IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 589 of 2025

Kashmira Bibi & Another

VERSUS

United India Insurance Company Limited & Another

For the appellants/claimants:	Mr. Snehasish Sutradhar, Adv. Mr. Swarnali Biswas, Adv.
For the respondents/Insurance Company:	Ms. Sucharita Paul, Adv.

Last Heard on: November 25, 2025

Judgment on: January 09, 2026

Biswaroop Chowdhury,J:

The appellants before this Court were the claimants in a case under Section 166 of the Motor Vehicles Act 1988 and is aggrieved by the Judgment and Award dated 30-09-2023 passed by Learned Additional District Judge Fast Track 6th Court Alipore South 24 Parganas in MAC Case No. 36 of 2017.

The case of the Appellant/claimant before Learned Trial Court may be summed up thus:

On 19-10-2016 at about 4.15 p.m. the victim Md. Bashir aged about 46 years was travelling in an auto-rick shaw bearing registration No. WB-04-6618 from Chakmir to Mollar Gate as a passenger and when the said auto rickshaw reached near Santoshpur Bus stand it suddenly turned turtle due to its high speed. As a result the victim Md. Bashir fell down on the road and received severe injuries all over his body and was removed to Behala Vidyasagar Hospital where he was declared brought dead by the attending doctor.

The victim deceased was the only earning member of the family and the entire family depended upon him prior to the accident.

The Appellant United India Insurance Company Limited filed written statement and contested the case. Issues were framed and evidence was adduced by the Appellants/claimants and the respondent no-1 United India Insurance Company Limited.

By Judgment and Award dated 30th September 2023 the Learned Trial Court was pleased to dispose the claim case by observing and directing as follows:

'Hence it is ORDERED that the instant MAC case No-36 of 2017 be and the same is allowed on contest against the Opposite Party no. 2/United India Insurance Company Limited and ex-parte against the Opposite Party no. 1.

The petitioners/claimants do get compensation of Rs. 4,73,650/- (Rupees four lakh seventy three thousand six hundred fifty only)from the

Opposite Party no. 2/United India Insurance Company Limited along with the interest at the rate of 6% annually from the date of filing of this case ie. on 31-08-2017 till the realization of the amount with interest at the rate of 6% per annum in the following order:

The petitioner no. 1 being the wife is to get Rs. 200,000/- and the petitioner no. 2 and 3 being the major sons are to get Rs. 74,000/- each. The petitioner no. 4 is to get Rs. 1,25,650/-.

The opposite party no-2/insurance company is hereby directed to pay petitioners on the basis of the aforesaid direction by issuing account payee cheques of the above said amount each in favour of petitioners along with interest at the rate interest of 6% per annum from the date of filing of this case ie. 31-08-2017, till the realization of the entire amount within a period of 30 (thirty) days failing which the petitioner/claimant shall be at liberty to put the order under Execution as per law.'

The Appellants/claimants being aggrieved by the Judgment and Award dated 30th September 2023 passed by the Learned Trial Judge has come up with the instant appeal.

The ground on which the Judgment of the Learned Trial Court is assailed is that the compensation awarded is inadequate. Secondly the Learned Trial Court failed to appreciate that the claimant was a driver and he used to earn Rs. 300/- per day. Thirdly the Learned Tribunal failed to consider the heads of compensation under funeral expenses, loss of estate and loss of consortium.

Heard Learned Advocates for the appellants and Learned Advocate for the respondent no-1 perused the evidence adduced and materials on record.

Learned Advocate for the Appellants submits that the Appellants by adducing evidence have proved that the deceased was a driver and earned Rs. 300/- per day. Learned Advocate refers to the deposition of P.W. 1, mother of the victim P.W.3 Auto Owner Manoj Kumar Singh. Learned Advocate further submits that in the unorganized sector there are no salary slips attendance registers of working days and the Hon'ble Supreme Court accepted daily income of Rs. 300/- in the case of R. Ravi V United India Insurance Co. Ltd. (2024) without requiring proof of actual working days. Learned Advocate also relies upon the following Judicial decisions:

1. **National Insurance Co. Ltd. VS Pronay Sethi and ors.**

   Reported in 2017 ACJ. 2700 (SC).

2. **Nagappa V Gurudayal Singh.**

   Reported in (2003) 2 SCC.

3. **Ramchandrappa V Royal Sundaram Alliance Insurance Co.**

   (2011) 13 SCC. 236.

4. **Syed Sadiq VS Divisional Manager United India Insurance Co.**

   (2014) 2 SCC-735.

5. **Chameli Devi V Jivrail Mian.**

   (2019) 12 SCC P-148.

6. K.Suresh V New India Assurance

Reported in Co. (2012) 12 SCC. 274.

Learned Advocate for the respondent no-1 United Insurance Company Limited submits, that the charge sheet and seizure list and evidence adduced by the owner of the involved Auto Rickshaw no. WB-04A/6618, reflects that P.W. 3 had employed 'a driver' to drive his only one Auto'. Admittedly the said driver 'Shyamal Dolui' was driving the concerned Auto Rickshaw on the date of accident and not the victim 'Md. Bashir' Learned Advocate also submits that except oral submissions P.W.3 did not produce any document to prove that the victim was his driver.

Learned Advocate relies upon the following unreported decisions of this Hon'ble Court.

Sahida Bibi Sekh and Anr. VS National Insurance Company Lrd. And Anr.

FMAT-972 of 2017.

Chandanda Mahata and ors. VS National Insurance Company Limited and Anr.

FMAT. 501 of 2019.

Saraswati Chouthan and ors. VS The Oriental Insurance Company Limited and ors.

FMAT 1185 of 2018.

United India Insurance Co. Ltd. VS Jatila Sarkar and Anr.

FMAT 541 of 2019.

Sephali Saha and Ors. VS The Oriental Insurance Company Ltd. and Anr.

FMA 381 of 2022.

Murshida Begum and Ors. VS United India Insurance Co. Ltd. and Anr.

FMA-1072 of 2024.

In the instant case before proceeding to decide as to whether the Learned Trial Court awarded just compensation it is necessary to consider as to whether the claimants were able to prove the occupation and income of the victim.

Now so far the occupation of the victim is concerned the evidence will go to show that not only the claimants deposed that the victim was driver by occupation but P.W. 3 also filed documents to show that he is the owner of auto-rickshaw and in his oral evidence has specifically stated that he employed Md. Bashir the victim as driver of the vehicle at Rs. 300/- per day. It is true that in case of big transport business namely bus service, or Goods carriage, or heavy vehicles, there may be salary register or attendance book, but in case of auto service, or taxi, by an individual salary register or attendance book may not be maintained and appointment letters are usually not issued. Thus if the evidence of the claimants corroborated by auto-owners inspires confidence in the minds of Court, the oral evidence that victim was engaged in the occupation of driver may be accepted. In the instant case the owner of Auto deposed of engaging the victim as driver and the claimants have filed driving license of victim which goes to show that the victim had license to drive three wheeler. Hence the occupation of victim as driver of Auto Rickshaw should be accepted.

In this regard it is also necessary to consider the decision of the Hon'ble Supreme Court in the case of Syed Sadiq and others VS Divisional Manager United India Insurance Company Limited Reported in (2014) 2 SCC. P-735 observed as follows:

8. The appellant/claimant in his appeal further claimed that he had been earning Rs. 10,000/- p.m. by doing vegetable vending work. The High Court however, considered the loss of income at Rs. 3500/- p.m. considering that the claimant did not produce any document to establish his loss of income. It is difficult for us to convince ourselves as to how a labour involved in an unorganized sector doing his own business is expected to produce documents to prove his monthly income. In this regard, this Court, in the case of Ramchandrappa v. Manager, Royal Sundaram Alliance Company Limited[2], has held as under:

"13. In the instant case, it is not in dispute that the Appellant was aged about 35 years and was working as a Coolie and was earning Rs. 4500/- per month at the time of accident. This claim is reduced by the Tribunal to a sum of Rs. 3000/- only on the assumption that wages of the labourer during the relevant period viz. in the year 2004, was Rs. 100/- per day. This assumption in our view has no basis. Before the Tribunal, though Insurance Company was served, it did not choose to appear before the Court nor did it repudiated the claim of the claimant. Therefore, there was no reason for the Tribunal to have reduced the claim of the claimant and determined the monthly earning a sum of Rs. 3000/- p.m. Secondly, the Appellant was working as a Coolie and therefore, we cannot expect him to produce any documentary evidence to substantiate his claim. In the absence of any other evidence contrary to the claim made by the claimant, in our view, in the facts of the present case, the Tribunal should have accepted the claim of the claimant.

14. We hasten to add that in all cases and in all circumstances, the Tribunal need not accept the claim of the claimant in the absence of supporting material. It depends on the facts of each case. In a given case, if the claim made is so exorbitant or if the claim made is contrary to ground realities, the Tribunal may not accept the claim and may proceed to determine the possible income by resorting to some guess work, which may include the ground realities prevailing at the relevant point of time.

15. In the present case, Appellant was working as a Coolie and in and around the date of the accident, the wage of the labourer was between Rs. 100/- to Rs. 150/- per day or Rs. 4500/- per month. In our view, the claim was honest and bonafide and, therefore, there was no reason for the Tribunal to have reduced the monthly earning of the Appellant from Rs. 4500/- to Rs. 3000/- per month. We, therefore, accept his statement that his monthly earning was Rs. 4500/-."

9. There is no reason, in the instant case for the Tribunal and the High Court to ask for evidence of monthly income of the appellant/claimant. On the other hand, going by the present state of economy and the rising prices in agricultural products, we are inclined to believe that a vegetable vendor is reasonably capable of earning Rs. 6,500/- per month.

In the case of National Insurance Co. Ltd. VS Vimal Kaur and ors. FAO 6751-2017 the Hon'ble Punjab and Haryana Court on the basis of driving license of the victim was pleased to hold that victim was authorized to drive heavy vehicle and thus considered minimum rate of wages of skilled workers in category of heavy vehicle driver.

Upon considering the facts and circumstances of the case and the judicial decisions there is no hesitation to hold that the victim was engaged as driver of Auto on daily wages. However as it appears from evidence that apart from the victim there was another driver who was found driving the Auto on the date of accident there is ground to presume that the victim was not engaged on all the days of the month. However considering the fact that the victim was authorized to drive Auto-Rickshaw and had to earn livelihood as driver it would be just and reasonable to consider the monthly income of victim as Rs. 7,000/-. The compensation would be as follows:

The yearly Income comes to-Rs. 84,000/-

One fourth i.e. Rs. 28,000/- should be deducted as personal expenditure thus.

Yearly income comes to Rs. 63,000/- 20% Future Prospect being Rs. 12,600/- should be added Thus Total yearly income is Rs. 75,600/-.

Annual dependency loss comes Rs. 75,600/-

Considering the victims age multiplier of 13 should be applied.

Thus total dependency loss comes to Rs. 8, 52, 800/-. Further the Appellants are entitled to Rs. 70,000/- on account of Filial consortium to Mother being Rs. 40,000/- and Rs. 30,000/- on account of loss of estate and Funeral expenses.

Thus Rs. 9,22,800/- is the total compensation which the appellants are entitled from respondent no-1 by arithmetical calculation. However this court is of the view that Rs. 9,00,000/- (Rupees nine lakh) is just and reasonable .

Hence this Appeal stands disposed. Judgment and Award dated 30-09-2023 passed by Learned Additional District Judge Fast Track 6th Court Alipur

South 24 Parganas in MAC Case No. 36 of 2017 stands modified to the extent that the Appellants/claimants are entitled to compensation of Rs. 9,00,000/- from the Respondent no-1 United India Insurance Company Ltd. along with interest @ 6% per annum from the date of filing till today. As the compensation awarded by the Learned Trial Court is already paid, the respondent no-1 shall deposit, the balance amount before the Registrar General High Court Calcutta. Such deposit shall be made within 8 weeks from the date of communication of the Order.

The Appellants are permitted to withdraw the deposit made in equal shares upon compliance of all necessary formalities.

(Biswaroop Chowdhury, J.)