

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

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 1309 of 2025

With

IA NO: CAN 3 of 2025

Oriental Insurance Company Latd.

VERSUS

Smt. Pani Mahali & Ors.

With

COT 96 of 2025

Pani Mahali & Ors.

VERSUS

The Oriental Assurance Company Limited & Anr.

For the appellant/insurance company
in FMA 1309 of 2025:

Mr. Sucharita Paul, Adv.

Mr. Amit Ranjan Roy, Adv.

For the respondents/claimants in
FMA 1309 of 2025 and appellant in
COT 96 of 2025:

Last Heard on: February 09, 2026

Judgment on: May 22, 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 28th July 2022 passed by Learned Additional District Judge 3rd Court Paschim Medinipur in MAC Case No-513 of 2013.

The case of the claimants/respondents no-1 to 3 before Learned Trial Court may be summed up thus:

On 18.03.2013 at about 10.30 A.M. the deceased was going to his office by riding his own motor cycle bearing no. WB-34H/6064 from his quarters at the extreme left side of the road and near RPF Union office and Mahabir Petrol Pump a south side area, Kharagpur the offending vehicle bearing no WB-33/8145 (Tracker/Tower) coming in very high speed and in rash and negligent manner dashed him with his motorcycle and he fell down on the ground sustaining grievous injuries all over his body and his motor cycle was badly damaged and he was taken to S.E. Railway Main Hospital Kharagpur by the local people for treatment but unfortunately a few hours of treatment there he succumbed to his injuries.

The deceased was sole earning member of his family consisting of his wife and minor son and the daughter, who were solely dependent upon his income to maintain their livelihood and they are at present in immense financial trouble for untimely pathetic death of sole earning member.

Pursuant to the filing of this case notice was issued upon the opposite parties. Opposite party vehicle owner although appeared and filed written

statement but did not contest the case. Opposite party Oriental Insurance Company Ltd. contested the case by filing written statement.

Issues were framed and evidence was adduced. Learned Trial Court upon considering the evidence and upon hearing the parties was pleased to dispose of the claim case by observing and directing as follows:

Hence it is ORDERED that the instant case being MACC No-513 of 2013 be and the same is hereby allowed on contest against the opposite party no. 2 and ex-parte against the opposite party no-1 but without costs.

The opposite party no-2 (The Oriental Insurance Co. Ltd) which indemnified the opposite party no. 1 is hereby directed to pay the total compensation amount of Rs. 54,28,000/- (Rupees fifty four lakhs twenty eight thousand) only together with interest @6% per annum from 17-07-2017 till full liquidation by issuing three A/C payee cheques in the name of the claimant no. (1) Smt. Pani Mahali, 2) Anita Mahali and 3) Suraj Mahali u/s-166 of Motor Vehicles Act 1988 within two (2) months from the date of this Order, failing which the claimant no. 1 to 3 shall be at liberty to put the order in execution.

The Appellant Oriental Insurance Co. Ltd. being aggrieved by and dissatisfied with the Judgment and Award passed by the Learned Trial Court has come up with the instant appeal. The respondents/claimants no. 1 to 3 being also aggrieved by the said Judgment and Award passed has filed a cross-objection.

Heard Learned Advocate for the appellant and Learned Advocate for the respondents/claimants. Perused the evidence adduced and materials on record.

The ground of Appeal by the appellant Insurance Company is that the offending vehicle was driven without a valid route permit as per deposition of OPW-1. It is submitted that the route permit was from 'Jamma to Barbetia' and the offending Trekker was being driven at the Southern side of Kharagpur. It is further submitted that the Learned Trial Judge awarded Rs. 1,65,000/- on account of general damages without considering the limit and that the amount under head of 'non-pecuniary damages' should have been limited to Rs. 77,000/-.

Learned Advocate for the respondents/claimants submits that the Learned Trial Judge upon considering the evidence has rightly arrived at a decision thus interference to the findings is not necessary. Learned Advocate further submits that the Learned Judge erred in awarding interest from 17-07-2017 and not from date of filing.

With regard to the submission of Learned Advocate for the Appellant Insurance Company that the offending vehicle did not have valid route permit it is necessary to consider the evidence of OPW-1. OPW-1 Sri Uttam Mudi in his examination in chief has stated that he is attached with RTO Paschim Medinipur as Supervisory Head Clerk. He filed the route permit of vehicle no. WB-33/8145 being marked as Exhibit-C. In cross examination he stated that

Srikanta Pramanik had valid driving license for LMV on 18/10/2013 and on that day the offending vehicle had valid route permit.

No where from the evidence of OPW-1 it appears that where the accident took place does not fall within the route for which permit was granted. The issue with regard to plying in the route not covered by permit is dealt with by Learned Trial Court by assigning reasons. Thus no interference is required.

Upon perusal of the award of compensation it appears that the Learned Trial Judge applied the correct principles and came to a finding that compensation on account of total dependency loss should be Rs. 52,62,840/-. However on account of General damages this Court is of the view that Rs. 44,000/- on account of consortium and Rs. 33,000/- on account of funeral expenses and loss of estate should be awarded. Thus the total compensation comes to Rs. 53,39,840/- by arithmetical calculation. However this Court is of the view that compensation of Rs. 53,50,000/- is just and reasonable. However with regard to awarding of interest it appears from the trial Court record that the claimants were not represented on different dates for which show cause notice was issued and matter dismissed for default and thereafter restored. Learned Trial Judge has assigned reasons for awarding interest from 17-07-2017 till realization. Thus no interference should be made.

Hence this Appeal FMA-1309/2025 along with COT-96 of 2025 stands disposed. Judgment and Award dated 28th July 2022 passed by Learned Additional District Judge 3rd Court Paschim Medinipur in MAC Case No-513 of

2013 is modified to the extent that claimants/respondent no. 1 to 3 are entitled to Rs. 53,50,000/- from the Appellant Oriental Insurance Co. Ltd. along with interest @6% p.a. interest from 17-07-2017 till realization. The appellant Insurance Company shall deposit before Registrar General High Court Calcutta Rs. 53,50,000/- along with interest within 8 weeks from the date of communication of this Order. In the event compensation awarded by Learned Trial Court is already deposited no further deposit be made. The claimant/respondent will be entitled to withdraw the compensation as observed above along with accrued interest if any. Balance amount along with accrued interest if any will be returned to the Appellant/Insurance Company.

The claimants/respondent no 1 to 3 are entitled to withdraw the compensation 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.)