

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

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 1476 of 2025

Gouri Oraon And Anr.

VERSUS

The United India Insurance Company Limited & Anr.

For the appellants/claimants:

Mr. Subir Banerjee, Adv.
Mr. Sandip Bandyopadhyaya, Adv.
Ms. Ruxmini Basu Roy, Adv.

For the respondent/Insurance Co.:

Mr. M.P. Chakraborty, Adv.
Mr. Ratnadip Karmakar, Adv.

For the respondent no.2:

Mr. Sanjay Paul, Adv.

Last Heard on: March 10, 2026

Judgment on: April 20, 2026

Biswaroop Chowdhury,J:

The appellant before this Court were claimants in a case under Section 166 of the Motor Vehicles Act 1988 and are aggrieved by Judgment and Award dated 10-04-2024 passed by Learned Additional District Judge 1st Court at Raygunge Uttar Dinajpur in MAC Case No-100 of 2020.

The case of the appellants/claimants before Learned Trial Court may be summed up thus;

On 05-01-2020 at about 6.00 p.m. Uttam Oraon since deceased after finishing his rice mill work when returning to his house and reached Kadamtala on NH-34 at that time one NBSTC Bus bearing no. WB-63A/5784 which was coming from Tungideghi towards Raiganj with high and excessive speed and rash and negligent manner and all on a sudden came to wrong side Kancha portion of the road and struck Uttam Oraon with a great force. As a result Uttam Oraon received injuries and was taken to Raiganj Govt Medical College and Hospital by the local people. Primarily the injured was admitted there but due his serious condition he was referred to North Bengal Medical College and Hospital and from there he was taken to Greenage Hospital Siliguri as per the advice of the doctor for better treatment. The injured was there from 07.01.2020 till 10.01.2020 but due to financial condition it was decided to take him to SSKM hospital Kolkata. On the way his condition became serious and he was taken back to Raiganj Medical College and Hospital where doctor declared him dead. The accident took place due to rash and negligent driving of driver of offending vehicle WB-63A/5784.

The victim was a man of active habits aged about 34 years and on his death claimants suffered great financial loss, mental pain and agony.

Pursuant to filing of this case notice was issued upon the opposite parties. Opposite Parties contested the case by filing written statements.

ISSUES were framed and evidence was adduced. Learned Trial Judge upon perusing the evidence adduced and upon hearing the Learned Advocate was pleased to dispose of the claim case by observing and directing as follows:

‘Accordingly, it is,

ORDERED

That the instant case, filed U/s. 166 of Motor Vehicles Act, 1988, is allowed on contest against the OP no. 1/Owner of the vehicle bearing Registration No. WB-63A/5784 (NBSTC Bus) and OP nos. 2 and 3/the Insurer, i.e., United India Insurance Co. Ltd.

That the petitioners namely 1) Gouri Oraon and 2) Aniket Oraon, represented by his grand-mother/Gouri Oroan do get an award of Rs. 11,45,200/- (Rupees eleven lacs forty-five thousand and two hundred only) plus interest @6% per annum from the date of filing (15.07.20) till payment along with Rs. 89643/- from Opposite party nos. 2 & 3/Insurer, ie., United India Insurance Co. Ltd.

The O.P Insurance Company i.e. United India Insurance Co. Ltd. is directed to make payment of Rs. 11,45,200/- (Rupees eleven lascs forty-five thousand and two hundred only) plus interest @6% per annum from the date of filing (15.07.20) till payment along with Rs. 89643/- in favour of both the petitioners nos. 1 & 2 namely 1) Gouri Oraon and 2) Aniket Oraon, by issuing separate account payee cheques in their respective names, within two months from the

date of this order, failing which petitioners shall have the liberty to proceed in accordance with law to realize the fruit of this award.

In case of minor claimant, ie., Petitioner no. 2/Aniket Oroan, after receive the cheque issued in favour of such minor claimant, the amount mentioned therein shall be invested by the claimant no. 1/Gouri Oraon, being the grandmother/guardian of such minor claimant in fixed deposit scheme in the name of such minor claimant, wither in a Nationalized Bank or in a Post Office till the attaining the age of majority of such minor claimant.

After furnishing of documents regarding making of such investment in the name of the minor claimant (no.2), the cheque issued in favour of claimant no. 1/Gouri Oraon will be handed over to her.

The petitioners are entitled to receive the cheques on payment of deficit court fees as per rules, if not paid.

The claimants are directed to furnish their photographs before receiving their cheques.

A copy of this judgment be given to the O.P no.2 & 3/the United India Insurance Company Ltd. free of cost for compliance.'

The appellants being aggrieved by the Judgment and Award passed by Learned Trial Judge has come up with the instant appeal Heard Learned Advocates for the parties. Perused the evidence adduced and materials on record.

Learned Advocate for the appellant submits that the Learned Judge erred in not considering the income of the victim as Rs. 9,000/- per month when owner of the establishment where victim worked stated that the victim used to get Rs. 9,000/- per month. Learned Advocate further submits that Government circular of unskilled worker will also go to show that victim is entitled to get Rs. 9,000/- per month. Learned Advocate also submits that in the FIR also it was stated that victim was working under P.W. 2 which ought to have been considered.

Learned Advocate relies upon the following judicial decision:

Manusha Sree Kumar and ors. VS The United India Insurance Co. Ltd.

Smt. Sarathi Barman VS Reliance General Insurance Company Ltd. and Anr.

Civil Appeal No. 2138 of 2026

E. Vajramma and others VS Shriram General Insurance Co. Ltd. and Anr.

Reported in 2025 (1) TAC-50(SC)

Learned Advocate for the respondent no-1 United India Insurance Co. Ltd. submits that the nature of work which the victim used to do is not specified thus the Learned Trial Judge did not commit any error.

Upon perusing the claim petition and the evidence of P.W.-1 Gouri Oraon and the FIR it will appear that the victim was employed at Rice Mill whose proprietor was Gyan Shankar Singh of Tungidighi, Karandighi. Although there was cross examination with regard to income of the victim but there is no cross-examination with regard to the victim being employed at Rice Mill of Gyan Shankar Singh. Thus it is established that the victim was employed at Rice Mill of Gyan Shankar Singh. With regard to the income of the victim the employer Gyan Shankar Singh filed certificate of salary of the victim, and also deposed, in Court. He further stated that the victim used to earn Rs. 9,000/- per month. Although in the certificate it is not mentioned about the nature of work the victim used to do but in a question put by the Court P.W. 3 replied that the victim was provided more amount in case of overtime duty.

Thus the issuance of salary certificate and evidence of P.W. 3 inspires confidence in the mind of this Court that the victim used to earn Rs. 9,000/- per month. As in the instant case salary certificate was issued and employer of the victim deposed the decision of the Hon'ble Supreme Court in the case of Manusha Sree Kumar (supra) is not applicable, and there is no scope to proceed on National Income.

Thus the income of the victim has to be considered as Rs. 9,000/- per month.

In the event the income of the victim is Rs. 9,000/- per month Rs. 3,600/- should be taken as future prospect, and the total income comes to Rs.

12,600/- per month. $1/3^{\text{rd}}$ should be deducted on account of personal expenses and Net monthly income comes to Rs. 8,400/-. The annual dependency loss comes to Rs. 100,800/-. Multiplier of 16 should be applied. Thus the total dependency loss comes to Rs. 16,12,800/-. Further the appellants/claimants are entitled to Rs. 70,000/- on account of consortium, funeral expenses and loss of estate and medical expense of Rs. 89,643/-. Thus total compensation of Rs. 17,72,443/- comes by arithmetical calculation. However this Court is of the view that compensation of Rs. 17,00,000/- is just and reasonable.

Hence this FMAT(MV) No-436 of 2024 stands disposed. Judgment and Award dated 10-04-2024 passed by Learned Additional District Judge 1st Court at Raiganj. In MMAC-100 of 2020 is modified to the extent that the appellants are entitled to Rs. 17,00,000/- from respondent no-1 United India Insurance Company Limited along with interest @6% per annum from date of filing of claim case till today. The respondent no-1 shall deposit before Registrar General High Court Calcutta Rs. 17,00,000/- along with interest @6% per annum from date of filing claim case till today. Such deposit shall be made within 8 weeks from the date of communication of this Order. In the event compensation awarded by Learned Trial Court is paid balance amount be deposited. The appellants/claimants will be entitled to withdraw the compensation amount upon compliance of necessary formalities. The balance amount if any be returned to responded no-1 along with accrued interest if any.

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.)