

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

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 427 of 2023

National Insurance Company Limited

VERSUS

Tahajul Hassen Jamadar @ Tajul Jamadar

For the appellants/insurance company: Mr. Parimal Kumar Pahari

For the respondents/claimant: Mr. Niranjana Maity, Adv.

Ms. Indrani Ghosh, Adv.

Last Heard on: November 17, 2025

Judgment on: January 30, 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 Judgement and Award dated 28-02-2023 passed by Learned Additional District Judge 6th Fast Track Court Alipore in MAC Case No 36 of 2018.

The case of the claimant/respondent no-1 in the claim case before Learned Trial Court may be summed up thus:

On 29-04-2014 while the victim Tahajul Hassen Jamadar @ Tajul Jamadar was travelling by a bus bearing No WB-19F-9091 as passenger of the said bus along Belvedere Road near Central Government Quarter with P.S. Alipore, the driver of the said offending vehicle No WB-19F-9091 was proceeding with his vehicle rashly, carelessly and negligently and thereby dashed against a road side tree and as a result the said Tahajul Hassen Jamadar @ Tajul Jamadar sustained severe injuries along with other passengers causing permanent disablement. Rash reckless and negligent driving of the driver of the offending vehicle no WB-19F-9091 (Bus) was the sole and direct cause for this pathetic accident which could easily be avoided had the driver been not reckless rash and/or negligent and did not fail to take reasonable care and attention while driving the said vehicle at the material time being devoid of ordinary sense of prudent driving.

The injured had an active life and energy till the date of accident but after the accident and owing to sustaining permanent disablement he has lost his active life and energy and unable to lead a normal and pleasurable life. He has become completely dependent upon the assistance and help of others. The applicant has sustained immense pecuniary loss besides his suffering from perpetual pain shock and mental agony.

Pursuant to filing of the case notice was issued upon the opposite party Insurance Company and opposite party vehicle owner. Opposite party/Appellant Insurance Company contested the case by filing written

statement. Issues were framed and evidence was adduced. Learned Trial Judge upon considering the evidence and hearing the parties was pleased to dispose the claim case by observing and directing as follows:

It is ORDERED That the claimant victim Tahajul Hassen Jamadar @ Tajul Jamadar on account of his injury is entitled to a compensation of Rs 5,59,500/- (Rupees five lakhs Fifty nine thousand and five hundred only) with an interest of 6 % from the date of filing of this application that is from 15-09-2014. The opposite party no-2 being National Insurance Company Limited is directed to issue an account payee cheque of Rs 5,59,500/- (Rupees five lakhs Fifty nine thousand and five hundred only) in favour of the injured claimant with an interest of 6% from the date of filing this application that is from 15-09-2014 within two months from the date of this order failing which the petitioner may recover the same by execution proceedings.

The appellant being National Insurance Company Limited being aggrieved by the Judgement and Award passed by the Learned Trial Court has come up with the instant appeal.

It is the contention of the appellant that the Learned Trial Judge erred in considering the notional income of the victim to be Rs 5,000/- when there is no proof of occupation and income of the victim. It is further contended that the Doctor who issued the certificate clinically examined the claimant and did not treat him for injury. It is also contended that the compensation awarded is excessive and it should be reduced.

Heard Learned Advocate for the appellant and Learned Advocate for the respondent no-1. Perused the materials on record.

The following decisions are relied upon by the Learned Advocates

- Raj Kumar Vs Ajay Kumar and Anr
Reported in (2011) 1 SCC P-343
- Dinesh kumar J Vs National Insurance Co Limited
Reported in 2018 ACJ 535
- Golla Rajanna etc Vs Divisional Manager and Anr
Reported in 2017 (1) TAC 259 (SC)
- Ratan Mali Vs New India Assurance Co Ltd and anr
Reported in 2005 ACJ-242
- Savita and ors Vs Divisional Manager
Reported in 2018 (2) TAC 376 (SC)
- Nagar Mal and others Vs Oriental Insurance Co Ltd
Reported in 2018 ACJ 971
- Magma General Insurance Co Ltd Vs Nanu Ram alias Chru Ram
and Others
Reported in 2018 (4) TAC 345 (SC)

- Angad tiwari and anr vs National Insurance Company Limited
Reported in 2024(4) TAC 353 (SC)

With regard to the first contention of the appellant that the Doctor who issued the Disability Certificate did not treat the claimant for injury it appears that the prescription of the doctor P.W3 specifically states that the victim was clinically examined and the prescriptions medical reports and other relevant documents were perused by P.W 3 and the findings on such examination was recorded. In cross examination also P.W 3 is stated that the patient suffered fracture injury on the shaft of his left femur and the injury found on the person of the patient was non schedule. Nothing has come out in cross examination that P.W 3 did not have authority to issue certificate of disablement in favour of the patient or the certificate was issued contrary to the procedure provided under medical rules.

In the case of **Raj Kumar** (Supra) the Hon'ble Supreme Court observed as follows:

“24.In this case, the Tribunal acted on the disability certificate, but the High Court had reservations about its acceptability as it found that the injured had been treated in the Government Hospital in Delhi whereas the disability certificate was issued by a District Hospital in the State of Uttar Pradesh. The reason given by the High Court for rejection may not be sound for two reasons. Firstly though the accident occurred in Delhi and the injured claimant was

treated in a Delhi Hospital after the accident, as he hailed from Chirori Mandi in the neighbouring District of Ghaziabad in Uttar Pradesh, situated on the outskirts of Delhi, he might have continued the treatment in the place where he resided. Secondly the certificate has been issued by the Chief Medical Officer, Ghaziabad, on the assessment made by the Medical Board which also consisted of an Orthopaedic Surgeon. We are therefore of the view that the High Court ought not to have rejected the said disability certificate.”

In the case of **Golla Rajanna** (Supra) the Hon’ble Supreme Court observed as follows:

“7.The Workmen’s Compensation Commissioner, having regard to the evidence, had returned a finding on the nature of injury and the percentage of disability. It is purely a question of fact. There is no case for the insurance company that the finding is based on no evidence at all or that it is perverse. Under Section 4(1)(c)(ii) of the Act, the percentage of permanent disability needs to be assessed only by a qualified medical practitioner. There is no case for the respondents that the doctor who issued the disability certificate is not a qualified medical practitioner, as defined under the Act. Thus, the Workmen’s Compensation Commissioner has passed the order based on the certificate of disability issued by the doctor and which has been duly proved before the Workmen’s Compensation Commissioner.”

Thus considering the evidence of P.W 3, the Certificates issued and the Judicial decisions this court is of the view that the Learned Trial Judge rightly accepted the Disability Certificate issued by P.W 3.

Now with regard to the income of the claimant/victim upon perusal of evidence of P.W1/ the claimant it appears he has specifically stated the occupation he was engaged being the job of tailor. Nothing has come out in cross examination that he was not working as tailor. Although no documents with regard to income is produced but it is not unusual for a person engaged in tailoring work to earn Rs 5,000/- per month. Thus the Learned Trial Court rightly proceeded on the notional income of Rs 5,000/per month.

In the case of **Magma General Insurance Co Ltd Vs Nanu Ram** the Hon'ble Apex Court observed as follows:

"8.3. With respect to the income of the deceased, as the family could not produce any evidence to show that the income of the deceased was Rs. 15,000 per month, as claimed, the High Court took his income to be Rs. 6,000, which is marginally above the minimum wage of an unskilled worker at Rs. 5,342.

This finding is also not being interfered with."

In the facts and circumstances this court is of the view that the compensation awarded by the Learned Trial Court is just and reasonable and no interference is necessary.

Hence this appeal FMA-427 of 2023 fails and the same is dismissed. The Judgement and Award dated 28/02/2023 passed by Learned Additional District Judge 6th Fast Track Court Alipore in MAC Case No 36 of 2018 is affirmed. The respondent no-1/claimant is permitted to withdraw the awarded seem deposited on compliance of the necessary formalities.

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.)