

Item 08.04.
No. 2026
2 & 3

Ct
09

rup

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 974 of 2025

Cholamandalam MS General Insurance Company
Limited

Vs

Sk. Azizul (since deceased) substituted by his legal
heirs Lutfunnesa Bibi & Ors

With

COT 118 of 2025

Lutfunnesa Bibi & Ors.

Vs.

Cholamandalam MS General Insurance Company
Limited & Anr.

Mr. Soumalya Ganguli.

... for the appellant/insurance company
in FMA 974 of 2025 and respondent
no.1 in COT 118 of 2025.

Mr. Krishanu Banik.

Mr. Tathagata Banik.

... for the respondents/claimants in FMA
974 of 2025 and
appellants/claimants in COT 118 of
2025 .

Learned advocates for the parties are present.

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 30th day of July, 2024 passed by the
Learned Additional District Judge, Fast Track Court,
Suri, Birbhum in M.A.C. Case No. 267 of 2019. The
respondent No.1/Sk. Azizul since deceased, who was a
claimant before the Trial Court being aggrieved by the

judgment and award has also preferred a cross-objection being COT 118 of 2025. The case of the respondent/claimant before the Trial Court may summed up thus:-

On 11/04/2019 the victim was proceeding towards Bolpur side through Bolpur - Suri Road riding a motor-cycle and by this manner at about 01:00 P.M when he came near Seacom University, Kendradangal on that road under P.S-Panrui at that time offending Dumper being no. WB57D-6527 which was proceeding towards Suri side from Bolpur side dashed the victim coming from opposite direction and also coming from wrong side and the victim sustained grievous injury, and he was shifted to Bolpur S.D. Hospital there after he was shifted Life Line Nursing Home, thereafter Swastika Nursing Home Kolkata, and thereafter the victim was transferred to Sai Ambika Hospital, Bangalore there after at Manipal Hospital, Bangalore where various kind of expensive treatment and operation were done.

The claimant sustained mental pain and agony along with physical pain due to accident and also sustained heavy financial loss. The claimant sustained various pecuniary and non pecuniary loss due to accident. The claimant sustained mental stress, hazard, discomfort and inconvenience due to

accident and all are continuing. The life stile has been changed due to accident. The claimant spent Rs 5,00,000/- for his treatment and special diet and all are going on. The claimant is suffering a lot for the accident. The lower portion of the body of the victim became paralyzed due to accident and the victim is in bed ridden condition and no chance of his improvement and he is a 100% disabled person.

That the driver of the offending vehicle being No WB57D-6527 was driving the vehicle rashly and negligently with high and excessive speed which caused the accident coming in wrong side. The driver of the offending vehicle was the sole responsible for the accident.

The claimant became disabled person due to accident and his disability is 100% and the family of the claimant is forced to depute a full time attendant and for which the expenditure of Rs 150/ day to Rs 4500/ month is being incurred. The victim became disabled person and he was a mason in profession and his income was very stable income as he was a renowned mason of the locality and he has a bright future prospect in his profession.

Pursuant to filing of the claim case, notice was issued upon the opposite party/vehicle owner and the opposite party/Cholamandalam MS General Insurance Company Ltd.. The opposite

party/Cholamandalam MS General Insurance Company Ltd. contested the case by filing written statement. However, the opposite party/vehicle owner although appeared but did not contest the case subsequently.

Issues were framed. Evidence was adduced.

By the judgment and award dated 30th July, 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 claim petition U/s. 166 of the M.V. Act is allowed on contest against the O.P.No.2 i.e., Cholamandalam M/S General Insurance Company Ltd. and allowed exparte against O.P.No.1 without costs.

The O.P.No.1 and O.P. No.2 are jointly and severally liable to pay the awarded amount to the petitioner.

The petitioner do hereby get an award for Rs.26,62,140/-(Rupees Twenty Six Lakhs Sixty Two Thousand One Hundred Forty) only along with interest @ 6% p.a. from the date of filing of this application i.e. from 19.09.2019 till realization of the awarded amount.

The O.P.No.2 (Cholamandalam M/S General

Insurance Company Ltd.) is directed to pay the awarded amount of Rs.26,62,140/-(Rupees Twenty Six Lakhs Sixty Two Thousand One Hundred Forty) only along with accrued interest, as mentioned above, by issuing an account payee cheque in the name of the claimant viz. Sk. Azizul within Thirty days from the date of delivery of Judgment failing which the O.P. No.2 will have to pay further interest @ 10% p.a. upon the awarded amount from the date of expiry of thirty days till realization of the awarded amount. Failing which the petitioner is at liberty to execute the same in accordance with law.

The claimant is directed to pay deficit court fees upon the enhanced compensation amount within 15 days from the date of passing Judgment.

The claimant is debarred from obtaining the certified copy of this award unless deficit court fees is paid.

Let a copy of this judgment be supplied to the parties free of costs.”

The appellant/Cholamandalam MS General Insurance Company Ltd. being aggrieved by the judgment and award passed by the Learned Trial Court has come up with the instant appeal. The claimant/ Sk. Azizul (since deceased) being also aggrieved by the said judgment and award has filed a cross-objection.

Heard learned advocates for the appellant/insurance company and learned advocates for the respondents. Perused the evidence adduced and the materials on record.

Learned advocate for appellant/insurance company submits that the Learned Trial Judge erred in awarding Rs.4,00,000/- on account of future medical expenses and this finding is without any basis and the same should be reduced. Learned advocate further submits that the Learned Judge observed in order that Rs.40,000/- should be awarded for future medical treatment but at the same time on computing compensation the future medical expenses is considered as Rs.4,00,000/-. Learned advocate further submits that the attendant charge of Rs. 5,04,000/- of the victim is also excessive and the same should also be reduced.

Learned advocate for the respondents no.1 to 3 who are the heirs of the original claimant submits that the Learned Trial Judge has come to a finding by awarding compensation on different heads but the Learned Judge erred in considering the income of the victim to be Rs. 5000/- per month, although the claimant/victim was able to prove the occupation. Learned advocate further submits that as the claimant/victim had proved the occupation, the monthly income as per government circular should be

Rs.9000/- per month which is applicable in the case of mason. Upon perusing the evidence adduced, it appears that although the victim who was a claimant before the Trial Court stated he was a mason and he used to earn Rs.9000/- per month but such evidence is not corroborated. Thus, the Learned Trial Judge did not commit any error in observing that the evidence of claimant/victim is without any corroboration. It is true that in the case of a death of a person where the occupation is required to be proved in cases of the victim being a mason the family members are usually unable to find out any corroborative evidence as they are not acquainted with the persons who used to know the victim being engaged as a mason. Nor it is possible for the family member of the victim of mason to find out under whom the said victim worked. Thus, in case of the death of the mason the statement of the family members giving certain particulars are sufficient to prove that victim was mason without corroboration. However, where the victim is still living and has acquaintance with the persons who knew that he was working as a mason as well the persons under whom he worked, certain corroboration are necessary to prove that the victim was a mason. In the absence of corroboration courts are not bound to accept the evidence of claimant mainly in injury case which may

not be fully applicable where there is the death of person and the family members are unable to corroborate the evidence with regard to the occupation and income as mason. Considering the reasons given by the Learned Trial Judge regarding victim's occupation and award of medical expenses and attendant, this court does not find anything to interfere.

However, the considering the age of the victim the members of the family it would be just and reasonable to consider the notional monthly income to be Rs.6000/- per month. In the event, the monthly income is considered to be Rs.6,000/-, although the total compensation which is awarded by the Learned Trial Court exceeds about 200,000/- however, this Court is of the view that in stead of going into the arithmetical calculation to find out the reasonable compensation it would be just and proper to award compensation of Rs.28,00,000/- to the respondents being the heirs of the victim who suffered injury.

Thus, the appeal being FMA 974 of 2025 and COT 118 of 2025 and connected application stand disposed of.

The Judgment and award passed by the Learned Additional District Judge, Fast Track Court, Suri, Birbhum in M.A.C. Case No. 267 of 2019 stands modified to the extent that respondent nos. 1, 2 and 3

are entitled to total compensation of Rs.28,00,000/- along with interest @ 6% per annum from the date of filing of the claim case till today.

Such payment shall be made by depositing the same before the Learned Registrar General, High Court, Calcutta within a period of eight weeks from the date of communication of this order. However, in the event the compensation awarded by the Learned Trial Court is already deposited, the balance amount be deposited within a period of eight weeks.

The respondent nos. 1, 2 and 3 are permitted to withdraw the compensation amount along with accrued interest upon compliance with all necessary formalities.

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Biswaroop Chowdhury, J.)