motor Vehicles Act 1988 provides as follows:-

‘Section 164 payment of compensation in case of death or grievous hurt etc. 1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law the owner of the motor vehicle or the authorized insurer shall be liable to pay in the case of death or, grievous hurt due to any accident arising out of the use of motor vehicle a compensation of a sum of five lakh rupees in case of death or of two and a half lakh rupees in case of grievous hurt to the legal heirs or the victim as the case may be.

2) In any claim application under sub-section (1) the claimant shall not be required to plead or establish that the death or grievous hurt in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or of the vehicle concerned or of any other person.

3) Where in respect of death or grievous hurt due to an accident arising out of the use of motor vehicle compensation has been paid under any other law for the time being in force, such amount of compensation shall be reduced from the amount of compensation payble under this section'.

In the instant case considering the percentage of disability and the pain and sufferings and the amended provisions of Section 164 of the Motor Vehicles Act 1988 this Court is of the view that compensation of Rs. 1,50,000/- (Rupees One lac fifty thousand) is just and reasonable.

Hence this Appeal FMA-340 of 2009 stands disposed. The Judgment and Award dated 19-12-2007 passed by Learned Additional District Judge 10th Court Alipore in South 24 Parganas in MAC Case No-29/2007 stands modified to the extent that the appellant is entitled to compensation of Rs. 1,50,000/- (Rupees One lac fifty thousand) from the respondent United India Insurance Company Limited. The respondent United India Insurance Company Limited shall deposit Rs. 1,50,000/- alongwith interest @6% per annum from date of filing claim case today. Such deposit shall be made before Registrar General High Court at Calcutta within 8 weeks from the date of communication of this

Order. In the event compensation awarded by Trial Court is paid or deposited balance deposit be made.

The appellant/claimant will be entitled to withdraw compensation upon compliance of necessary formalities and upon payment of deficit court fees.

TCR be returned.

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.)