IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 1034 of 2025

National Insurance Co. Ltd.

VERSUS

Bula Saha & Anr.

With

COT 124 of 2025

With

IA No.: CAN/1/2026

Bula Saha

VERSUS

National Insurance Co. Ltd. & Anr.

For the appellant/Insurance Co. in FMA 1034/2025 and respondent No.1 in COT/124/2025:	Mr. Rajesh Singh, Adv.
For the respondents/claimants in FMA 1034/2025 and appellant in COT/124/2025:	Mr. Saswata Bhattacharyya, Adv. Mr. S. Mitra, Adv.

Last Heard on: October 13, 2026

Judgment on: November 20, 2026

Biswaroop Chowdhury,J:

The appellant before this Court was an opposite party in a case under Section 166 of the Motor Vehicles Act 1988 and is aggrieved by the Judgment

and Award dated 06.03.2025 passed by Learned Judge Bench IV, City Civil Court Calcutta in MAC-Case No-325 of 2010.

The case of the claimants/respondents before the Learned Trial Court may be summed up thus:-

On 29-03-2016 at about 12.30 hrs the victim Souvick Saha was moving along AJC Bose Road North to South direction in a Motor Cycle registration Number being WB-07H 6490 and when it reached in front of Prachi Cinema a private bus bearing registration no. WB-04G0530 dashed the Motor cyclist from behind. The victim was taken to NRS Medical College and Hospital Kolkata where he succumbed to his injuries.

The accident could have been avoided but for the rash and negligent driving by the driver of private Bus. WB-04G0530.

Pursuant to the filing of this case notice was issued to the opposite parties. Opposite party vehicle owner did not contest the case. However 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 and upon hearing the Learned Advocates was pleased to dispose of the claim case by observing and directing as follows:-

'Accordingly the instant claim petition under Section 166 of the Motor Vehicles Act 1988 is allowed ex-parte against the opposite party no. 1/owner of

the offending vehicle and on contest against the opposite party no. 2/Insurer but without costs.

The claimants do hereby get an Award of compensation amounting to Rs. 62,20,073/- (Rupees sixty Two Lakh Twenty Thousand and seventy Three) in total plus an amount of interest to be calculated on this amount at the rate of 6% per annum from 01.01.2018 till the date of actual realization of the same.

The opposite party no.2/The National Insurance Company Limited is hereby directed to issue an account payee cheque amounting to Rs. 62,20,073/- (Rupees Sixty Two Lakh Twenty Thousand and Seventy Three) in favour of the claimant plus an amount of interest to be calculated on the aforesaid cheque amount at the rate of 6% per annum from 01.01.2018 till the date of such payment within sixty days from the date of this Award, failing which the claimant shall be at liberty to realize the same through the Court.

The Appellant National Insurance Company Limited being aggrieved by the Judgment and Award passed by the Learned Trial Court has come up with this appeal. The respondents/claimants being also aggrieved by the Judgment and Award passed with regard to quantum of compensation have filed cross-objection.

Heard Learned Advocate for the appellant and learned Advocate for the respondents claimants. Perused the evidence adduced and materials on record. Learned Advocate for the appellant Insurance Company submits that the Learned Trial Judge erred in considering monthly salary of victim as Rs.

48,010/- which consists of certain re-imbursements and allowances which cannot be the regular monthly income.

Learned Advocate further submits that the Employer of the victim deposited the Compensation amount before the Workmens Compensation Court where the monthly income is considered as Rs. 16,670/- thus the monthly income cannot be considered as Rs. 48,010/-.

Learned Advocate also submits that the claimants/respondents have suppressed certain material facts before trial Court with regard to monthly income. Learned Advocate furnishes the FORM-16-document for the Assessment year 2016-2017 and submits that the FORM-16 document will go to show that income of the victim was Rs. 2,47,488/- annually and the same was suppressed. It is submitted by the Learned Advocate that as compensation under Workmen's Compensation Act is withdrawn by claimants, they are estopped from claiming compensation under Section 166 of the Motor Vehicles Act 1988.

It is further submitted that compensation awarded should be reduced.

Learned Advocate for the claimants/respondents submits that the claimants/respondents did not file any case before the Workmen's Compensation Court and the employer deposited the compensation suo-moto, thus this case under Section 166 of the Motor Vehicles Act 1988 is maintainable. Learned Advocate relies upon the following Judicial decisions:-

Oriental Insurance Co. Ltd. VS Dyamaud and others.

TAAC 2013 (Vol II). 1.

Learned Advocate further submits that the compensation awarded by the Learned Trial Court is reasonable. Learned Advocate also submits that the learned Trial Judge erred in not awarding interest from the date of filing claim case.

Now with regard to the first submission of Learned Advocate for the appellant that this case is not maintainable as compensation is already withdrawn as no claim case was filed by the claimants/respondents before Workmen's Compensation Court but the Employer deposited the compensation suo-moto this case under Section 166 of the Motor Vehicles Act 1988 cannot be said to be non-maintainable.

With regard to the submission of FORM16 at the Appellate stage by the Appellant this Court is of the view that as the appellant could not discover the said document at the stage of trial the appellant should be permitted to rely on the said document in the interest of justice. Moreover as compensation has to be derived on the basis of monthly income of the victim, the reasonable opportunity to furnish evidence with regard to income should be granted.

Upon perusal of the FORM16 document it will appear that total annual income of the victim is Rs. 2,47,488/-. However the said annual income is considered as Rs. 2,47,000/- 40% future prospect added, total annual income

comes to Rs. 3,45,800/- 50% deducted on account of personal expenses annual dependency loss comes to Rs. 1,72,900/-. Applying the multiplier of 17 the total compensation comes to Rs. 29,39,300/-. Further the claimants are entitled to Rs. 40,000/- each on account of loss of consortium and Rs. 30,000/- on account of loss of estate and funeral expenses. Thus 30,49,300/- is the total compensation which claimants/respondents are entitled as per arithmetical calculation. However compensation of Rs. 31,00,000/- (Rupees thirty one lac) is just and reasonable. As Rs. 8,50,000/- is withdrawn under Workmen's Compensation Act, the balance amount shall be paid by Appellant/Insurance Company.

Hence the Appeal FMA-1034 of 2025 and COT 124 of 2025 stands disposed. Judgment and Award dated 6th March 2025 passed by Learned Judge Bench IV City Civil Court Calcutta in MAC Case No-325 of 2016 stands modified to the extent that the claimants/respondents are entitled to compensation of Rs. 22,50,000/- from the appellant/insurance company. The appellant National Insurance Company Ltd. shall deposit Rs. 22,50,000/- alongwith interest @6% per annum from date of filing claim case till today. Such deposit shall be made before the 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 deposited no further deposit be made.

The claimants/respondents will be entitled to withdraw the compensation upon compliance of necessary formalities. Balance amount if any with accrued interest be returned to the appellant Insurance Company.

Considering the urgency on the ground that claimant is cancer patient and undergoing treatment compensation deposited be released very expeditiously on furnishing details of NEFT to the Registrar General.

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.)