

Form No. J(2)

District: MIDNAPUR

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

Appellate Side

Present :

The Hon'ble Justice Biswaroop Chowdhury

FMA 2367 of 2004

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IA NO: CAN 2 OF 2005

(Old No: CAN 1545 OF 2005)

NATIONAL INSURANCE COMPANY LTD.

VS

**HABIBUR RAHAMAN KADERI, since deceased,
represented by his legal heirs Sanoyara Begum
& Ors.**

With

COT 1687 of 2006

**HABIBUR RAHAMAN KADERI, since deceased,
represented by his legal heirs Sanoyara Begum
& Ors.**

Vs.

NATIONAL INSURANCE COMPANY LTD. & ANR.

Ms. Gopa Das Mukherjee

... for the appellant/Insurance Company

Mr. Rabindra Nath Mahato

... for the respondents

Heard on : 28.01.2026

Judgment on : 28.01.2026

Biswaroop Chowdhury , J.

1. Learned advocates for the parties are present.
2. A cross objection was filed with FMA 2367 of 2004 being COT 1687 of 2006. By consent of the learned advocates, the matter is

treated on the day's list and taken up for argument analogously with FMA 2367 of 2004.

3. The appellant before this court was the opposite party in a case under Section 166 of the Motor Vehicle Act, 1988 and is aggrieved by the Judgement and Award dated 12th April, 2004 passed by the learned Additional District Judge, 5th Court, Midnapur in MAC Case No.544 of 2003. The case of the claimants/respondent no.2 before the learned trial court may be summed up thus :

“ On 19.12.2001 at about 10AM, the petitioner Habibur Rahaman Kaderi was returning home from Minabazar Jora Masjid a bus bearing WB-29/2024 came rashly with high speed in negligently manner and dashed. He sustained pelvic bone injury and that he became physically handicapped. He was admitted Midnapore Sadar Hospital for 26 days. Thus, the claimant has prayed for compensation of Rs.2,50,000/-.”

4. Pursuant to the filing of the claim case notice was issued upon the opposite party.

5. The opposite party National Insurance Company Limited contested the case by filing written statement. Issues were framed and evidence was adduced.

6. By Judgement and Award dated 12th day of April, 2006, the learned Trial Judge was pleased to dispose of the claim by observing and directing as follows :-

“ Hence, it is order that the petitioner u/s 166 of the M.V Act filed by the petitioner is hereby allowed on contest as

against the opposite party no.2/National Insurance Company and allowed ex-parte as against the others. The petitioner do get compensation of Rs.1,17,000/- from the opposite party no.2.

The opposite party no.2 is directed to pay the said sum to the petitioner within one month henceforth by issuing an account cheque in the name of the petitioner of Habibur Rahaman Kaderi, in default, the opposite party no.2 will have to bear an interest @9% per annum from the date of this order.”

7. 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.

8. The claimant victim Habibur Rahaman Kaderi also preferred a cross objection being COT 1687 of 2006.

9. It is the contention of the appellant/National Insurance Company Limited that the compensation awarded was excessive and the learned Trial Judge ought to have assessed the compensation by applying the multiplier eight and not multiplier of thirteen. It is also contended that the learned trial Judge erred in awarding Rs.25,000/- for treatment without medical document.

10. The respondent no.1 Habibur Rahaman Kaderi filed cross objection challenging the order of the learned trial court on the ground that the income ought to have been assessed at Rs.5,000/- and the interest ought to have been awarded and thirdly, no compensation is awarded on the ground of pain and suffering.

11. Heard learned advocate for the appellant National Insurance Company Ltd. and learned advocate for the respondent Nos.1 and 2/claimants.

12. Perused the material on record.

13. With regard to submission of the learned advocate for the appellant/Insurance Company that the multiplier eight ought to have been applied, it appears from the observation of the learned trial judge that the different documents filed by the petitioner/claimant shows different ages. In one document it was mentioned as 65 years and in another document 48 years and in other it is mentioned as 52 years. Considering different ages, learned trial Judge thought fit to consider the age of the claimant to be 60 years and thought fit to apply the multiplier of thirteen. Thus, it is not necessary to interfere with the said findings of the learned Trial Judge.

14. With regard to medical expenses, this Court is of the view that as the Motor Accident Claims Tribunal is not strictly civil court and Tribunal is to follow principles of natural justice, the learned trial Judge considered the medical document and the period of stay in the Hospital and thought fit to award Rs.25,000/- on account of medical expenses. Hence, it is not necessary to interfere in such findings.

15. With regard to submission of the learned advocate for the respondent nos.1 and 2/claimants that the income of the victim Habibur Rahaman Kaderi ought to have been assessed at

Rs.5,000/- and that the issue of income is not rebutted in cross examination, it appears that although the claimant filed document showing professional tax for medical profession but the said certificate was not exhibited. Even if it is assumed that the said certificate is correct and the claimant Habibur Rahaman Kaderi was a Medical Practitioner but no proof was furnished with regard to income. In the case of claimant/victim where the issue before the Tribunal is with regard to income from service, the Minimum Wages Act can be considered as well as the wages and salaries which exists in the market with regard to the occupation may also be taken into consideration but in the case of profession or business unless relevant document with regard to income Tax Return or accounts of business or particulars with regard to profession is furnished, the court has no other alternative but to consider the notional income. Thus, the learned trial Judge did not commit any error in considering the notional income of Rs.1500/-. Considering the notional income of Rs.1,500/- the learned Trial Judge arrived at a just and reasonable compensation of Rs.2,34,000/-. As the claimant was already paid Rs.25,000/- the balance amount of Rs.1,17,000/- directed to be paid. However, as the claimant/victim was admitted in Hospital for about 23 days certain amount of compensation ought to have been awarded on account of pain and suffering. Thus, in the view of this Court taking the period of stay in Hospital which is about 23 days the amount of compensation on account of pain and

suffering should be Rs.23,000/-. Thus, it would be just and reasonable to award compensation of Rs.1,40,000/-.

16. Thus, this appeal FMA 2367 of 2004 along with COT 1687 of 2006 stands disposed of. Connected application, if any, also stands disposed of.

17. The Judgement and Award dated 12th April, 2004 passed by the learned Additional District Judge, 5th Court, Midnapur passed in MAC Case No.544 of 2003 stands modified to the extent that the respondent nos.1 and 2/claimants shall be paid compensation of Rs.1,40,000/- along with interest @ 6% per annum from the date of filing of the claim case till today. Such deposit shall be made before the Registrar General, High Court, Calcutta within a period of eight weeks from the date of communication of the order. In the event, the compensation awarded by the learned Trial Court is already deposited the balance amount of compensation shall be deposited along with interest.

18. The claimants/respondent nos.1 and 2 will be entitled to withdraw the deposit upon compliance of all necessary formalities. In the event there is residuary amount upon compliance of this order, it shall be refunded to the appellant National Insurance Company Limited.

19. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Biswaroop Chowdhury, J.)