IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 288 of 2025

National Insurance Co. Ltd.

VERSUS

Lipi Das (Dead)

Through Legal Heirs Bhaskar Ch. Das & Ors.

For the appellant/Insurance Company:	Mrs. Sucharita Paul, Adv.
For the respondents/claimants:	Mr. Jayanta Kumar Mandal, Adv. Mr. Sayantan Rakshit, Adv.

Last Heard on: November 19, 2025

Judgment on: January 07, 2026

Biswaroop Chowdhury,J:

The Appellant before this Court was an opposite party in a claim case under Section 166 of the Motor Vehicles Act 1988 and is aggrieved by the Judgment and Award dated 18th April 2024 passed by Learned Additional District Judge 6th Court Paschim Medinipur in MAC Case No. 206 of 2019.

The respondents no. 1 to 4, being aggrieved by the Judgment and Award of the Learned Trial Court has also filed a counter objection.

The case of the claimants/respondent no. 1 to 4 before the Learned Trial Court may be summed up thus:

On 26-09-2017 at about 11.00 am the injured Smt. Lipi Das W/O Bhaskar Chandra Das @ Bhaskar Das after finishing her work was proceeding with her bicycle from Tantigeria towards Khairullachak by the left side of Tantigeria-Khairullachak pitch road when the injured reached near Birla Gate at that time, one Truck bearing No. WB-33D/4302 was coming from the same side with very high speed and rash and negligent manner and without horn and signal suddenly dashed the bicyele along with injured Smt. Lipi Das from behind. As a result of forceful hitting, the injured fell down from the bicycle and sustained bleeding grievous injury on her head both legs and multiple injury on all over the body. She was taken by the local people to the MMCH and thereafter she was referred to SSKM Hospital at Kolkata for her better treatment and after discharge she continued her treatment as an OPD patient under Dr. Sanatan Rath and Dr. P.K. Saha at Cuttack.

Subsequently, the injured Lipi Das expired on 11-06-2019 leaving behind claimants as her Legal heirs.

The claimants/respondents no. 1 to 4 filed the case praying for compensation of Rs. 700,000/-, apart from future prospect usual interest loss of estate, and loss of consortium. It is the case of the claimants that the victim Lipi Das used to work as cook and earn Rs. 6,000/-per month.

Over the incident a complaint was lodged and case was registered u/s-279/338 IPC and on completion of investigation charge sheet was submitted u/s 279/338 IPC.

The Appellant National Insurance Co. Ltd. contested the case by filing written statement. Issues were framed and evidence was adduced by the claimants/respondent no. 1 to 4.

By Judgment and Award dated 18/04/2024 the Learned Trial Court was pleased to dispose of the claim case by observing and directing as follows:

'Hence it is ORDERED that the instant case being No. 206 of 2019 (CIS No. 212 of 2019) filed u/s.166 of Motor Vehicles Act, 1988 is allowed on contest as against the OP No-2/Insurer National Insurance Co.Ltd and ex-parte against the O.P.No-1/owner.

The amount of compensation as awarded of Rs. 7,14,000/-(Rupees Seven Lakh Fourteen Thousand Only) shall carry a simple interest @ 4% per annum from the date of filing of this claim application i.e. 29/05/2019 till final liquidation of the entire amount.

The OP No-2/Insurer, National Insurance Co. Ltd is directed to pay the awarded amount to the petitioners/claimants nos. 1 to 4 in equal share with interest within three months from the date of this order and the same to be defrayed without deduction of any TDS, whatsoever over the interest amount or the awarded amount, after deposit of deficit Court fees by the claimants before the tribunal in default the petitioners shall at liberty to put this award in execution in accordance with Law'.

The Appellant Insurance Company being aggrieved by the Judgment and Award passed by the Learned Trial Court has come up with the instant appeal. The respondent nos. 1 to 4 also being aggrieved by the Award passed by Learned Trial Judge have filed counter objection.

Heard Learned Advocate for the Appellant and Learned Advocate for the respondent no. 1 to 4 perused the evidence adduced.

Learned Advocate for the Appellant submits that Learned Trial Judge failed to appreciate the delay in lodging the FIR which makes the case of the claimants doubtful.

Learned Advocate further submits that the injured victim died 2 years after the accident thus the death cannot be related to the said accident. Learned Advocate also submits that the claim for injury would abate on the death of the injured person and does not survive to his Legal heirs.

Learned Advocate for the respondent no. 1 to 4/claimants submits that the Learned Trial Judge erred in not taking into consideration, the permanent disability, and actual medical expenses and awarded inadequate compensation.

The following decisions are relied upon by Learned Advocates for respondent nos. 1 to 4.

Kirti and Anr. VS Oriental Insurance Company LTD

Reported in 2021 SAR (CIV) 147.

Shiv Kumar and others VS Gainda Lal and others.

Reported in 2022(4) TAC. 707 (SC).

Sarla Verma (SMT) and others VS Delhi Transport Corporation and Anr.

Reported (2009) 6 SCC. 121.

National Insurance Company Limited VS Pranay Sethi and ors.

2017(4) TAC. 673(S.C).

The Oriental Insurance Company Limited VS Kahlon @ Jasmail Singh Kahlan (deceased through his legal Representative)

2021 SAR (civ)1078.

New India Assurance Co.Ltd. VS Manab Sen (Deceased) by LRS and Another.

Reported in 2023(3) TAC. 871 (Cal).

Kusum Lata and Ors. VS Sabir and others.

Reported in 2011(2) TAC. 1(S.C.).

Durga Mayee Pradhan VS Ghambir Singh Manager and Another.

Reported in 2011(2) TAC SIKKIM.

Ravi VS Burdrinarayan and ors.

Reported in 2011 SAR. (Civil) 270.

Pragati National Insurance Company Ltd. VS Smt. Pratima Barrik and Anr.

Reported in 2017(2) TAC. 466 Cal.

With regard to the first submission of Learned Advocate for the Appellant that there was delay in lodging FIR it appears that the accident took place on 26/09/2017 and complaint was lodged on 04/10/2017. Thus there is delay of 8 days in lodging complaint which is not in-ordinate.

Learned Trial Judge while considering the issue of delay relied upon a decision of the Hon'ble Supreme Court in the case of Ravi VS Badri Narayan and others reported in (2011) 4SCC. P-693. The Hon'ble Supreme Court in the said case observed as follows:

'It is well settled that the delay in lodging the FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect a common man to first rushed to the police station immediately after an accident. Human nature and family responsibilities occupying the mind of Kith and Kin to such and extend that they give more importance to get the victim treated rather than to rush to the police station. Under such circumstances they are not expected to act mechanically with promptitude in lodging the FIR with the police. Delay in lodging the FIR thus cannot be the ground to deny justice to the victim.'

Upon considering the period of delay which is eight days and the judicial decision relied upon by the Learned Trial Judge in considering issue of delay this Court is of the view that there is no infirmity in the decision of the Learned Trial Judge with regard to considering issue of delay. Moreover the claim case is instituted after about, one and half year from the date of lodging FIR, thus it cannot be said that FIR is lodged merely for the purpose of the claim case. The evidence of P.W. 3 and the documentary evidence will also go to show involvement of the vehicle bearing no. WB-33D/4302. Thus there is no scope to interfere with the findings of Learned Trial Judge about involvement of vehicle bearing no. WB-33D/4302.

Now the 2^{nd} point for consideration is whether claim case has abated due to death of the injured claimant. In this regard nowhere it appears from record that this point was argued before the Learned Trial Court. However enlightment is drawn from the decision of the Hon'ble Supreme Court in the case of The Oriental Insurance Company Ltd. V. Kohlan @ Jasmail Singh Kahlan (deceased) through his Legal Representative reported in 2021SAR (civ) 1078. In the said case the Hon'ble Supreme Court observed as follows:

'The Act is a beneficial and welfare legislation. Section 166(1)(a) of the Act provides for a statutory claim for compensation arising out of an accident by the person who has sustained the injury. Under clause (b), compensation is payable to the owner of the property. In case of death the legal representatives of the deceased can pursue the claim. Property under the Act will have a much wider connotation than the conventional definition. If the legal heirs can pursue claims in case of death, we see no reason why the legal representatives cannot pursue claims for loss of property akin to estate of the injured, if he is deceased subsequently for reasons other than attributable to the accident or injuries under clause 1(c) of Section 166. Such a claim would be completely distinct from personal injuries to the claimant and which may not be the cause of death. Such claims of personal injuries would undoubtedly abate with the death of the injured. What would the loss of estate mean and what items would be covered by it are issues which has to engage our attention.'

'The appellant has a statutory obligation to Pay compensations in motor accident claim cases. This obligation cannot be evaded behind the defence that it was available only for personal injuries and abates on his death irrespective of the loss caused to the estate of the deceased because of the injuries.'

Thus the claim case cannot be said to abate on the death of the injured person.

Now with regard to quantum of compensation Learned Trial Judge upon considering the notional income of Rs. 5,000/- per month and applying multiplies of 17 to the disability of 70% ascertained the compensation of Rs. 7,14,000/-.

Thus the Learned Trial Judge ignored the issue of future prospect and medical expenditure while ascertaining the compensation.

Now with regard to medical expenses of the injured person although the medical bills and vouchers filed in Court were not proved but considering the fact that the Motor Accident Claim Tribunal is not strictly a Civil Court bound to follow rules of evidence but follow principles of Natural Justice and the claim legislation is welfare legislation the Tribunal upon perusing the medical prescriptions, the vouchers, period of treatment in hospital and nature of injury can award compensation which according to the Tribunal is just and reasonable. In the instant case considering the fact that the injured person suffered disablement and the period of stay in hospital and the deposition of P.W. 1 that more than Rs. 50,000/- is incurred on account of medical expenses this Court is of the view that it would be reasonable to award Rs. 30,000/- on account of medical expenses.

Now with regard to future prospect the Learned Trial Judge went on to observe that there is no proof of occupation and income it cannot be presumed that deceased had future prospect. So far the occupation of the injured person as cook is concerned evidence was adduced not only by the husband of the injured but also corroborated by P.W. 3 who is a resident of the locality where the victim used to reside. Moreover in the complaint before police Authority the brother in law of the victim also stated that the victim was returning from work. Thus there is no ground to disbelieve that the victim was a cook by occupation. It is to be remembered that in all occupations it is not possible to furnish documents by claimants. Thus upon considering the oral evidence if it instils confidence in the minds of court about employment of victim such evidence may be accepted. In the instant case also the evidence of claimant i.e. P.W.-1 and that of P.W. 3 is sufficient to believe that the occupation of victim was cook. As the income was not proved Learned Trial Court rightly proceeded on the Notional Income of Rs. 5,000/- per month.

With regard to future prospect it is well settled that the grant of future prospect does not depend on whether the victim was on fixed salary, or self employed or in permanent employment. In the case of Kirti VS Oriental Insurance Company Ltd. the Hon'ble Supreme Court observed as follows:

'23. The rationale behind the awarding of future prospects is therefore no longer merely about the type of profession, whether permanent or otherwise, although the percentage awarded is still dependent on the same. The awarding of future prospects is now a part of the duty of the Court to grant just compensation, taking into account the realities of life, particularly of inflation, the quest of individuals to better their circumstances and those of their loved ones, rising wage rates and the impact of experience on the quality of work.

24. Taking the above rationale into account, the situation is quite clear with respect to notional income determined by a Court in the first category of

cases outlined earlier, those where the victim is proved to be employed but claimants are unable to prove the income before the Court. Once the victim has been proved to be employed at some venture, the necessary corollary is that they would be earning an income. It is clear that no rational distinction can be drawn with respect to the granting of future prospects merely on the basis that their income was not proved, particularly when the Court has determined their notional income.

25. When it comes to the second category of cases, relating to notional income for non-earning victims, it is my opinion that the above principle applies with equal vigor, particularly with respect to homemakers. Once notional income is determined, the effects of inflation would equally apply. Further, no one would ever say that the improvements in skills that come with experience do not take place in the domain of work within the household. It is worth noting that, although not extensively discussed, this Court has been granting future prospects even in cases pertaining to notional income, as has been highlighted by my learned brother, Surya Kant, J., in his opinion [Hem Raj v. Oriental Insurance Company Limited, (2018) 15 SCC 654; Sunita Tokas v. New India Insurance Co. Ltd., (2019) 20 SCC 688].

26. Therefore, on the basis of the above, certain general observations can be made regarding the issue of calculation of notional income for homemakers and the grant of future prospects with respect to them, for the purposes of grant of compensation which can be summarized as follows:

a. Grant of compensation, on a pecuniary basis, with respect to a homemaker, is a settled proposition of law.

b. Taking into account the gendered nature of housework, with an overwhelming percentage of women being engaged in the same as compared to men, the fixing of notional income of a homemaker attains special significance. It becomes a recognition of the work, labour and sacrifices of homemakers and a reflection of changing attitudes. It is also in furtherance of our nation's international law obligations and our constitutional vision of social equality and ensuring dignity to all.

c. Various methods can be employed by the Court to fix the notional income of a homemaker, depending on the facts and circumstances of the case.

d. The Court should ensure while choosing the method, and fixing the notional income, that the same is just in the facts and circumstances of the particular case, neither assessing the compensation too conservatively, nor too liberally.

e. The granting of future prospects, on the notional income calculated in such cases, is a component of just compensation.

Thus considering the judicial decisions and the facts of the case this Court is of the view that 30% should be granted on account of future prospect.

Hence the claimants would be entitled to compensation under the following heads.

1. Annual Income – Rs. 5000X12

- Rs. 60,000/-

Future Prospect-30%-Rs. 18,000/-

Thus total yearly Income-Rs. 78,000/-

Multiplier of 17 is applied-17/-

Rs. 13,26,000/-

As 70% disability suffered-it is. 9,28,200/-

Medical Expenses Rs. 30,000/-

Total Compensation – is Rs. 9,58,200/-.

Thus the claimants/Respondent No. 1 to 4 are entitled to compensation of Rs. 9,58,200/-.

Hence this FMA 288 of 2025 along with COT No. 48/2025 stands disposed. Judgment and Award dated 18th April 2024 passed by Learned Additional District Judge 6th Court Paschim Medinipur in MAC Case No-206 of 2019, stands modified to the extent that the claimants/respondents no-1,2,3 and 4 are entitled to compensation of Rs. 9,58,200/- from the Appellant National Insurance Company Limited along with interest @ 4% per annum from date of filing till deposit.

The Appellant National Insurance Company Limited shall deposit before the Registrar General High Court Calcutta the excess sum to the Award passed by the Learned Trial Court being Rs. 2,44,200/- along with interest @ 4% per annum from the date of filing till today. Such deposit shall be made within 8 weeks from the date of communication of this order.

Upon deposit being made respondent no. 1 to 4 (claimants will be entitled to withdraw the entire awarded sum upon compliance of all 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.)