

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

Present:

The Hon'ble Justice Biswaroop Chowdhury

**F.M.A. 503 of 2024
*Surajit Sinha Mahapatra***

VERSUS

The Bajaj Allianz General Insurance Company Ltd. & Anr.

For the appellants/claimant:

Mr. Jayanta Banerjee, Adv.

Mrs. Ruxmini B. Roy, Adv.

For the respondents:

Mr. Argha Bhattacharjee, Adv.

Mr. Soumalya Ganguli, Adv.

Last Heard on: April 08, 2026

Judgment on: April 16, 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 19.12.2023 passed by Learned Additional District Judge 6th Court Paschim Midnapur in MAC No. 284/2011.

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

On 18.08.2011 at 11 A.M. while the claimant was proceeding towards Midnapur West from Salbani by riding on his Motor Cycle bearing no. WB-34J/3200 and when he reached in between Godapiyasal and Kachare Road near culvert NH 60 road, the offending truck bearing No. WB-41E/0621 coming from opposite direction in rash and negligent manner hit the motor cycle of the injured with great force. Due to forceful hitting claimant was thrown out along with his Motor Cycle at a considerable distance and sustained grievous injury on his right leg right hand and over his head. The local people removed the injured to Midnapur Medical College and hospital where he was admitted but due to his precarious condition he was transferred to Apollo Gleneagles Hospital Kolkata for better treatment. He remain hospitalized from 18.04.2011 till 3.5.2011 in the said Hospital and thereafter he was treated at Bombay Hospital and Medical Research Centre where he was operated upon and incurred medical expenses of Rs. 5 lakh. That the claimant is still under treatment and has become permanently disabled. It is further pleaded that the accident was caused due to rash and negligent driving on the part of the driver of the offending truck bearing no. WB-41E/0621 and the said driver is responsible for the accident.

Pursuant to the filing of the claim cases notice was issued upon the opposite party vehicle owner and opposite party Insurance Company. Opposite party vehicle owner on receiving notice appeared in Court but subsequently did not contest the case. However Opposite Party Bajaj Alianz General Insurance Company Ltd. filed written statements and contested the case. Issues were

framed and evidence was adduced. Upon considering the evidence adduced and upon hearing the Learned Advocates Learned Trial Judge was pleased to dispose of the claim case by observing and directing as follows:-

'Hence,

It is

ORDERED

That the motor accident claim case no. 284 of 2011 filed u/s. 166 of M.V. Act is allowed in full against OP no. 2/the Bajaj Alianz General Insurance Co. Ltd. and exparte against Dinesh Prasad but without cost.

The claimant/injured Surajit Sinha Mahapatra is entitled to get Rs. 15,00,000/- (Rupees Fifteen lac) along with interest at the rate of 2% (two) per annum from the date of filing (21.09.2011) till its realization towards compensation from the Bajaj Alianz General Insurance Co. Ltd.

The Bajaj Alianz General Insurance Co. Ltd. is directed to issue two A/C payee cheques in equal amount within 60 days from the date of receipt of the copy of the judgment. One cheque amount will be fixed in any nationalized bank in the name of claimant for the period of 5 years and the fixed amount will not be released without permission of court. The Xerox copy of fixed deposit certificate be submitted to this court as proof of compliance order.

A copy of the judgment be supplied to the parties free of cost.'

The appellant claimant being aggrieved by the quantum of composition awarded by the Learned Trial Court has come up with the instant appeal. Heard Learned Advocate for the appellant and Learned Advocate for the respondent Insurance Company perused the evidence adduced and material on record.

Learned Advocate for the claimant submits that the Learned Trial Judge has fixed the notional income of the claimant appellant as Rs. 10 thousand although the claimant appellant has furnished evidence about his income in Foreign Country. Learned Advocate further submits that the Learned Trial Judge erred in awarding only Rs. 50 Thousand on account of pain and sufferings and only Rs. 1 lakh on account of medical expense and Rs. 20 Thousand on future medical expenses which is very meager amount. Learned Advocate also submits that the Learned Trial Judge has erred in not taking into consideration the future prospect. It is submitted by the Learned Advocate that the compensation awarded by the Learned Trial Judge is meager and the same should be enhanced.

Learned Advocate for the respondent No. 1 Insurance Company submits that there is no error on the part of the Learned Trial Judge in proceeding with the Notional Income of Rs. 10 Thousand as the appellant claimant has failed to prove his income.

Upon hearing the Learned Advocates and considering the materials on record although it is an admitted position that the appellant claimant was

posted as a manager at Dubai but the appellant claimant did not furnish any particulars with regard to his income by submitting Bank Statements. However it is to be remembered that when a person residing in India is posted a foreign country in post of a manager it is to be presumed that he is proceeding to foreign country to earn a handsome salary and not meagre amount of Rs. 10 thousand which he can earn in India. Although notional income taken into consideration by the Learned Trial Court is very low and should be enhanced considerably but, in the facts and circumstances of the case it would be just and reasonable to consider the notional income at Rs. 30,000/- (Rupees thirty thousand).

In the event notional income is considered as Rs. 30 thousand the compensation awarded on the loss of income increases 3 times which would be 37 lakh 80 thousand. The future prospect should be atleast Rs. 5 lakh and the compensation on account of loss of income comes to Rs. 42 lakh 70 thousand. Considering the period of stay in Hospital this Court is of the view that Rs. 2 lakh should be granted on account of pain and suffering, Rs. 2 lakh on account of medical expenses and Rs. 100,000/- on account of future medical expenses and Rs. 100,000/- on account of loss of amenities loss of expectation of life and lost of transportation. And transportation charges which comes to Rs. 6 lakh. Thus the total compensation comes to Rs. 48 lakh 70 thousand by arithmetic calculation which the appellant/claimant is entitled to from respondent no. 1 Insurance Company. However this Court is of the view that compensation of Rs. 49 lakh is just a reasonable.

Hence, this appeal FMA 51503/2024 stands disposed. The Judgment and Award passed by the Learned Additional District Judge 6th Court Paschim Midnapur in MAC case no. 284/2024 stands modified to the extent that the appellant claimant will be entitled to Rs. 49 lakh along with interest @6% per annum from the date of filing of claim case till today. The respondent no-1 Bajaj Allianz General Insurance Company Limited shall deposit Rs. 49 lakh along with interest @6% per annum from the date of filing claim case till today before Registrar General High Court Calcutta. Such deposit shall be made within 8 weeks from the date of communication of this Order. It is however made clear that in the event compensation awarded by the Learned Trial Court is paid or deposited the balance amount along with interest be deposited before Registrar General. The claimant appellant will be entitled to withdraw the compensation amount deposited before Registrar General and Trial Court upon compliance of necessary formalities. This is in modification of the Order of Learned Trial Court regarding fixing of one cheque in Nationalized Bank.

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.)