

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

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 935 of 2025

With

IA No: CAN 1 of 2025

CAN 2 of 2025

Oriental Insurance Company Limited

VERSUS

Soumen Mondal & Anr.

With

COT 145 of 2025

IA No: CAN 1 of 2025

Soumen Mondal

VERSUS

Oriental Insurance Company Limited & Anr.

For the appellant in FMA 935 of 2025 Ms. Sayanti Santra, Adv.
and respondent in COT 145 of 2025:

For the respondent in FMA 935 of Mr. Amit Ranjan Roy, Adv.
2025 and appellant in COT 145 of
2025:

Last Heard on: November 17, 2025

Judgment on: January 14, 2026

Biswaroop Chowdhury,J:

The appellant before this Court was an opposite party in a case under Section 166 of the Motor Vehicles Act 1988 filed by the respondent no-1 and is aggrieved by the Judgment and Award dated 21st December 2024 passed by Learned Additional District Judge 2nd Court Tamluk Purba Medinipur in MAC Case No-123 of 2012. The respondent no-1/ claimant being also aggrieved by the Judgment and Award passed has filed a cross objection being COT. 145 of 2025.

The case of the claimant/respondent no-1 may be summed up thus:

On 05-09-2011 at about 1.45 p.m the victim Soumen Mondal since injured was waiting to catch the bus near 'Matangini more' stoppage over City Centre – Manjushree Road. At the material time a vehicle bearing No-WB-30H/4856 (Tata-Indigo) was proceeding from 'City Centre'- towards 'Manjushree Side' at a terrific high speed, recklessly endangering human life and safety of others and dashed the victim with a great force and violating the Traffic/Road Rules. As a result the victim sustained severe injury on right leg with communised compound fracture which caused his permanent disability.

Rash and negligent driving on the part of the driver of the said vehicle bearing No. WB-30H/4856 (Tata-Indigo) was the sole cause of the pathetic accident which could easily be avoided if the reckless driver would take proper care and reasonable attention at the material time being devoid of ordinary sense of prudent driving. Police started a criminal case against the driver of the said vehicle bearing No WB-30H/4856. U/S. 279/338 IPC.

The victim since injured was a smart young and active man. He was the sole bread-earner of the family and he had all qualities to prosper in his life in the near future. The accident made him permanent disabled man. He lost his prospect. He sustained mental shock pain and agony. The accident forces him to pass a life of miserable days.

Pursuant to filing of the claim case notice was issued upon the opposite parties. The Appellant Oriental Insurance Company Ltd. appeared and contested the case by filing written statement but the respondent no-2 owner of vehicle did not appear to contest the case. Evidence was adduced by the claimant/respondent no-1 and appellant/opposite party. The Learned Trial Court upon considering the evidence and hearing the Learned Advocates for the parties was pleased to dispose the claim case by observing and directing as follows:

‘Hence it is ordered that the instant MAC Case No. 123 of 2012 u/sec. 166 of the M.V. Act be and the same is allowed on contest against OP-2 i.e. Oriental Insurance Co. Ltd. and ex parte against OP-1 Panchami Patra owner of the offending vehicle bearing No-WB-30H/4856 but without any order as to costs.

The claimant Soumen Mondal do get an award of Rs. 7,49,788/- (Rupees seven lakh Forty Nine thousand Seven hundred Eighty Eight only) together with an interest @4% p.a. from the date of filing of the instant case till payment by OP No. 2/Oriental Insurance Co.Ltd.

The OP-2/Oriental Insurance Co. Ltd. is hereby directed to pay the awarded amount with interest by an A/C payee cheque in the name of the claimant Soumen Mondal.

The OP-2/Oriental Insurance Co. Ltd. is further directed to issue the said cheque within one month from the date of this Order till realization of that amount.'

The appellant Oriental Insurance Co. Ltd being aggrieved by the Judgment and Award dated 21st December 2024 passed by the Learned Trial Court has come up with the instant appeal.

The respondent no-1/claimant being also aggrieved by the Judgment and Award passed by the Learned Trial Court has come up with this appeal.

It is the contention of the appellant that the Learned Trial Judge erred in allowing the claim case and passing the award although claim case was made after 3 years from the date of accident and the FIR was lodged 17 days after the accident. It is further contended that the disability certificate was valid till 18-11-2019 and without reassessment the said certificate cannot be relied upon but the Learned Trial Judge without verification accepted the said certificate. It is also contended that the Learned Judge erred in awarding Rs. 1,13,188/- on account of medical expenses without the same being proved.

It is the contention of the respondent no-1/claimant in the cross objection that the Learned Tribunal ought to have considered the monthly

income as Rs. 20,000/- instead of Rs. 3,000/-. It is further contended that the Learned Tribunal ought to have considered disability as 100% and it is also contended that the multiplier ought to be 18 instead of 17.

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

Learned Advocate for the appellant submits that the Learned Trial Judge erred in not considering the issue of delay in lodging FIR. Learned Advocate for the appellant further submits that the Learned Trial Court proceeded on the basis of disability certificate which was valid upto 18/11/2019. Learned Advocate also submits that the disability certificate was not reviewed thus the Learned Trial Court ought not to have relied upon the said certificate.

Learned Advocate for the respondent no-1/claimant submits that the claimant/victim suffered disability of 100% and the compensation awarded should be enhanced.

With regard to the first submission of Learned Advocate for appellant that delay was inordinate with regard to the issue of lodging the FIR, this court is of the view that mere delay in lodging the FIR is not a ground to disbelieve the case of the claimant. In the case of Syed Sadiq and others Vs Divisional Manager United India Insurance Company limited reported in (2011) 4 SCC P-693 the Hon'ble Supreme Court while considering the issue of delay in lodging the FIR was pleased to observe as follows:

It is well settled that the delay in lodging the FIR cannot be a ground to doubt the claimants case knowing the Indian conditions as they are we cannot expect a common man to first rush to the police station immediately after an accident. Human nature and family responsibilities occupying the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than rush to the police station.'

In the instant case also it appears that after the accident the victim was hospitalized for 11 days thus delay in this case is not inordinate.

Now with regard to the second submission of Learned Advocate for the Appellant that the disability certificate was for 5 years it appears upon perusal of the said certificate that the same was issued in accordance with the rules. P.W. 3 has deposed that he was a member of the Board which issued Disability certificate and it was unanimously opined that the claimant Soumen Mondal was suffering 55% disability. Although in the cross examination P.W. 3 stated that the disability certificate mentions that the certificate does not require review after five years in the certificate there is no such specification. Neither of the columns in the certificate there is indication as to whether it is required to be reviewed after 5 years or not. As argued by the Learned Advocate for the appellant that the claimant did not review the disability certificate after 5 years this Court is of the view that the disability certificate was issued on 19/11/2014 during pendency of the claim case. When the deposition of P.W.1 claimant was made on 10th January 2019, 5 years did not expire and about 10

months were left for the certificate to expire. A disability certificate required for the purpose of job, education or some other benefit under any scheme cannot be equated with disability certificate for the purpose of motor accident claims. In a motor accident claim a person who has suffered temporary disability when files a certificate at the time of filing of claim case he cannot be made to wait for review of the same when the validity expires after few years neither can he be compelled to go and obtain review of the said certificate. As the statute does not provide guideline for assessing compensation in case of temporary disablement the guidelines with regard to permanent disablement may be followed and in the event it appears to the court that compensation is excessive the same may be reduced accordingly. In the instant case upon considering the quantum of compensation on account of disablement and the age of the victim and the multiplier applied this Court is of the view that the compensation on account of disablement need not be reduced.

The Learned Trial Court has also considered the evidence with regard to treatment costs and the age and education for deciding the future prospect. Thus no interference is required with these issues.

Although Learned Advocate for the claimant/respondent no-1 submits that multiplier of 18 ought to have been applied but considering the fact that compensation awarded is just and reasonable no interference is necessary.

Thus this Appeal FMA-935 of 2025 and COT 145 of 2025 stands dismissed. Judgment and Award dated 21st December 2024 passed by Learned

Additional District Judge 2nd Court Tamluk Purba Medinipur in MAC Case No-123 of 2012 is affirmed. However the direction to pay 6% interest in the event payment is not made within one month from the date of the award is set aside. The claimants/respondent no-1 will be entitled to withdraw the awarded sum along with interest @ 4% per annum from the date of filing claim case till deposit, along with accrued interest. The residuary amount if any shall be paid to the Appellant Insurance Company.

The Trial Court Records be sent back.

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.)