

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

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 354 OF 2024

With

IA NO.: CAN 2 OF 2024

Magma Hdi General Insurance Co. Ltd.

VERSUS

Tarun Majumder And Ors.

With

COT 88 OF 2024

Tarun Majumder And Anr.

VERSUS

Magma Hdi General Insurance Co. Ltd. & Anr.

For the appellant/Insurance Company: Mr. Soumalya Ganguli, Adv.

For the respondents/claimants: Mr. Saswata Bhattacharyya, Adv.

Last Heard on: February 03, 2026

Judgment on: February 11, 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 and is aggrieved by the Judgment and Award dated 20th December 2023 passed by Learned Additional District

Judge Fast Track Court-I Alipore South 24 Parganas in MACC No-486 of 2021. The respondent no. 1 and 2 being also aggrieved by the Judgment and Award passed by the Learned Trial Judge have filed cross objections being COT No. 88 of 2024.

The case of the claimants/respondent no. 1 and 2 before the Learned Trial Court may be summed up thus:

On 26-03-2021 at about 13:45 hours the driver of the truck being registration No. WB-19F/7521 was driving the same in rash and negligent manner along Bidhan Sarani at a very high speed from north to South direction and as it reached near Premises No. 115/9 Bidhan Sarani it dashed one scooty being registration No. WB-522/4651 from behind. The said victimized scooty was plying through its extreme left side of the road. As a result of which the pillion rider namely MAMATA BASAK @ MAMATA MAJUMDER of said victimized scooty fell down and sustained severe injuries all over her body and she was taken away to hospital; immediately just after the accident where she was declared brought dead.

The deceased was the only earning member of her family and after accidental premature death the family members of the deceased (Father and Minor Son) are in acute financial crises and have lost future prospects.

Pursuant to filing of the claim case notice was issued upon the Insurance Company and the vehicle owner. The opposite party Magma HDI General Insurance Co. Ltd. contested the case by filing written statement. Issues were

framed and evidence was adduced. By Judgment and Award dated 20th day of December 2023 Learned Trial Court was pleased to dispose of the claim case by observing and directing as follows:

Hence it is ORDERED that the Motor Accident Claim Case under Section 166 of MV Act is hereby allowed on contest against the contesting OP no. 2 namely Magma HDI General Insurance Co. Ltd. and exparte against the OP no. 1 but without any order as to costs.

The claimants/petitioners do get an award of Rs. 64,46,444/- (Rupees Sixty – Four Lakhs Forty six Thousand Four-Hundred and Forty – Four) only to the claimants/petitioners by issuing two separate Account Payee cheques to the claimants accordingly. The Payee/claimant no. 1 is granted the liberty to produce his PAN card before the Insurance Company for TDS if any as per law.

The OP no-2/Magma HDI General Insurance Co. Ltd. is directed to divide the aforesaid awarded compensation amount equally among both the claimants namely Tarun Majumder and minor Tamajit Majumder, and pay the same within 90 days from the date of this award, along with proportional amount of interest computed as per the aforementioned rate on each individual compensation amount.

The guardian/claimant no.1 Tarun Majumdar is directed to invest the compensation received for the minor claimant no. 2 namely Tamajit Majumder in a fixed deposit account of some Nationalized Bank in the name of the said minor child for a period extending to the reaching of his majority.

In the event of failure of the OP. No. 2/Magma HDF General Insurance Co. Ltd. to make payment of the compensation amount as mentioned above within 90 days of this order, the claimants shall be at liberty to put this order into execution with further interest @7.5% Per annum from the date of order till the date of realization.

The claimants/petitioner are hereby directed to deposit the deficit court fees of Rs. 69,970/- within a period of ten days from the date of passing of this judgment.

Any compensation if any already paid to the claimants/petitioners under Section 140 of MV Act shall be deducted from the amount of compensation made herein. The Appellant Magma HDI General Insurance Co. Ltd. being aggrieved by the Judgment and Award passed by the Learned Trial Judge has come up with the instant appeal. The respondent no-1, and 2/claimants being also aggrieved by the Judgment and Award passed by the Learned Trial Judge have filed the cross objection.

Heard Learned Advocate for the Appellant Magma HDI General Insurance Co. Ltd. and Learned Advocate for the respondent no-1 and 2/claimants perused the materials on record.

Learned Advocate for the appellant submits that the Learned Trial Court erred in awarding interest @ 7.5% per annum and the same should be reduced.

Learned Advocate for the respondent no-1 and 2/claimants submits that the Learned Trial Judge ought to have considered the income of the victim to be 13 months salary which all Police persons get. Learned Advocate draws attention to the document marked Exhibit No-26 which goes to show that cash compensation of Rs. 48,160/- was received for the year 2020. Learned Advocate for the appellant disputes such submission as the same was not argued before the Learned Trial Court.

Upon hearing the Learned Advocates and considering the facts of the case this Court is of the view that although Learned Trial Judge rightly came to the findings that there was rash and negligent driving by driver of offending vehicle no-WB-19F/7521, and proceeded on the annual income of Rs. 3,72,732/- but cash compensation was not considered. Although cash compensation amount may not be same every year but this Court is of the view that it would be reasonable to proceed by considering the cash compensatory allowance about Rs. 28,000/- average and consider the annual income to be Rs. 400,000/- In the event annual income comes to Rs. 400,000/- addition on account of future prospect should be 50% thus Rs. 200,000/- should be on account of future prospect. Thus total annual income comes to Rs. 600,000/-. $\frac{1}{3}$ rd should be deducted on account of personal expenditure and annual dependency loss comes to Rs. 400,000/-. The multiplier of 17 should be applied. Hence total dependency loss comes to Rs. 68,00,000/-. Further the claimants are entitled to Rs. 1,10,000/- on account of consortium of Rs. 40,000/-, each and Rs. 30,000/- on account of funeral expenses and loss of

estate. Thus Rs. 69,10,000/- is the total compensation which claimants/respondents no-1 and 2 are entitled from the Appellant Magma HDI. General Insurance Co. Ltd.

Hence this Appeal being FMA 354 of 2024 along with COT. No. 88 of 2024 stands disposed. The Judgment and Award dated 20th December 2023 passed by Learned Additional District Judge Fast Track Court-I. Alipore South 24 Parganas in MACC No-486 of 2021 stands modified to the extent that the respondent no-1, and (2) claimants are entitled to compensation of Rs. 69,10,000/- from the Appellant Insurance Company along with interest @6% per annum from the date of filing till today. Such payments shall be made by making the deposit before Registrar General High Court Calcutta within 8 weeks from the date of communication of this Order.

In the event the compensation awarded by the Learned Trial Court is already deposited balance amount shall be deposited.

The claimants/respondents are permitted to withdraw the awarded sum deposited along with accrued interest if any upon compliance of required 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.)