

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

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 1077 of 2025

Cholamandalam MS General Insurance Co. Ltd.

VERSUS

Pinki Garai & Ors.

With

C.O.T 81 of 2025

Pinki Garai & Ors.

VERSUS

Cholamandalam MS General Insurance Co. Ltd. & Anr.

For the appellant in FMA 1077 of 2025 and respondent in COT 81 of 2025:

Mr. Soumalya Ganguli, Adv.

Mr. Krishanu Banik, Adv.

For the respondents in FMA 1077 of 2025 and appellant in COT 81 of 2025:

Mr. Tathagata Banik, Adv.

Last Heard on: November 25, 2025

Judgment on: January 20, 2026

Biswaroop Chowdhury,J:

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 dated 18th January 2025 passed by Learned Additional District

Judge Fast Track Court Suri Birbhum in MAC Case No. 118 of 2023. The respondent no-1, to 4/claimants also being aggrieved by the Judgment and Award dated 18th January 2025 passed by the Learned Trial Court has filed cross objection being COT 81/2025.

The case of the claimants/respondent no-1 to 4 in the claim under Section 166 of the Motor Vehicles Act 1988 may be summed up thus:

The victim was a mechanic of Lethe work shop and he worked at a Lethe workshop at Taltala Sainthia More and after completion of work at about 9.00 p.m the victim used to avail a vehicle at nearby Pukurpara bus stop which is situated on Sainthia Kandi via Katasur road and he used to go to village Katasur regularly by such type of vehicle and thereafter he took his bicycle and used to go to his residence through his bicycle and that was his regular routine journey and on 05-02-23 like other days after completion of his duty in the aforesaid Lethe workshop the victim reached at Pukurpara bus stop on foot at about 9.00 p.m. At that time the offending vehicle being no. WB-45-6643 which was proceeding towards Katasur side from Saithia side through Sainthia Kandi road dashed the back side of the victim and then and there local people shifted him to Sainthia Gramin Hospital and thereafter he was shifted to Burdwan Medical College and hospital and lastly he was shifted to SSKM hospital Kolkata where he expired on 09.01.2023 during treatment. The accident took place due to involvement of vehicle bearing no. WB-45-6643. Due to careless and negligence of the driver of the offending vehicle the victim lost his life and

driver is solely responsible for the accident and accidental death of the victim. The victim was standing extreme left side mud portion of the road inspite of that the offending vehicle dashed the victim and the victim lost his life and driver is solely responsible for the accident and accidental death of the victim. The petitioners sustained mental pain and agony due to untimely accidental death of the victim. The petitioners sustained loss of estate and they spent huge money for carrying the dead body and cremation of the same. The claimant no-1 being the wife of the victim sustained loss of consortium due to death of her husband and claimant no-2 sustained loss of parental consortium due to death of his father. The claimant no-3 and 4 sustained loss of filial consortium due to death of their son. The victim was only 31 years of age and he was a man of good health and he was a mechanic of Lethe workshop, and he had a bright future prospect in his profession and all has been ended due to his untimely accidental death. The victim was the only bread earner of the family and the petitioners are entitled to get compensation along with interest from the date of filing of their case.

Pursuant to the filing of the claim case notice was issued upon the opposite parties. Opposite party/Appellant Cholamandalam MS General Insurance Co. Ltd contested the case by filing written statement. The opposite party vehicle owner did not appear and contest the case. Issues were framed and evidence was adduced By Judgment and Award dated 18th January 2025 Learned Trial Court was pleased to dispose of the claim case 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 OP No. 2 ie. M/S Cholamandalam General Insurance Co.Ltd. and allowed ex-parte against OP No-1 with costs.

The OP No. 1 and OP No-2 are jointly and severally liable to pay the awarded amount to the petitioner. The petitioners do hereby get an award for Rs. 11,98,000/- (Rupees Eleven Lakhs Ninety Eight Thousand) only as compensation and interest on the above @ 6% per annum from the date of filing of the case i.e. from the date of filing of this application i.e. from 28.03.2023 till realization of the awarded amount.

The OP No. 2 i.e. M/S. Cholamandalam General Insurance Co. Ltd. is directed to pay the awarded amount of Rs. 11,98,000/- (Rupees Eleven lakhs Ninety Eight Thousand) only along with awarded interest as mentioned above, by issuing four number of separate account payee cheques in favour of the claimants of Rs. 2,99,500/- each within thirty days from the date of delivery of Judgment failing which OP. No-2 will have to pay further interest @10% p.a. upon the awarded amount from the date of expiry of thirty days till realization of the awarded amount. In default the petitioners are at liberty to execute the same in accordance with law. The claimant is directed to pay deficit Court fees within 15 days from the date of passing Judgment.'

The Appellant Cholamandalam MS General Insurance Co. Ltd. being aggrieved by the Judgment and Award dated 18th January 2025 passed by the Learned Trial Court has come up with the instant appeal. The respondent no-1

to 4 being also aggrieved against the Judgment and Award of the Learned Trial Judge has filed a cross objection.

The grounds on which the Judgment and Award of the Learned Trial Court is assailed is that the personal deduction of 1/4th ought not to have been done as father is not a dependent secondly the consortium awarded to the extent of Rs. 1,60,000/- is excessive, thirdly, the interest awarded 6% p.a and further interest if award not paid within time to the extent of 10% p.a is also excessive.

The respondents/claimants have contended that the income of the victim ought to have been considered as Rs. 9,562/-+Rs. 362) instead of Rs. 5,000/- per month.

Heard Learned Advocate for the Appellant Insurance Company and Learned Advocate for the Respondent no-1 to 4/claimants persued the materials on record.

Learned Advocate for the Appellant Insurance Company submits that compensation awarded is excessive and filial consortium of Rs. 1,60,000/- ought not to have been awarded. Learned Advocate further submits that interest @6% per annum from the date of filing of the case till realization is excessive. Learned Advocate also submits that awarding of further interest @10% p.a. in the event payment is not made within one month from the date of order is also bad in law.

Learned Advocate for the respondent no-1/claimant submits that the compensation ought not to have been awarded on the basis of notional income of Rs. 5000/- but the income of the victim ought to have been considered as Rs. 9,562+Rs.362/- Learned Advocate further submits that grant of filial consortium of Rs. 1,60,000/- is justified. Learned Advocate also submit that the father being dependant on the victim 1/4th of personal deduction is justified.

The argument is on the basis of three fold aspect, namely consideration of monthly income of the victim, deduction of 1/4th on account of personal expenses and grant of Rs. 1,60,000/- as filial consortium.

With regard to first submission of monthly income of the victim the claimant P.W. 1 in her examination in chief has stated that her husband worked at Lathe Workshop (Engineer work shop) viz Arjun Ghosh Lathe Workshop, proprietor Arjun Ghosh situated at Taltala more near Bukhariya Petrol Pump adjacent to Sainthia-Behrampur road P.S. Sainthia Dist-Birbhum and he earned Rs. 9000/- per month. Thus from statement of P.W. 1 it appears that the name of the establishment, the name of the proprietor, the location of the establishment is specific. Thus even if letter of employment is not produced it cannot be disbelieved that the victim has worked as a mechanic of a Lathe Workshop. Moreover nothing has come out in cross-examination by which the statement of P.W. 1 can be disbelieved and in cross examination P.W. 1 stated that from the place of work of her husband to her house it takes 30 minutes

which also supports the case of the claimant about occupation as a mechanic at Lathe Workshop of Arjun Ghosh.

Now with regard to the monthly income of the victim although no documents are furnished about such income but the Learned Advocate for the respondent no-1 submitted a circular wherefrom it appears that minimum monthly wages of Lathe Machine operator who are treated as skilled worker is Rs. 9593/- and Rs. 369/- is daily wage. The claimants/respondent no-1 and 2, did not specify as to whether the victim earned Rs. 9,000/- on monthly basis or he was appointed on daily basis. Now in the case of daily wages even if it is presumed that the victim used to earn Rs. 369/- daily it is not necessary, that he was engaged on all days or he worked on all days. Thus there is every possibility to earn Rs. 9,000/- per month. Thus it would be proper to consider the monthly income of the victim as Rs. 9,000/-. In the event Rs. 9,000/- is take to be monthly income the compensation would be as follows:

Monthly income-Rs- 9,000/-

40% Future prospect Rs. 3600/-

Total Monthly income including Future Prospect -Rs. 12,600/-

1/4th personal expenses (Rs. 3,150/-)

being deducted Net income-Rs. 9,450/-

The Annual dependency loss (Rs. 9,450,X12)-Rs. 1,13,400/-

The Total dependency loss is derived by applying multiplier of 16-

(Rs. 1,13,400X16)-Rs. 18,14,400/-

The total dependency loss comes to Rs. 18,14,400/-. Further the claimants/respondents are entitled to Rs. 1,50,000/- on account of Funeral Expenses of Loss of Estate and Loss of Consortium of Rs. 15,000/-, Rs. 15,000/- and Rs. 1,20,000/- respectively. Thus the total compensation comes to Rs. 19,64,400/- by Arithmetical Calculation which the respondent no. 1 to 4/claimants are entitled to from the Appellant Insurance Company. However this Court is of the view that compensation of Rs. 19,00,000/- (Nineteen lakh) is just and reasonable.

Hence both the Appeal FMA-No- 1077 of 2025 along with Cross objection being COT-81/2025 stands disposed. The judgement and Award dated 18th January 2025 passed by Learned Additional District Judge Fast Track Court Suri Birbhum in MAC No- 118 of 2023 stands modified to the extent that the Appellant Choramandalam M.S. General Insurance Company Limited is liable to pay Rs. 19,00,000/- (Rupees Nineteen Lakh) to the respondents no. 1, 2, 3 and 4 along with interest @ 6% per annum from date of filing claim case till payment. As the compensation awarded by the Learned Trial Court is already deposited, the balance amount along with interest @6% per annum from the date of filing claim case till today be deposited before the Registrar General High Court Calcutta. Such deposit shall be made within 8 weeks from the date of communication of this order. The respondent no. 1 to 4/claimants will be

entitled to withdraw the awarded sum deposited including accrued interest upon compliance of all formalities. It is hereby clarified that awarded sum if already deposited with interest in excess of 6% Per annum from the date of filing claim case till deposit the excess sum shall be refunded to the Appellant.

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.)