

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 872 of 2008

MD. MALEK ALI MOLLA @ MALEK MOLLA

VERSUS

THE ORIENTAL INSURANCE CO. LTD. & ANR.

For the appellant:

Mr. Niranjana Maity, Adv.

Ms. Adrija Bhattacharjee, Adv.

For the respondents:

Ms. Indrani Ghosh, Adv.

Mr. Rajesh Singh, Adv.

Last Heard on: January 05, 2026

Judgment on: February 06, 2026

Biswaroop Chowdhury, J:

The appellant before this Court was a claimant in a case under Section 166 of the Motor Vehicles Act 1988 and is aggrieved by the Judgment and Award dated 14-08-2007 passed by Learned Additional District Judge 10th Court Alipore in MAC Case No-12 of 2007.

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

On 05-04-2003 while the victim Md. Malek Ali Molla @ Malek Molla was standing by the left side of Diamond Harbour Road (Eastern side) non-mettalled portion while the driver of offending vehicle No. WB-19-2925 was proceeding with his vehicle towards Kakdwip in a rash and negligent manner and thereby dashed against one cycle and cyclist and occupant of the cycle and the said pedestrian Malek Molla and as a result he sustained severe injuries on his person causing permanent disability. Rash reckless and negligent driving of the driver of offending vehicle No. WB-19-2925 (Trakker) was the sole and direct cause for this pathetic accident which could easily be avoided, had the driver been not reckless, had attention while driving the said vehicle at the material time given and not being devoid of ordinary sense of prudent driving. The injured Md. Malek Ali Molla had an active life and energy till the date of accident. But after the accident and owing to sustaining permanent disablement he has lost his active life and energy and unable to lead a normal and pleasurable life. He had become completely dependent upon the assistance and help of others.

Pursuant to filing of the claim case notice was issued upon the opposite parties. The opposite party/respondent no-1, Oriental Insurance Co. Ltd. contested the case by filing written statement. ISSUES were framed and evidence was adduced by the appellant/claimant. Learned Trial Judge by Judgment and Award dated 14-08-2007 disposed the claim case by observing and directing as follows:

Hence it is ORDERED that the MAC Case No. 12 of 2007 be and the same is allowed on contest against the OP. No-2 and allowed ex-parte against the OP No.-1 but without any costs.

The petitioner Md. Malek Ali Molla @ Malek Molla do get award of compensation to the tune of Rs. 10,000/- (Rupees Ten Thousand) only from OP No-1 and 2. OP no-1 being indemnified the OP No-2. The Oriental Insurance Co. Ltd. is directed to issue an A/C payee cheque to the tune of Rs. 10,000/- (Rupees Ten Thousand) in the name of the petitioner/applicant Md. Malek Ali Molla @ Malek Molla along with interest @ 6% from the date of filing of the petition within one month from the date of this order, failing which the awarded money shall carry interest @9% till the liquidation of the awarded money. The O.P. no. 2 being the insurer of the offending vehicle is to indemnify the awarded money.'

The claimant/appellant being aggrieved by the Judgment and Award passed by the Learned Trial Court has come up with the instant appeal.

It is the contention of the appellant/claimant, that the Learned Trial Court mechanically held that the appellant did not suffer disability because of the accident in question. It is further contended that the Learned Trial Court erred in disbelieving the disability certificate on the ground of delay. It is also contended that the disability certificate ought to have been believed when the appellant was admitted to nursing home due to accident.

Heard Learned Advocate for the appellant/claimant and Learned Advocate for the respondent no-1 Oriental Insurance Company Limited Perused the evidence adduced and the materials on record.

Learned Advocate for the appellant/claimant submits that the Learned Trial Court erred in law in disbelieving the disability certificate. Learned Advocate further submits that the disability certificate ought to have been taken into consideration for awarding compensation. Learned Advocate also submits that the compensation awarded should be enhanced.

Learned Advocate for the respondent no-1 Oriental Insurance Company Ltd. submits that the Disability Certificate issued does not relate the same with regard to Road Traffic Accident, thus the Learned Trial Court rightly refused to consider the disability certificate in awarding compensation.

It appears from record that the claimant/appellant apart from adducing oral evidence had filed nursing home discharge certificate, and disability certificate. The nursing home owner was examined and the Superintendent of Diamond Harbour Hospital from where the Disability Certificate was issued was also examined. From the deposition of P.W.-3 owner of nursing home it is clear that the appellant/claimant was admitted to nursing home and the discharge certificate also mentions about Road Traffic Accident. Further from the deposition of P.W. 4 it appears that the handicapped certificate was issued in favour of the claimant/appellant on 05-11-2004. It was issued by the Medical Board after examining the patient. Superintendent Orthopadic

Surgeon, Eye Specialist ENT. Specialists were the members of the board. Thus upon considering the 'Handicapped Certificate' and the deposition of P.W. 4 it has to be inferred that the handicapped certificate was issued upon compliance of rules and medical procedures. As the patient/victim was examined by the Board it should be presumed that the Board prior to examining the patient/victim has perused the earlier medical prescription and certificates.

Now the point for consideration is whether the disability is caused due to Road Traffic Accident.

In this regard it is necessary to consider the Handicapped Certificate issued by the Sub-Divisional Hospital Diamond Harbour 24 Parganas (South). The said certificate states that the claimant is considered to be Orthopaedically handicapped and has got post traumatic Lt. wrist amputation. From the columns mentioned in the Certificate it is tick marked with regard to disability caused by injury. As there is only column with regard to injury which is indicated by giving tick mark and there is no specific column with regard to road traffic accident the said certificate cannot be discarded on the ground that it does not mention about Road Traffic Accident. The Disability Certificate read along with the Nursing home discharge certificate where there is mention of (LT) Wrist Amputation and Road Traffic Accident furnishes ground to draw inference that disability is caused due road traffic accident. As Tribunals are not Civil Court rigid rules of evidence is not applicable. Moreover Motor Vehicle CLAIM Legislation is a beneficial legislation, thus by adapting a rigid view the

object of the Legislation should not be frustrated but a reasonable view should be taken from the materials on record so that the beneficial object of the legislation should be fulfilled.

In the case of Ratan Mali VS New India Assurance.

Reported in 2005 ACJ-245 Division Bench of this Hon'ble Court observed as follows:

'The Division Bench of this Court has considered the several judgments of various other High Courts on this point and upon such consideration has observed that the Motor Vehicles Act is a social legislation for the benefit of those who are victims of the rash and negligent drivers who play with the dangerous toys in the form of motor vehicles. Such an Act does not demand or deserve rigid technical interpretation. It is not necessary to dot every 'I' and cut every 't' while dealing with a claim application under such Act. Etymological meaning of the word 'impairment' has a very wide canvas and it covers 'weakening.' In this context, it is not possible to reject the evidence of a qualified doctor and the certificate issued by him.'

In the facts and circumstances this Court is of the view that the Learned Trial Judge erred in not holding that the disability due to road traffic accident is not proved. Thus the findings cannot be sustained.

Although it is submitted by the Learned Advocate that considering income of Rs. 3000/- per month and future prospect of 40% the loss on

account of disability comes to Rs. 8,06,400/- and the non-pecuniary damages should be Rs. 2,00,000/- but considering the percentage of disability to be 65% this Court is of the view that total compensation of Rs. 500,000/- is just and reasonable.

Hence the Appeal FMA-No-872 of 2008 stands disposed. The judgment and award dated 14/08/2009 passed by Learned Additional District Judge 10th Court Alipore South 24 Parganas in MAC Case No-12 of 2007 stands modified to the extent that the claimant/appellant is entitled to compensation of Rs. 500,000/- from respondent no-1 Oriental Insurance Co. Ltd along with interest @6% per annum from the date of filing of claim case till today. The respondent no-1 shall deposit Rs. 500,000/- along with interest before Registrar General High Court Calcutta. Such deposit shall be made within 8 weeks from the date of communication of the Order. In the event compensation awarded by Learned Trial Court is paid balance amount shall be deposited.

The appellant/claimant will be entitled to withdraw the sum deposited upon compliance of 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.)

