

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

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 3206 of 2016

With

IA NO: CAN 2 of 2024

ICICI Lombard General Insurance Co. Ltd.

VERSUS

Nageshwar Shaw & Anr.

For the appellants/Insurance Company: Mr. Parimal Kumar Pahari, Adv.

For the respondents/claimants: Mr. Sanat Kumar Mallick, Adv.

Last Heard on: February 10, 2026

Judgment on: March 06, 2026

Biswaroop Chowdhury,J:

The appellant before this Court was an opposite party in a case under Section 166 of the Motor Vehicles Act 1966, and is aggrieved by the Judgment and Award dated 24-11-2015 passed by Learned Judge 3rd Bench City Civil Court Calcutta in MJC No- 15 of 2014.

The claimant/Respondent no-1 being also aggrieved by the Judgment and Award of the Learned Trial Court has also filed Cross Objection being COT-48/2023.

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

On 21-12-2013 on the tram car track near 227/1 APC. Road. Kolkata-4 at about 6.40 AM. the accident took place. The victim was walking through tram car track separate from the road of other vehicles of APC Road from north to south for his personal business and at that time the offending lorry being No. OR-O1-3626 came with a high speed in a rash and negligent manner by endangering human life and safety to others through same road and same direction and dashed the victim petitioner from his behind. Due to the said accident the claimant-petitioner fell down on the road and ran over his legs by the wheels of the lorry and thereafter he was removed to the R.G. Kar Medical College and Hospital. The left leg of the claimant petitioner has been amputated due to the injuries. The claimant/petitioner lodged complaint before police Authority for which Shyampukur P.S. Case No-254 dated 21-12-13 was instituted against driver of offending vehicle.

The appellant ICICI Lombard General Insurance Company Limited contested the case by filing written statement. ISSUES were framed and evidence was adduced. The Learned Trial Judge by Judgment and Award dated

24th November 2015 disposed of the claim case by observing and directing as follows:

Hence it is ORDERED that the application under Section 166 of the Motor Vehicles Act filed by the petitioner/claimant Nageswar Shaw is allowed on contest without any cost against the OP.No-2-ICICI Lombard General Insurance Co. Ltd.

The Petitioner/Claimant do get compensation of Rs. 11,57,000/- (Rupees Eleven Lakh Fifty Seven Thousand only) along with interest at the rate of 8% p.a. from the date of filing of this case, i.e. from 04-01-2014 till realization of the awarded amount subject to payment of court fees upon entire amount.

The OP No-2 ICICI Lombard General Insurance Co. Ltd. is hereby directed to pay the awarded amount subject to payment of court fees upon entire amount. The OP. No-2 ICICI Lombard General Insurance Co. Ltd. is hereby directed to pay the awarded amount by issuing an A/C payee cheque in favour of the petitioner/claimant, namely, Nageswar shaw through this Tribunal within one month from this date, failing which the petitioner/claimant is at liberty to realize the same by putting the order into execution.'

The Appellant Insurance Company being aggrieved by the Judgment and Award 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 filed the cross objection.

Heard Learned Advocate for the appellant 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 considering the income of the claimant to be Rs. 12,000/- without any documents. Learned Advocate further submits that the Learned Trial Judge ought not to have considered the monthly income of the claimant to be Rs. 12,000/- Learned Advocate also submits that the compensation awarded is excessive.

Learned Advocate for the respondent no-1/claimant submits that the Learned Trial Judge ought to have considered the nature of disability to be 86% and not 50%. Learned Advocate further submits that the Learned Judge erred in not considering income of the claimant to be Rs. 15,000/- per month. Learned Advocate also submits that future medical costs and costs of artificial limb, and future prospect should also be taken into consideration and granted.

Now with regard to the percentage of disability it appears that the said certificate was issued by Medical Board. However as the members of the Board were not examined the Learned Trial Judge did not err in considering disablement of 50% under Section 137 of the Motor Vehicles Act.

However upon considering the evidence of P.W. 1 and P.W. 3 where the owner of taxi by whom claimant was engaged deposed regarding daily income of claimant and considering the nature of occupation it is not unusual for a taxi driver to earn Rs. 15,000/- per month. As future prospect is not taken into

consideration future prospect should be 30%. Considering the nature of injury medical expenses present and future and cost of artificial limb, and pain and sufferings Rs. 200,000/- on such head is just and reasonable.

Thus in the event monthly income is considered to be Rs. 15,000/- per month taking into consideration 30% future prospect total monthly income comes to Rs. 19,500/-. Thus annual income comes to Rs. 2,34,000/-. As the disability suffered is 50% Annual Loss due to disability is Rs. 1,17,000/-. As the victim was 38 years multiplier of 15 is to be applied. Thus total loss due to disability is Rs. 17,55,000/-. Further the claimants on account of pain sufferings mental agony, medical expenses both present and future should get Rs. 200,000/-. Thus Rs. 19,55,000/- is the total compensation which the claimant/respondent no-1 is entitled from the Appellant as per arithmetical calculation. However this Court is of the view that compensation of Rs. 20,00,000/- is just and reasonable.

Hence FMA3206/2016 along with COT 48/2023 stands disposed. The Judgment and Award dated 24/11/2015 passed by Learned Judge 3rd Bench City Civil Court Calcutta in MJC no. 15 of 2024 stands modified to the extent that the claimant respondent no. 1 will be entitled to compensation of Rs. 20,00,000/- along with interest @ 6% p.a. from date of filing claim case till today from the appellant ICICI Lombard General Insurance Company Limited. The appellant Insurance Company shall pay the compensation amount along with interest by depositing the same before the 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 the balance amount shall be deposited. The Respondent no. 1/claimant will be entitled to withdraw the compensation amount of Rs. 20,00,000/- (Rupees twenty lakh) along with accrued interest if any upon compliance of necessary formalities. This appeal stand disposed.

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.)