

In the High Court at Calcutta

Civil Appellate Jurisdiction

Appellate Side

10.03.2026
Item No.129 &130
Ali
ct. no.9

FMA 1057 of 2025

National Insurance Company Ltd.

Vs.

Lata Gajpal & Ors.

With

COT 101 of 2025

Lata Gajpal & Ors.

Vs.

National Insurance Company Ltd. & Anr.

Mr. Sanjay Paul

...for the appellant/ Insurance Co. in FMA 1057/2025 &
Respondent/Insurance Co. in COT 101/2025

Mr. Saikat Sen

...for the respondents/ claimants in FMA
1057/2025 & appellants/claimants in COT 101/2025.

1. Learned advocates for the parties are present.
2. Heard learned advocates for the parties.
3. 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 passed by the learned Additional District Judge, Special Court, Asansol, in M.A.C. Case No. 94 of 2018. The case of the respondent Nos. 1 and 2/claimants before the learned Trial Court may be summed up thus:

"On 20.12.2017 at about 06.20 hrs., the victim Gopal Swaroop Gajpal was returning from his working place at Maithan from Asansol side, through NH-2 road, by riding his Motor Cycle No.-JH/17F-1739, in his left side of the road (own side) with moderate speed, by observing the traffic rules. When he reached the spot, i.e. near Melakola under the jurisdiction of Kulti Police Station, at that time, the offending Alto Car bearing registration No.-WB/38AA-1868, driven by driver rashly and negligently in a very fast speed without observing the traffic rules and without observing the intensity of the road and without blowing any horn came from back side and dashed the Motor Cycle. As a result of such accident, the victim was thrown off at a considerable distance and sustained multiply grievous bleeding injuries, all over his body and head, as evident from the post mortem report and his helmet broke down into pieces. Immediately, after the accident, the victim was taken to S.D. Hospital Asansol for treatment, by the local people, where the attending doctor declared him dead. The Post Mortem examination was done and Asansol South P.S. U.D. Case No. 640/2017 dated 20.12.2017 was instituted.

The victim was a permanent employee of Indewll Constructions Pvt. Ltd., and he used to earn

Rs.45,100/- per month. In the event he would have lived, the victim would have bright future in his service carrier. He had passed the examination for Bachelor of Engineering of Electronics and Instrumentation from Bihlai University in the year 2009 by achieving the first division and making the claimants believe that he was a brilliant student. Due to the Road Traffic Accident the dreams of the claimants have been snatched away. The victim was the only bread earner of his family and he was contributing, all his income on the family to fulfill the day to day house-hold requirements. Due to sudden death of the victim the claimants are now unable to find a way for their livelihood in future.

4. Pursuant to the filing of the claim case notice was issued upon the opposite party vehicle (owner) and the opposite party Insurance Company. Opposite party/Insurance Company contested the case by filing written statement.
5. The issues were framed and evidence were adduced. Learned Trial Judge by judgment and award dated 21st day of February, 2025 was pleased to dispose the claim case by observing and directing as follows:
"That the M.A.C. Case be and the same is allowed ex parte against O.P. No.1 and on contest against O.P. No.2/insurance company but without costs."

The petitioners do get an award of Rs.67,36,832/- (Rupees Sixty Seven Lakh Thirty Six Thousand Eight Hundred Thirty Two) with simple interest at the rate of 6% per annum over the amount from the date of filing of the case till the full realization of the compensation amount to awarded.

The O.P. No.2 insurance company is directed to make payment of the compensation amount so awarded by issuing A/C Payee cheque in the name of the petitioner No. 1 Lata Gajpal as per this order within thirty days from today, in default of which the petitioner is at liberty to recover the compensation amount so awarded by execution of the award through court of law.

Let a copy of the judgment be given free of cost to the parties for their information and compliance".

6. The appellant/National Insurance Company Ltd. being aggrieved by the judgment and award passed by the learned Trial Court has come up with the instant appeal. The claimants/respondents No. 1 and 2 be also aggrieved by the judgment and award passed by the learned Trial Judge has filed a Cross Objection being COT 101 of 2025.
7. Heard learned advocate for the appellant and learned advocate for the respondent Nos. 1 and 2. Perused the evidences adduced and the materials on record. Learned advocate for the appellant submits that the learned Trial Judge erred in awarding

compensation of Rs. 67,36,832/-. Learned advocate further submits that on the basis of the income on which the learned Judge proceeded and the compensation which is arrived at by way of arithmetical calculation the compensation cannot be Rs. 67,36,832/-. Thus, the compensation should be reduced as per the guidelines laid down under the Motor Vehicles Act.

8. Learned counsel relies upon the income on which the learned Trial Judge proceeded. Learned advocate submits that the salary of the victim was assessed by the learned Trial Judge as Rs.4,62,975/-. 40% future prospect is added the net salary comes to Rs.6,48,165/-. Upon deducting 50% on personal expenses the annual dependency loss comes to Rs.3,24,082/-. Upon applying the multiplier of 16 the total dependency loss comes to Rs.52,74,560/-. Thus, the compensation ascertained by the learned Trial Judge does not tally by arithmetical calculation.
9. Learned advocate for the respondent Nos. 1 and 2 submits that the learned Trial Judge deducted the provident fund contribution to arrive at the compensation. In the event the provident fund contribution is not added the gross salary is Rs.4,93,943/- the Tax deducted is Rs.23,000/-. Upon deduction of the Tax the net annual income

comes to Rs.4,70,943/-. The future prospect of the victim should be considered as 40% and, thereafter, the compensation ought to have been ascertained.

10. Upon hearing the learned advocates and considering the facts of the case, this Court is of the view, that the submissions of both the learned advocates has some substance thus it would be just and proper to proceed on the basis of total gross salary of Rs.4,93,943/-. In the event Income Tax of Rs.23,000/- is deducted from the gross salary the net annual salary comes to Rs.4,70,943/-. Adding future prospect of 40% i.e. Rs. 1,88,377/- the total annual income comes to Rs.6,59,320/-. Thereafter, on deduction of 50% of the personal expenses, the annual dependency loss comes to Rs.3,29,600/-. As the victim was 32 years of age, the multiplier of 16 should be applied and the total dependency loss comes to Rs.52,72,560/-. Further the appellants/claimants are entitled to Rs.1,10,000/- on account of consortium, loss of estate, and funeral expenses. Thus the total compensation comes to Rs.53,84,560/- by arithmetical calculation. However, this Court is of the view that Rs.54,00,000/- is just and reasonable compensation.
11. Thus, this appeal FMA 1057 of 2025 along with COT 101 of 2025 stands disposed of.

12. The respondent Nos. 1 and 2 are entitled to Rs.54,00,000/- from the appellant/National Insurance Company Ltd. along with interest @ 6% per annum from the date of filing of the claim case till today.
13. The appellant/National Insurance Company Ltd. has already deposited the amount as was directed by the learned Trial Court along with interest. Thus, the respondent Nos. 1 and 2 are entitled to withdraw Rs.54,00,000/- along with interest @6% per annum from the date of filing of claim case till today along with accrued interest, if any. The balance amount, if any, shall be returned to the appellant/National Insurance Company Ltd with accrued interest, if any. The withdrawal may be made by the parties upon compliance of the necessary formalities. The respondent Nos. 1 and 2 will be entitled to withdraw the claim amount deposited in equal share.
14. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Biswaroop Chowdhury, J.)