IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 1355 of 2024

The Oriental Insurance Co. Ltd.

VERSUS

Sri Ajit Dhibar & Ors.

With

COT 119 of 2025

With

CAN 1 of 2025

Ajit Dhibar @ Haglu

VERSUS

The Oriental Insurance Co. Ltd. & Ors.

For the appellant/Oriental Insurance Co. Ltd.:	Ms. Sayanti Santra, Adv.
For the respondent/claimant:	Mr. Amit Ranjan Roy, Adv.
For the respondent No.5/Bajaj Allianz General Insurance Co. Ltd.:	Mr. Rajesh Singh, Adv.

Last Heard on: April 30, 2026

Judgment on: May 15, 2026

Biswaroop Chowdhury, J:

Delay in filing cross objection COT-119 of 2025 is condoned.

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 25th July 2024 passed by Learned Additional District Judge 2nd Court Tamluk Purba Medinipur in MAC Case No-26 of 2015/73 of 2012.

The case of the claimant/respondent no-1 may be summed up thus:

On 30-12-2011 at about 12.05 AM (night) the victim since injured Ajit Dhibar @ Haglu was travelling on the 'PICK-UP-VAN' bearing No. JH-10-AA/1002 as a Khalassi/Helper along the extreme left (semi-metal portion of the road) of N.H. 41 near Hirapur and it was proceeding from 'Mayna Side' towards 'Kolaghat side'. At the material time one vehicle bearing No-WB-29/3576 was proceeding from the opposite direction at a terrific high speed, recklessly endangering human life and safety of others and dashed just near the driver's cabin with a great force and violating the Traffic/Road Rules. As a result the victim sustained severe injury on face, eyes and other parts of the body which caused his permanent disablement.

Rash and negligent driving on the part of the driver of vehicle bearing No. WB-29/3576 (Lorry) was the sole cause of the pathetic accident which could easily be avoided if the reckless driver would take proper care and reasonable attention at the material time being devoid of ordinary sense of prudent driving. Police started a criminal case against the driver of the said vehicle bearing No. WB-29/3576 U/S 279/338 IPC.

The victim since injured was a smart young and active man. He was the sole bread earner of the family and he had all qualities, to prosper in the near future. The accident made him permanent disabled man.

Pursuant to the filing of the case notice was issued upon the opposite parties. Opposite Parties vehicle owners although appeared and filed written statement but thereafter did not contest the case. Opposite parties Oriental Insurance Company Ltd, and Bajaj Allianz General Insurance Co. Ltd. filed written statement and contested the case. 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 of the claim case by observing and directing as follows:

'Hence it is ordered that the instant MAC Case No. 26 of 2015 (Registration No-329/2015) u/sec166 of the MV Act be and the same is allowed on contest against OP-3 i.e. Oriental Insurance Co. Ltd and OP-4 i.e. Bajaj Allianz General Insurance Co. Ltd. and ex-parte against OP-1 Satyaranjan Das, owner of the offending truck bearing No. WB-29/3576, and OP No. 2 i/e owners of the pick up van bearing No. JH-10AA/1002 but without any order as to costs.

The claimants Ajit Dhibar @ Haglu do get an award of Rs. 4,34,400/- (Rupees four lakh thirty four thousand and four hundred only) together with an interest @6% p.a. from the date of filing of the instant case till the payment by OP No. 3/Oriental Insurance Co. Ltd.

The OP-3/Oriental Insurance Co. Ltd. is further directed to issue the said cheque within one month from the date of this Order, failing which the awarded amount shall carry further interest @8% p.a. from the date of this Order till realization of that amount.' The appellant Oriental Insurance Company Ltd. being aggrieved by the Judgment and Award passed by the Learned Trial Judge has come up with the instant appeal.

Heard Learned Advocate for the appellant/insurance company and Learned Advocate for the respondent/claimant. Perused the evidence adduced and materials on record.

Learned Advocate for the appellant submits that the accident took place on 30th December 2011 and the claimant was admitted on 14/02/2012 thus it cannot be said that admission in hospital is related to the accident.

Learned Advocate further submits that one glass particle was found from right eye this it cannot be said that Disability was due to accident. Learned Advocate also submits that Review is to be done after five years which is not done in the instant case. It is submitted by the Learned Advocate that driving license of the driver was not issued from RTO. thus there is violation of policy condition.

Learned Advocate for the claimant/respondent submits that the appellant/Insurance Company could not prove that driving license of the driver of offending vehicle was fake. Learned Advocate further submits that future prospect ought to have been 40% and the notional monthly income should be at least Rs. 5,000/- per month.

Upon perusal of the evidence of P.W. 1 claimant it appears that the claimant sustained severe injuries on his face, eyes, cervical spine and other parts of his body. P.W. 2 eye witness has also stated in the evidence that the victim sustained severe injuries on his face eyes cervical spine and other parts of body. The claimant injured deposed that he was treated at Purba Medinipur District Hospital Tamluk, thereafter saviour clinic Kolkata and then Medical College Kolkata. From the referral card itself it will appear that the claimant was taken to District Hospital Tamluk and as per deposition he was taken to Saviour clinic, Kolkata and Medical College Kolkata. It is to be remembered that when a person is injured he may be taken to hospital and after administrating medicine and first aid he may be released temporarily but the effect of such accident may not take place forthwith or may not be detected forthwith but may take place after certain period thus it cannot be concluded that merely because an injured person after long period from the date of accident is admitted to hospital the treatment is not related to accidental injury and after effect. Upon perusal of the evidence of P.W. 1, P.W. 2 it appears that the claimant/respondent sustained severe injuries on his face eyes, and cervical spine. P.W. 3 Doctor in his evidence stated that the claimant was under his treatment and on examination he found one glass particle inside his right eye. On 15-02-2012 he was operated by him and the said glass particle was removed from his eye. Thus from the evidence of P.W. 1, and P.W. 2 it appears that claimant suffered injury in his eye and evidence of P.W. 3 doctor corroborates the evidence of P.W. 1 and P.W. 2 as he stated that glass particle was removed from the eye of the claimant.

Thus the evidence of P.W. 1, P.W. 2, and P.W. 3 taken as a whole will go to show that there was a rood traffic accident. Learned Trial Judge upon considering the evidence as a whole came to the conclusion that the claimant/respondent no-1 suffered injury and disability to the extent of 30%.

With regard to the submission of Learned Advocate for the appellant that disability is to be reviewed after 5 years it is to be remembered that Disability Certificate for the purpose of motor accident claim case cannot be equated with the disability criteria for any job or for concession. In case of disability for the motor accident claim case Courts have to consider the extent of disability when the case is taken up for consideration and cannot adjourn the matter till the next date of review. Even if the said disability certificate is to be reviewed or re-assessment is recommended after certain period courts and tribunals are well within their power to consider the nature of disability, the occupation of the claimant prior to accident and the demeanor of the injured witness his movements and decide whether full compensation to be granted or certain percentage should be reduced.

In the instant case the claimant/respondent no-1 suffered visual impairment and his occupation was Khalasi thus the compensation should not be reduced considering the nature of disablement, and his occupation.

Now with regard to the submission of Learned Advocate for the appellant that the driving license was fake such submission cannot be sustained. As driving license cannot be filed in Court by the claimants as the same are seized by Police Authority, just on the basis of license number and statement of RTO it cannot be said driving license was fake. It is only when the driving license is produced in Court by Summoning the I.O. and the driver is examined in this regard it can be possible for the Court to come to a conclusion as to whether driving license was fake. Upon perusal of seizure list it appears that only driving license number is mentioned but the issuing Authority is not mentioned. Thus it cannot be said that it was issued by PVD. Kolkata and not any other authority. Thus the argument with regard to fake driving license cannot be sustained. Hence the findings of the Learned Trial Judge with regard to accident injury and permanent disability cannot be disturbed.

Now with regard to quantum of compensation it appears from the evidence of P.W. 1 claimant that he was Khalasi of the offending vehicle. Such statement is also reiterated in cross-examination. Even P.W. 2 eye witness has corroborated that claimant was a Khalasi. Thus the occupation prior to accident is proved. As the occupation of Khalasi is proved it would be reasonable to consider the notional income as Rs. 4,000/- per month.

In the event notional income is Rs. 4,000/- per month the annual income comes to Rs. 48,000/-. Future prospect of 30% i.e. Rs. 16,000/- should be added and annual income comes to Rs. 64,000/-. As the percentage of disability is 30%. Compensation on account of disability comes to Rs. 64,000/- X18X30/100=Rs. 3,45,600/-. The medical expenses should be Rs. 15,000/- and compensation on account of pain and sufferings Rs. 100,000/- is awarded.

Thus the total compensation which comes by arithmetical calculation is Rs. 4,60,000/-. However this Court is of the view that compensation of Rs. 500,000/- is just and reasonable.

Hence this FMA-1355 of 2024 along with COT 119 of 2025 stands disposed. The Judgment and Award dated 25th July 2024 passed by Learned Additional District Judge 2nd Court Tamluk Purba Medinipur in MAC. Case No. 26 of 2015/73 of 2012 stands modified to the extent that the respondent no-1/claimant is entitled to Rs. 500,000/- from the Appellant Oriental Insurance Company Limited along with interest @6% per annum from date of filing claim case till today. The appellant Oriental Insurance Co. Ltd. shall pay Rs. 500,000/- along with interest @6% p.a. from date of filing of claim case till today. Such payment shall be made within 8 weeks from the date of communication of this order by depositing the same before Registrar General High Court Calcutta. In the event compensation awarded by Learned Trial Court is already deposited the balance amount be deposited.

The respondent no-1/claimant will be entitled to withdraw the compensation along with accrued interest if any upon compliance of 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.)