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

Present:

**The Hon'ble Justice Biswaroop Chowdhury**

***F.M.A. 1269 of 2025***

***With***

***IA NO: CAN/1/2026***

***Awdhesh Kr. Yadav @ Adesh Kr. Yadav***

***VERSUS***

***The New India Assurance Co. Ltd. & Anr.***

| | |
|---|---|
| For the Appellant: | Mr. Subir Banerjee, Adv.<br>Mr. Sandip Bandyopadhyay, Adv. |
| For the Respondent: | Ms. R. B. Roy, Adv.<br>Ms. Priyanka Samanta, Adv.<br><br>Mr. Avishek Das, Adv.<br>Mr. Soubhik Dey, Adv. |

**Last Heard on: October 14, 2026**

**Judgment on: November 20, 2026**

**Biswaroop Chowdhury, J:**

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 20-06-2025 passed by Learned Additional District Judge 2nd Court Uttar Dinajpur at Raiganj in MAC- No- 196 of 2017.

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

On 14/07/2017 at about 2 PM the vehicle bearing no WB-4218 was coming from Kolkata Side with a loaded truck, when the vehicle bearing no WB-23B/4218 reached at chavat (NH-34) under P.S. Itahar at that time one vehicle bearing no WB- 59/1305 was coming from opposite direction very rash and negligently as a result the driver of the vehicle bearing no WB-59/1305 lost his control over the vehicle and there was head on collision with the vehicle bearing no WB-23B/4218. As a result the claimant/ victim got seriously injured. Local people rescued the victim and shifted to Itahar BPHC. Thereafter the victim was shifted to Raiganj District Hospital , then to Samaritan Clinic (P) Ltd in Kolkata and lastly to SSKM Hospital. The victim's left arm was amputed. Due to rash and negligent driving by the driver of the vehicle no WB-59/1305 the accident took place. Pursuant to filing of the case notice was issued upon the opposite parties. Opposite party vehicle owner did not contest the case. Opposite party Insurance Company contested the case by filing written statement. ISSUES were framed and evidence was adduced. Learned Trial Judge upon considering the evidence adduced and upon hearing the Learned Advocates was pleased to dispose the claim case by observing and directing as follows:

*'Hence it is ORDERED that the MAC case be and the same is allowed on contest without cost against the O.P New India Assurance Company Limited.*

*The claimant/petitioner Awdesh Kumar Yadav @ Adesh Kumar Yadav is entitled to get Rs 12,00,000 (Rupees twelve lakhs) only as compensation with interest @6% p.a from the date of filing claim petition till payment.*

*O.P New India Assurance Company Limited is directed to pay the aforesaid amount in an A/C payee cheque of stated amount with interest from the date of filing within one month of the Judgement filing which petitioner will be at liberty to execute this award in accordance with law.'*

The appellant/claimant being aggrieved by the quantum of compensation awarded by the Learned Trial Court has come up with the instant appeal.

Heard Learned Advocate for the appellant and learned Advocate for the respondent. Perused the evidence adduced and materials on record.

Learned Advocate for the appellant submits that the Learned Trial Judge erred in awarding lump sum compensation, without considering loss of earning capacity.

Learned Advocate further submits that the Learned Trial Judge further erred in not considering the monthly income of the victim claimant to as Rs 6,000/- and percentage of disability as 100 %.

Learned Advocate also submits that the compensation awarded should be enhanced.

Learned Advocate for the Respondent New India Assurance Company Limited submits that the claimant/appellant could not prove the income thus

the Learned Trial Judge did not commit any error in awarding lump sum compensation.

Learned Advocate further submits that the appellant/ claimant did not examine the owner of the vehicle nor the other driver thus occupation of the victim is not proved.

Learned Advocate also submits that the compensation awarded by Learned Trial Court should not be enhanced.

In the instant case the appellant/ claimant contended that his occupation is driver. In his evidence it appears that in his cross examination also he stated that he was assistant driver of vehicle No WB-23B/4218 on the date of accident. In the claim petition also he has given the name of his employer as Nagendra Yadav. Moreover the claimant has filed driving license to show that he was eligible to drive vehicle. Thus from the evidence it is clear that victim's/claimaint's occupation is driver. Although the claimant P.W 1 could not prove the income but considering his occupation the notional monthly income should be considered as Rs 6,000/-. Now with regard to percentage of disability it appears that the claimant relied upon the disability certificate issued by Parsa (Saran) primary Health Centre, stating 80% disability. Although the disability certificate was not issued by Medical Board but the fact of amputation of left arm being established in oral evidence and considering that the occupation of victim as driver, which cannot be performed

with one hand the percentage of disability as referred in Disability Certificate should be accepted.

In the event monthly income is considered as Rs 6,000/- Annual Income comes to Rs 72,000/-.

Future prospect of 40% which is Rs 28, 800 /- added, net Annual Income comes to Rs 1, 00, 800 /-. However net annual Income of Rs 1,00,000/- is taken for consideration . As percentage of disability is 80%, the loss of earning capacity is arrived by applying multiplier of 16-80% of Rs. 100,000/-X16=Rs. 12,80,000/-

Thus loss of earning comes to Rs 12,80,000/-. Further the Learned Trial Court awarded Rs 400000/- on account of pain and sufferings, and Rs. 300000/- on account of Medical Expenses which in the view of this Court is just and reasonable. Hence, total compensation comes to Rs. 1980000/- as per arithmetical calculation. However, this Court is of the view that compensation of Rs. 20,00,000/- is just and reasonable.

Hence, this appeal FMA 1269/2025 stands disposed. Judgment and Award dated 20.06.2025 passed by Learned Additional District Judge 2nd Court Uttar Dinajpur at Raiganj in MAC Case No- 196/2017 is modified to the extent that the appellant/claimant is entitled to compensation of Rs 20 lakh from Respondent New India Assurance Company Limited Respondent Insurance Company shall deposit 20 lakh along with interest @6% p. a from date of filing claim case till today. Such deposit shall be made before Registrar General High

Court Calcutta within 8 weeks from the date of communication of this order. In the event compensation awarded by Trial Court is already deposited balance deposit be made.

The claimant/ appellant will be entitled to withdraw compensation upon compliance of necessary formalities, and payment of deficit Court fees.

Deficit court fees be paid within one week.

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.)**