

Item 13.02.
No. 2026
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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 753 of 2025

National Insurance Company Limited
Vs
Sathi Debnath & Ors.

With
COT 121 of 2025
Sathi Debnath & Ors.
Vs.

National Insurance Company Limited & Anr.

Mr. Deb Narayan Ray.
... for the appellant/insurance company.

Mr. Subir Banerjee,
Mr. Sandip Bandhopadhyay,
Mrs. Ruxmini Basu Roy.
... for the respondent nos. 1 to 4/claimants.

Learned advocates for the parties are present.

Heard learned advocates for the parties.

The Appellant/National Insurance Company Limited before this Court was an opposite party in a claim case under Section 166 of the Motor Vehicles Act, 1988 and is aggrieved by the judgment and award dated 20.12.2024 passed by the Learned Additional District Judge, 3rd Court, Balurghat, Dakshin Dinajpur in MAC case No. 17 of 2023.

The respondent nos. 1, 2, 3 and 4/claimants being also aggrieved by the judgment and award passed by the Learned Trial Court has come up with

the Cross-objection being COT 121 of 2025.

The case of the appellants/claimants before the Learned Trial Court may be summed up thus:

On 02.10.2022 victim along with his friend Ujjwal Mahato were sitting on a standing motor cycle bearing no. WB-84B/7363 in front of the house Saikat Ranjan Das, near Malancha Bazar by the extreme left hand side (i.e the kancha portion) of the Hili to Balurghat 512 N.H. road to collect hen/chicken from the house of the employer Saikat Ranjan Das and after that to reach at the shop, in the name & style SAGUNA DAILY FRESH, situated at Balurghat Dist hospital More for sell of the said hen/chicken. The said day was Durga Astomi and demand of hen/chicken was in high. At about 02.046 Hrs. when victim and his above named friends were sitting on the standing motor cycle, at that time the offending vehicle, being No. WB-62G/4644 (Maruti Suzuki Omni), coming from Hili side towards Balurghat side at a high speed and negligent manner lost control and went into the extreme left hand side of the road in the kancha portion and dashed against the victim along with his friend with the motor cycle. As a result victim fell down with the motor cycle and got multiple severe injuries on his person. Local people rescued the victim and his friend and shifted them at Balurghat Disct. Hospital but the doctor declared him dead.

Rash and negligent driving by the driver of the offending vehicle, bearing No. WB-62G/4644 was sole cause of the accident.

Pursuant to the filing of the case notices were issues upon the opposite parties. Opposite party/insurance company contested the case by filing written statement.

By the judgment and award dated 13.12.2024, Learned Trial Judge was pleased to dispose of claim case by observing and directing as follows:-

“ Hence, it is,

ORDERED

That the MAC Case No. 17 of 2023 be and the same is allowed exparte against the O.P. No.1 without cost and on contest against O.P. No.2 the Insurance Companies.

The O.P. No. 2 National Insurance company Ltd. of the offending vehicle being No. WB-62G/4644 is directed to pay compensation to the claimant No.1 the widow of the deceased amounting to Rs.6,06,250/- (Rs. six lakhs six thousand two hundred fifty only) and claimant No.2 to 4 entitled to get amounting to Rs.5,66,250/- (Rs. five lakhs sixty six thousand two hundred fifty only) each through this tribunal by four A/C payee cheques within two months hereof with interest @ 6% per annum on the amount of awarded compensation

from the date of filing of the application till the date of realization in full.”

The Appellant/National Insurance Company Limited being aggrieved by the judgement and award passed by the Learned Trial Court has come up with the instant appeal.

The respondent nos. 1 to 4/claimants being also aggrieved with regard to the quantum of compensation awarded by the Learned Trial Court has filed this Cross-objection.

Heard learned advocates for the parties. Perused the evidence adduced and materials on record.

The Appellant/National Insurance Company Limited submits that there was contributory negligence on the part of the victim but this issue was not considered by the Learned Trial Court. Learned advocate draws attention to the deposition of the PW-2. Learned advocate further submits that the quantum of compensation awarded to the claimants was also without any basis and the compensation awarded is excessive.

Learned advocate for the respondent nos. 1 to 4/claimants submits that the Learned Judge although considered the evidence adduced by the employer of the victim but instead of specific deposition of the employer of the victim, the Learned Judge instead of

taking into consideration Rs.11,850/- took into consideration Rs.9000/- monthly income to compute compensation.

Upon perusing the materials on records and upon hearing the learned advocates, it appears that PW-2 in his evidence has specifically stated how the accident took place and nothing has come in the cross-examination with regard to contributory negligence. Moreover the Appellant/National Insurance Company Limited has also not adduced with regard to contributory negligence. Thus the plea of contributory negligence cannot be sustained.

With regard to deposition of PW-3, learned advocate for the appellant relies upon a decision of the Hon'ble Supreme Court in the case of Krishna Devi & Anr. Vs. Ayub and Anr. reported in 2025 (2) T.A.C. 730 (S.C.) and submits when the employer has deposed with regard to income of the victim the same should be accepted. Upon perusing the deposition of the employer of the victim nothing has come out from the Cross-examination to dispute that the victim was the employee of PW-3. It has also come out in cross-examination that at the time of accident the victim was the only employee of his shop. Upon perusing the deposition of PW-3 and considering the account furnished there is sufficient ground to believe that Rs.11,845/- was the monthly salary of the victim.

However, this Court is of the view that it would be reasonable to proceed on the basis of monthly salary of Rs.11,000/-. Thus, Rs.11,000/- monthly salary is taken into consideration for computing the compensation. Thus, in the event the monthly salary is Rs.11,000/- considering the fact that the victim was an employee of a shop and not a permanent government employee or employee of any private company or large business undertaking it would be reasonable to consider the future prospect to be 20%. In the event 20% is considered the monthly income comes to Rs.13200/-. In the event the monthly income Rs.13,200/-, the annual incomes to Rs.158,400/-. $\frac{1}{4}$ should be deducted on account of personal expenditure and thus annual dependency loss comes to Rs.1,18,800/-. As the victim was 20 years of age the multiplier 18 should be applied and the total compensation comes to Rs. 21,38,400/-. Further the respondent nos. 1 to 4/claimants are entitled to get consortium of Rs. 1,20,000/- as well as Rs.30,000/- on account of funeral expenses and loss of estate and general heads of damage being Rs.1,50,000/--. Thus, 22,88,400/- is the compensation which the respondent nos. 1, 2, 3 and 4/Claimants are entitled to from the Appellant/National Insurance Company Limited. However, this Court is of the view that Rs. 23,00,000/-

(Rupees twenty three lakh) is just and reasonable. Thus The Appellant/National Insurance Company Limited shall pay Rs. 23,00,000/- (Rupees twenty three lakh) along with interest @6% per annum from the date of filing of the claim application till realization. Such deposit shall be made before the Registrar General, High Court, Calcutta within a period of eight (08) weeks from the date of communication of this order.

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

The respondent nos. 1, 2, 3 and 4/claimants are entitled to withdraw the awarded sum along with accrued interest if any. The balance amount if any, will be returned to the appellant/insurance company.

With the aforesaid observation, the appeal along with Cross-objection stand disposed of.

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

(Biswaroop Chowdhury, J.)