

18.02.2026
Sl. No. 06-07
g.b.
Court No.09

FMA 480 of 2025
With
COT 43 of 2025

Magma HDI General Insurance Co. Ltd.
-Vs-
Jaitun Nesha & Ors.
With
Azad Ansari & Anr.
-Vs-
The Magma HDI General Insurance Co. Ltd. & Anr.

Mr. Soumalya Ganguli
.....For the appellant
Mr. Subir Banerjee
Mr. Sandip Bandyopadhyay
Ms. Ruxmini Basu Roy
....For the Respondents

Learned advocates for the parties are present.

Heard learned advocates for the parties.

The appellant before this court was an opposite party in a case under Section 166 of the Motor Vehicles Act, 1988 and is aggrieved by the judgement and award dated 28.11.2024 passed by Learned Additional District Judge, Fast Track 1st Court, Islampur, Uttar Dinajpur in MAC Case No. 217 of 2022.

The respondent nos. 2 and 3 who are claimants in the said claim case have also filed a cross-objection being aggrieved by the judgement and award passed by the Learned Trial Judge. The

case of the claimants/respondent nos. 1 to 4 before the Learned Trial Court may be summed up thus:

On the date and time of the accident the deceased Zabir Ansari was coming from Kudargachhi to Bhulki by walking when he reached at Balamoni under Dalkhola P.S at the mean time one vehicle bearing no.- WB 59B/5390 (Truck) which was coming from Bhulki towards Kudargachhi in a very rash and negligent manner in which the driver of the offending vehicle lost his control over the vehicle came into wrong side of the road and dashed the deceased directly throwing him off at a considerable distance and he received severe injuries on this accident and there died on the spot.

The place of accident being the road is straight and wide and there was no obstruction over the road at the relevant time and accident. Due to rash and negligent driving with an excessive speed on the part of the driver of the offending vehicle the accident took place. In the event driver would have driven the vehicle carefully in normal speed then the accident could be avoided.

The victim was a Mason and help in hand of his family and as such the petitioners had a great financial loss, mental pain and agony and will have to suffer throughout their lives.

Pursuant to filing of this case, notice was issued upon the opposite party. The opposite party/insurance company contested the case by filing written statement. By judgement and award dated 28.11.2024, learned Trial Judge disposed of the claim case by observing and directing as follows:

Considering all the above aspects now it is necessary to assess the compensation payable to the claimants.

Sl. No.	Heads	Calculation	Amount
1.	Income	Rs.7375/-X12=Rs.88,500/-	
2.	Future prospect	Rs.35,400/-	
3.	Total (1) + (2)	Rs.1,23,900/-	
4.	Less 1/3 on account of personal and living expenses.	Rs.1,23,900/- (-) {1,23,900/- X 1/3}=Rs.1,23,900/- (-) Rs.41,300/- =Rs.82,600/-	
5.	Compensation after multiplier of 17 is applied	Rs.82,600/-X 18 =Rs.14,86,800/-	
6.	Loss of spousal consortium. Loss of parental consortium	Rs.48,400/- Rs.48,400/-	
7.	Loss of estate	Rs.18,150/-	
8.	Funeral expenses	Rs.18,150/-	
	Total Compensation (5+6+7+8)	Rs.16,19 ,900/-	

Considering the above claimant, being the father and wife of victim are entitled to an award of an amount of Rs.16,19,900/- (Sixteen lakh Nineteen thousand nine hundred only).

The appellant/insurance company being aggrieved by the judgement and award passed by the Learned Trial Court has come up with the instant appeal.

The respondent nos. 2 and 3 being also aggrieved with regard to the quantum awarded has filed a cross-objection.

The ground of challenge by the appellant/insurance company is that the Learned Trial Judge ought to have considered the notional income of the victim as Rs.6,000/- and not as Rs.7,375/-. Learned advocate further submits that the Learned Trial Judge erred in awarding the interest on the awarded compensation @ 6.5 per cent per annum.

Learned advocate appearing for the respondent nos. 2 and 3/claimants submits that the Learned Trial Judge erred in considering the notional income at Rs. 7,375/- per month instead of Rs.9,000/- per month. Learned advocate further submits that considering the monthly income of the victim as Rs.9,000/-, the compensation awarded should be enhanced.

Upon hearing the learned advocates for the parties and considering the facts of the case it appears that the claimants in their evidence have only examined themselves. No third party witness is examined to corroborate the income of the victim as a mason. No documents in this regard is also filed. Thus, considering the minimum rates and wages

circular issued by the Government Authorities, Learned Trial Judge did not commit any error in proceeding with the notional income of the victim to be Rs.7,375/- per month. Thus, this decision cannot be said to be erroneous. However, with regard to the grant of interest on the compensation awarded, this court is of the view that instead of 6.5 per cent per annum, it would be reasonable that the interest on the compensation amount should be 6 per cent per annum.

Hence, this appeal being FMA 480 of 2025 along with COT 43 of 2025 stands disposed of.

The judgement and award dated 28.11.2024 passed by the Learned Additional District Judge, Fast Track 1st Court, Islampur, Uttar Dinajpur in MAC 217 of 2022 is affirmed with regard to the principal amount awarded. However, with regard to the rate of interest, the said award stands modified and it is directed that the respondent nos. 2 and 3 will be entitled to receive compensation of Rs.16,19,900/- along with interest @ 6 per cent per annum from the date of filing of the claim case till today. As the appellant/insurance company has already deposited the awarded sum, the respondent nos. 2 and 3 are permitted to withdraw the awarded sum along with 6 per cent interest from the date of

filing of the claim case upon compliance of all necessary formalities.

The balance amount, if any, shall be returned to the appellant/insurance company along with accrued interest.

(Biswaroop Chowdhury, J.)