IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A.T. (MV) 38 of 2023

With

FMA 188 of 2024

Sanchita Sen Majumdar & Anr.

VERSUS

Oriental Insurance Co. Ltd. & Ors.

For the appellants: Mr. Krishanu Banik, Adv.
Mr. Tathagata Banik, Adv.

For the respondent No. 1: Ms. Gopa Das Mukherjee, Adv.

Last Heard on: January 06, 2026

Judgment on: March 12, 2026

Biswaroop Chowdhury,J:

The above appeals between the same parties are taken up together for their interconnectiveness. The Appellants in the above appeals were claimants in two motor accident claim cases arising out of a motor accident case dated 30-12-2015 where the appellants/claimants lost their two sons namely Sourav Sen Majumder and Souvik Sen Majumder. The claim cases were filed before the

Learned District Judge Hooghly, and thereafter transferred to the Learned Additional District Judge 2nd Court Chinsurah, Hooghly.

The claim case instituted on the death of Sourav Sen Majumder was registered as MAC No-182/2016 and the claim case instituted on the death of Souvik Sen Majumder was registered as MAC Case No-185 of 2016.

In both the claim cases the appellants/claimants alleged rash and negligent driving by driver of vehicle no. NL-01 L-2840 (Gas Tanker). In both the cases Oriental Insurance Company Limited insurer of vehicle no. NL-OIL-2840 appeared and contested the case.

By Judgment and Award dated 22nd August 2022, Learned Trial Judge disposed the claim case being MAC case No. 185 of 2016 by observing and directing as follows:

'Hence it is ORDERED that the claim application under Section 166 of the MV Act is allowed in part on contest against the OP no. 2 and ex-parte against the OP no-1. The claimants do get an award of compensation to the tune of Rs. 8,26,000/- only along with interest @8% per annum from the date of filing of the claim application till final realization from the OP No-2 towards compensation u/s. 166 of the MV Act.

The OP no-2 The Oriental Insurance Company Ltd. is directed to issue two account payee cheques of the following amounts in the names of each of the claimants within three months from the date of delivery of this judgment.

In the name of claimant no-1 Sanchita Sen Majumder Rs. 4,13,000/- plus 8% per annum from the date of filing of the claim application till final realization.

In the name of the claimant no-2 Ashok Sen Majumder Rs. 4,13,000/- plus 8% per annum from the date of filing of the claim application till final realization.'

Again by Judgment dated 6th day of December 2022 the Learned Trial Judge disposed the claim case MAC Case No-182 of 2016 by observing and directing as follows:

'Hence it is ORDERED that the claim application under Section 166 of the MV Act is allowed in part on contest against the O.P. no-2 and ex-parte against the O.P. No. 1. The claimants do get an award of compensation to the tune of Rs. 9,77,200/- only along with interest @8% per annum from the date of filing of the claim application till final realization from the O.P. No-2 towards compensation u/s. 166 of the MV Act.

The O.P. no.2 The Oriental Insurance Company Ltd. is directed to issue two account payee cheques of the following amounts in the names of each of the claimants, within three months from the date of delivery of this judgment.

In the name of claimant no-1 Sanchita Sen Majumder Rs. 4,88,600/- plus 8% per annum from the date of filing of the claim application till final realization.

In the name of the claimant no. 2. Ashok Sen Majumder Rs. 4,88,600/- plus 8% per annum from the date of filing of the claim application till final realization.

The aforesaid order shall come into effect only upon deposit of Court fees by the petitioners payable on the sum awarded excluding the court fees which has already been deposited.'

The claimants/appellants have assailed the Judgment and Award passed by Learned Trial Court in MAC 182/2016 in Appeal FMAT No-188 of 2024.

The ground of challenge in the instant appeal is that the compensation awarded is inadequate. Secondly the victim who was a student of Engineering Course had a bright future prospect and thus the Learned Trial Judge erred in considering the yearly income to be Rs. 36,000/-.

The following decisions are relied upon by Learned Advocate for the appellant.

Yashodamma S. VS Regional Manager Reliance General Insurance Company Ltd. and Anr.

Reported in 2023 ACJ 605.

Smt. Meena Pawaira and others VS Ashraf

Reported in 2021 SAR Online (SC)-680.

Oriental Insurance Company Ltd. VS Deo Patodi and others.

Reported in AIR-2009 S.C. 2442.

Reliance General Insurance Co. Ltd. VS Ramjan Mallick and others

FMA-712 of 2023.

Ramesh Chand Joshi and anr. VS New India Assurance Company Ltd.

In MAC App. No-212-13/2006. In the High Court at Delhi.

Babi Dixit and another VS Satendra Kumar and others

AIR-ONLINE-2018 Del. 2889.

S. Mohammed Hakim VS National Insurance Company Ltd. and Ors.

Reported in 2025(3) TAC 742(S.C)

Learned Advocate for the respondent no-1 Insurance Company submits that considering the income of the victim the Learned Trial Judge awarded just and reasonable compensation.

Upon hearing the Learned Advocates and considering the Judicial decisions relied upon and the evidence adduced this Court is of the view that that the decisions relied upon by the appellants do not apply to the facts of the case, as the educational qualification and the course pursued by the victim in the cases relied upon is different from the occupation and course pursued by the victim of this case. In the instant case Learned Trial Judge upon considering the educational qualification of the victim, and his income pleaded upon assigning reasons considered monthly income of Rs. 6,000/- per month. Thus there is no scope to interfere with regard to assessing compensation on the basis of monthly income of Rs. 6,000/- per month. Learned Trial Judge further considered future prospect and general damages and awarded compensation of Rs. 70,000/- However consortium of Rs. 40,000/- was awarded only to one of the parents. Thus this Court is of the view that consortium of Rs. 44,000/- and further Rs. 6,000/- on account of loss of estate and funeral expenses should be awarded. Hence it would be just and reasonable to award a further compensation of Rs. 50,000/- to what is already awarded by the Learned Trial Court.

The appellants/claimants have also assailed the Judgment and Award dated 22nd August 2022 passed by the Learned Trial Judge in MAC Case No. 185 of 2016 in Appeal FMAT (MV) No-38 of 2023.

The grounds on which the Judgment and Award passed by the Learned Trial Judge is assailed is firstly the compensation awarded is inadequate, secondly the monthly income ought not to be considered at Rs. 5000/- per month thirdly, the consortium should be awarded to both the parents.

Learned Advocate relies upon the following Judicial decisions:

Kumari Laxmisree VS Managing Director, K.S.R. Corporation.

Reported in 2025(2) TAC. 475 (SC).

Hitesh Nagjibhai Patel VS Bababhai Nagjibhai Rabari and another.

Reported in 2025(4) TAC-55(SC)

Kajal VS Jagdish Chand and others.

Reported in 2020(1) TAC. 705.

Baby Sakshi Grenda. VS Manroor Ahmad Simon and Another.

Reported in 2025(1) TAC-2.9. (S.C).

Reliance General Insurance Company Ltd. VS Sushil @ Saihim and others.

Reported in 2025(4) TAC 49(SC)

Kajal VS Jagdish Chand and others.

Reported in 2020(1) TAC. P-705.

Baby Sakshi Greola VS Manroar Ahmad Simon and Another.

2025(1) TAC. 29 (S.C.)

Learned Advocate for the Respondent no-1 submits that the Learned Trial Judge proceeded on the monthly income of Rs. 5000/- on the ground the victim was a student thus the compensation awarded should not be enhanced.

Upon hearing the Learned Advocates and considering the facts of the case it appears that the victim was a student of class X and he was to appear in the ensuing CBSE exam to be held in March 2016. Hence in the case of student who is to appear in school final examination has a prospect in future either in service or business or any profession. Although the said student used to engage himself in private tution and earn Rs. 4,000/- per month, the notional income should not be based on the income he earned during his student life but also the prospect of earning in future. Even if the student is not earning, the notional income should be on the basis of future prospect, and income should not be considered treating him as unemployed.

Upon considering the Judicial Decisions relied and the fact that the victim was to appear in the School Final (CBSE) Examination in the month of March 2016 it would be reasonable to consider the notional monthly income as Rs. 8,000/-

In the event monthly income is Rs. 8,000/- yearly income is Rs. 96,000/- 50% deducted on account of personal expenses the net yearly income comes to Rs. 48,000/- 40% future prospect being added the annual dependency loss comes to Rs. 67,200/-. By applying the multiplier of 18, the total dependency loss comes to Rs. 12,09,600/-. Further the claimants/appellants are entitled to Rs. 84,000/- on account of Filial consortium, Loss of estate and funeral expenses. Hence the total compensation comes to Rs. 12,93,600/- by arithmetical calculation.

However, this Court is of the view that Rs. 13,00,000/- is just and reasonable compensation.

Hence the appellants/claimants are entitled to compensation of Rs. 13,00,000/- along with interest @6% per annum from the date of filing claim case till today. As compensation of Rs. 8,26,000/- is already paid balance amount of Rs. 4,74,000/- be paid by the Respondent no-1 Oriental Insurance Company Ltd. to the appellants.

Thus both appeals FMAT(MV) 38 of 2023 and FMA-88 of 2024 stands disposed Appeal FMAT(MV) 38 of 2023 is disposed with a direction upon the respondent no-1 Insurance Company to pay the appellants further sum of Rs. 4,74,400/- along with interest @6% per annum from the date of filing claim case till today. FMA-188 of 2024 stands disposed with a direction upon respondent no-1 Insurance Company to pay the appellants a further sum of Rs. 50,000/- along with interest @6% per annum from the date of filing claim case till today.

Such payments shall be made by depositing the compensation amount before Registrar General High Court Calcutta within a period of 8 weeks from the date of communication of the Order.

The appellants will be entitled to withdraw the compensation amount upon compliance of all necessary 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.)