Item No. 63

Ct 09

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30.04.2026

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 548 of 2026
With
IA NO: CAN 1 of 2026

Salka Sen & Ors.
Vs
The National Insurance Company Limited & Anr.

Mr. Amit Ranjan Ray
... for the appellants.
Mr. Sanjay Paul
... for the respondent/insurance company.

Learned advocates for the parties are present.

The paper books filed be kept with the record.

This appeal is taken up for hearing by consent of the learned advocates.

The appellants before this Court were claimants in a claim case under Section 166 of the Motor Vehicles Act, 1988 and is aggrieved by the judgment and award dated 8th January, 2026 passed by the Learned Additional District Judge, 4th Court, Asansol, Paschim Bardhaman in MAC Case No. 32 of 2016/103 of 2016. The case of appellants/claimants before the Learned Trial Judge may be summed up thus:

On 05.05.2016 at about 9.30 AM, the victim Dhananjoy Sen was selling vegetable near Kalitola

More at Sabanpur. At that time one truck bearing No. BR-01GC/0891 came from Neamatpur side. Driver of the vehicle by driving the said vehicle in rash and negligent manner dashed the victim due to which he sustained severe injuries on his person. He was taken to Asansol District Hospital for treatment where he died on the same day. The driver of the truck bearing no. BR-01GC/0891 is solely responsible for the said accident.

The tragic accident as alleged took place due to rash and negligent driving of the driver of the offending vehicle. The victim was the only earning member of the family and due to his sudden death, the entire family is facing acute financial crisis.

Pursuant to filing of the claim case notice was issued upon the opposite parties. The opposite party, vehicle owner although appeared but did not contest the case by filing written statement. The opposite party, National Insurance Co. Ltd. contested the case by filing written statement. Issues were framed and evidence was adduced by the claimants as well as the opposite party, National Insurance Co. Ltd..

The Learned Trial Judge by the judgment and award dated 8th January, 2026 was pleased to dispose of the claim application by observing and directing as follows:

“Hence, it is,

ORDERED

That the claim petition U/s. 166 of the M.V. Act is allowed on contest against the O.P. No. 2 i.e. National Insurance Company Ltd., insurer of the offending vehicle bearing Registration No.-truck bearing no. BR-01GC/0891 and allowed exparte against O.P. No. 1 without costs.

The petitioners do hereby get an award for Rs.5,74,000/-(Rupees five lacs, seventy four Thousand only) as compensation and interest on the above @ 6% per annum from the date of filing of the case i.e. from 04.06.2016 till realization of the award.

O.P. No. 2 i.e. National Insurance Company Ltd., is directed to pay the awarded amount of Rs.2,18,000/- (Rupees two Lacs eighteen Thousand only) to Petitioner No:1 and Rs.1,78,000/- (one lacs seventy eight thousand) each to Petitioner No:2 and 3 along with accrued interest as mentioned above, by issuing three numbers of separate account payee cheques in favour of the claimants, failing which the O.P. 2 will have to pay further interest @ 6% p.a. upon the awarded amount from the date of expiry of sixty days till realization of the awarded amount. The petitioners will be at liberty to recover the said amount from O.P No. 2 in accordance with law if it is not paid with in stipulated period.

Be it mentioned that any amount awarded and paid in any other case arisen out from same cause of action including a case u/s- 140 of the M.V. Act, 1988 to the petitioners for this accident be adjusted against this awarded amount.

Let a copy of this Award be supplied to the Insurance Company free of costs."

The appellants/claimants being aggrieved by the quantum of compensation awarded by the Learned Trial Judge has come up with the instant appeal.

Heard learned advocates for the appellants/claimants and learned advocate for the respondent no.1. National Insurance Co. Ltd. Perused the evidence adduced and materials on record.

Learned advocate for the appellants submits that the Learned Trial Judge erred in considering the income of the victim to be Rs.3,000/- although the claim of the claimants was that the victim was to earn Rs.8,000/- per month as vegetable vendor. Learned advocate further submits that compensation awarded by the Learned Trial Judge should be enhanced.

Learned advocate for the respondent no.1, National Insurance Co. Ltd. disputes the submission of the learned advocate for the appellants and submits that award is just and reasonable and no interference is required.

Upon perusing the evidence of PW1/claimant, it appears that the victim died while he was selling vegetables. The place where the victim was selling vegetable is specifically mentioned. Moreover in cross-examination also the claimant/PW-1 has stated that the victim was a vegetable vendor at Sabanpur Kalitola More under Kulti P.S. Thus the occupation of the victim should not be disbelieved. In the event the occupation of the victim is believed, the question which comes for consideration is whether the amount of income mentioned in the claim petition alleged to be earned by the victim should be believed. The claimants in the instant case did not furnish any document to support the income. However, as the victim was a vegetable vendor and accounts are not usually maintained by vegetable vendor nor any income tax return is filed, ordinarily it is incumbent upon the Courts and Tribunal to consider an income which is just and reasonable. In the instant case, the victim was aged about 39 years. The occupation of the victim is proved to be the vegetable vendor. Being at the age of 39 years and having a family it would be just and reasonable to consider the income of the victim to be Rs.6,000/- per month. In the event the monthly income of Rs.6,000/- the Annual Income comes to Rs.72,000/-. The future prospect of 40% being added which is Rs.28,800/- the total annual income comes to Rs.1,00,800/-. 1/3 should be deducted on account of personal expenses and the annual dependency loss comes to Rs.67,200/-. The multiplier of 15 being applied, the total dependency loss comes to Rs.10,08,000/-. Further the appellants/claimants are entitled to Rs.70,000/- on account of loss of consortium, loss of estate and funeral expenses. Thus, the total compensation which comes by arithmetical calculation is Rs.10,78,000/-. However, This Court is of the view that compensation of Rs.11,00,000/- is just and reasonable.

Hence, this appeal being **FMA 548 of 2026** stands disposed of.

The judgment and award passed by the Learned Additional District Judge, 4^{th} Court, Asansol, Paschim Bardhaman in MAC Case No. 32 of 2016/103 of 2016 stands modified to the extent that the appellants/claimants will be entitled to Rs.11,00,000/- from the respondent no.1, National Insurance Co. Ltd. along with interest @ 6% from the date of filing of claim case (04.06.2016) till today.

The respondent No.1, National Insurance Co. Ltd. shall deposit Rs.11,00,000/- along with interest @ 6% p.a. from the date of filing of claim case (04.06.2016) till today before the Learned Registrar General, High Court, Calcutta. Such deposit to be made within period of eight 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 be deposited before the Registrar General High Court, Calcutta.

The appellants/claimants will be entitled to withdraw the amount upon compliance of necessary formalities.

Connected application, if any, also stands disposed of.

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Biswaroop Chowdhury, J.)