

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

21.04.2026
Item No.54
Ali
ct. no.9

FMAT (MV)371 of 2025
With
IA No.:CAN/1/2026

Sabita Mahata & Anr.
Vs.
Cholamandalam M.S. General Insurance Co. Ltd. & Ors.

Mr. Jayanta Banerjee,
Ms. Ruxmini Basu Roy,
Mr. Argha Bhattacharjee
.....for the appellants/claimants.

Mr. Rajesh Singh
...for the respondent No.1.

Ms. Sucharita Paul
...for the respondent No.2

In re.:CAN/1/2026

1. Learned advocates for the parties are present.
2. As this appeal is preferred after the period of limitation, the application for condonation of delay being CAN 1 of 2026 is taken up for consideration.
3. Upon hearing the learned advocates and considering the grounds furnished this Court is of the view that the cause shown for the delay is sufficient. Thus, delay in preferring this appeal is condoned and the appeal is admitted.
4. The application CAN 1 of 2026 stands disposed of.
5. Upon considering the facts of the case and the fact that paper books have already been filed

calling for Trial Court Records be dispensed with.

The application is taken up for hearing.

In Re.:FMAT (MV)371 of 2025

6. Heard learned advocates for the parties.

7. The appellant before this Court was a claimant in a case under Section 166 of the Motor Vehicles Act, 1988 and is aggrieved by the judgment and award dated 27th February, 2025 passed by the learned Additional District Judge, 6th Court, Paschim Medinipore in MAC Case No. 102 of 2022. The case of the appellants/claimants before learned Trial Courts may be summed up thus:

On 04.05.2017 at about 07.00 p.m. to 07.30 p.m. while the victim deceased Daman Mahata while returning home with his friend by riding a motorcycle bearing No. WB50-1937 to relative's house at Chandankath left side morum portion of the Bhadutala Jungle NH-60 road under Salboni police station at that time one Dumper bearing No. WB67A-2631 coming from same side on the said road with excessive high speed endangering human life and safety and without blowing any horn rashly and negligently while taking over the motorcycle towards the dumper and dashed the victim. As a result of which, the victim deceased Daman Mahata sustained grievous injury all over his person and he was taken to West Medinipur

Medical College and Hospital and there he died on the same day. The accident took place solely due to rash and negligent driving of the driver of the offending vehicle bearing No. WB67A/2639. The victim deceased was a sole bread earner of his family and he was active good health and was a mason under Government contractor and used to earn Rs.9,000/- per month and maintained his family.

8. Pursuant to the filing of this case, notice was issued upon the opposite parties and opposite party No. 1 (owner) of offending Dumper bearing No. WB67A/2639, opposite party No.2/Cholamandalam MS General Insurance Company Limited and opposite party No. 4/National Insurance Company Limited appeared and contested the case. Issues were framed and evidence was adduced. However, owner of motorcycle bearing No. WB50-1937 did not appear to contest the case. The learned Trial Court upon considering the hearing and upon hearing the learned advocates was pleased to dispose of the case by observing and directing as follows:

"Hence, it is

ORDERED

that the Motor Accident Claim being No. 102/2022 (CIS No.102 of 2022) filed u/s. 166 of M.V. Act is allowed on contest against O.P. No. 1 Kajal Mishra (owner of offending dumper No.WB67A/2631), O.P. No.2/Insurance (Cholamandalam Insurance Co. Ltd) & exonerate O.P. No.4/Insurance (National Insurance Company Ltd) and ex-parte against O.P. No.3 Uttam Mahata (owner of the victim motorcycle BW50/1937) but without cost.

It is not evidence on record that claimant no.2 is earning member and as such both claimants are held equally entitled to get compensation.

O.P. No.2/Cholamandalam M/S General Insurance Company Ltd is directed to pay award amount within 30 days from receipts of this judgment along with interest at the rate of 6% (six percent) per annum from the date of institution (15.02.2022) and till its realization by two account payee cheques.

A copy of the judgment be supplied to the parties free of cost".

9. The appellants/claimants being aggrieved by the quantum of compensation awarded by the learned Trial Court has come up with the instant appeal.
10. Heard learned advocates for the appellants and learned advocate for the respondent No.1/ Cholamandalam MS General Insurance Company Limited and respondent No. 2/National Insurance Company Limited perused the evidence adduced and the materials on record.

11. Learned advocate for the appellants submits that the learned Trial Judge erred in considering the monthly income as Rs. 6,000/- instead of Rs.9,000/-. It is further submitted that the learned Trial Judge erred in not granting future prospect with regard to the death of the victim. It is also submitted that the general damages awarded only Rs.37,000/-.
12. Learned advocates appearing for both the Insurance Companies submit that the learned Trial Judge did not commit any error and the judgment and award may not be interfered with. Upon perusing the petition and upon hearing the learned advocates, this Court is of the view that with regard to the Notional Income fixed by the learned Trial Judge it is just and reasonable. However, the learned Trial Judge ought to have considered 40% as future prospect. In the event the income of the victim is considered Rs.6,000/- per month; 50% deducted as personal expenses the net monthly income comes to Rs.3,000/-. The annual dependency loss comes to Rs.36,000/- 40% of future prospect which is Rs. 14,400/- added brings net annual dependency loss as Rs.50,400/-. The multiplier of '18' being applied the total dependency loss comes to Rs. 9,07,200/-. Further the claimants are entitled to

Rs.40,000/- each on account of filial consortium of Rs. 30,000/- on account of loss of estate and funeral expenses thus, general damages comes to Rs.1,10,000/-. Hence, total compensation by arithmetical calculation comes to Rs.10,17,200/-. However, this Court is of the view that Rs.10,00,000/-is just and reasonable compensation.

13. Hence this appeal FMAT (MV) 371 of 2025 stands disposed. The judgment and award dated 27.02.2025 passed by learned Additional District Judge, 6th Court, Paschim Medinipore in MAC Case No. 102 of 2022 stands modified to the extent that the claimants/appellants are entitled to Rs. 10,00,000/- from the respondent No. 1/Cholamandalam M.S. General Insurance Company Ltd. along with interest @ 6% per annum from the date of filing of the claim case till today. The respondent No. 1/Cholamandalam M.S. General Insurance Company Ltd. is directed to deposit the compensation amount of Rs.10,00,000/-along with interest within eight weeks from the date of communication of this order before the learned Registrar General, High Court, Calcutta. However, in the event the amount awarded by the learned Trial Court is already paid and deposited the balance amount of

compensation be deposited within a period of eight weeks from the date of communication of this order. The appellants are permitted to withdraw the compensation upon compliance of the necessary formalities. As observed by the learned Trial Court that National Insurance Company Limited is exonerated from the case, the said order stands affirmed.

14. Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Biswaroop Chowdhury, J.)