

In the High Court at Calcutta

Civil Appellate Jurisdiction

Appellate Side

29.06.2026
Item No.128
Ali
ct. no.9

FMA 21 of 2023

Shyamal Barman @ Sri Shymal Barman

Vs.

The New India Assurance Co. Ltd. & Anr.

Mr. Jayanta Kumar Mandal,

Mr. Sayantan Rakshit

..... for the appellant/claimant.

Mr. Sanjay Paul

...for the respondent/New India Assurance Co.

1. Learned advocates for the parties are present.
2. Heard learned advocates for the parties.
3. The appellants before this Court were the claimants in a case under Section 166 of the Motor Vehicles Act, 1988 and is aggrieved by the judgment and award dated 14th July 2022 passed by the learned Additional District Judge, 3rd Court, Balurghat, Dakshin Dinajpur in M.A.C. Case No. 24 of 2015. The case of the appellants/claimants before the learned Trial Court may be summed up thus:
On 02.05.14 at about in between 17.00 to 17.15 hrs. the injured was coming from Kumarganj side via 10 Mile to Balurghat Hospital for consulting with a doctor at Balurghat and one Bipul Sarkar who was the pillion rider of the motorcycle bearing No.-WB-62B/7122. Injured petitioner was the motorcycle

driver. The motorcycle was proceeding at a normal speed on the left side of the road. When they reached at 10 Mile at that time another vehicle bearing No.-WB-62A/8247 (TATA Indica Car) was coming from Balurghat side towards Gangarampur side at a very high speed and negligent manner. Due to rash and negligent driving the driver of the offending vehicle lost his control over the vehicle and came into wrong side of the road and dashed against the motorcycle of the injured petitioner at the extreme left side of the road and fled away from the place of occurrence.

Due to that accident the petitioner and pillion rider Bipul Sarkar fell down on the road with their motorcycle and got multiple severe injuries on their persons and the pillion rider Bipul Sarkar died on the spot for his accidental injuries.

The injured petitioner was admitted at Balurghat District Hospital but considering his injuries he was referred to another Medical College and Hospital and admitted at Anandalok Hospital at Siliguri. Thereafter, he was admitted at North Bengal Medical College and Hospital at Siliguri where his right leg was amputated above knee.

Rash and negligent driving by the driver of the vehicle bearing No.WB-62A/8247 was the sole cause for the accident.

The victim was man of active habits and good health and he was earned regularly from his occupation and contributed the entire earnings for the expenses of his family.

Due to the accidental injuries petitioner has sustained great financial loss and mental pain and agony and will have to suffer throughout his lives.

4. Pursuant to the filing of the claim case, notice was issued upon the opposite party vehicle owner. Opposite party vehicle owner did not contest the case. Opposite party New India Assurance Company Ltd. contested the case by filing written statements. Issues were framed and evidence was adduced.
5. Learned Trial Court upon considering the evidence adduced and upon hearing the learned advocate was pleased to dispose of the claim case by observing and directing as follows:

"hence, it is

Ordered

That the instant MAC case being no. 24 of 2015 is hereby allowed on contest against the OP No.2 and exparte against the OP No.1. the OP No.2, The New India Assurance Company Limited is hereby directed to pay a sum of Rs. 7,94,000.00 (Rupees Seven Lakhs Ninety Four Thousand only) as compensation to the claimant in terms of his prayer u/s 166 of the MV Act, 1988 along with simple interest @ 5% from the date of filing of this case till its recovery and also the costs of the proceedings.

The above awarded amount shall be paid to the claimant by the OP No.12 by disbursing the same through account payee cheque in the name of the claimant. The OP No.2 is directed to make the payment within 90 days of the date of this judgment and in default the claimant will be entitled to recover the same in accordance to law”.

6. The appellants/claimants being aggrieved by the quantum of compensation awarded has come up with the instant appeal.
7. Heard learned advocate for the appellant and learned advocate for the respondent No. 1 New India Assurance Company Ltd.
8. Perused the evidence adduced and the materials on record.
9. Learned advocate for the appellant submits that the compensation awarded by the learned Trial Court is meagre. Learned advocate further submits that the learned Trial Court ought to have considered the notional income of the injured person to be Rs.4,000/- instead of Rs.3,000/-. Learned advocate also submits that the learned Trial Judge instead of granting compensation of Rs. 1,94,000/- on account of medical expenses have granted compensation of Rs.1,19,000/-.It is submitted that the compensation on account of pain and suffering is also meagre.
- 10.Learned advocate for the respondent No. 1 New India Assurance Company Ltd. submits that the

learned Trial Judge has granted reasonable compensation which should not be interfered with. Learned advocate further submits that although Rs.4,000/- is not considered, as the notional monthly income, but the learned Trial Judge has awarded 40% on account of future prospect instead of Rs.2,520/-. Learned advocate also submits that the compensation on account of non pecuniary heads is not unreasonable.

11. Upon considering the facts of the case and upon hearing the learned advocates this Court does not find any error on the part of the learned Judge in computing the compensation with regard to loss of income. Although the notional income of Rs.4,000/- is not taken into consideration, but as 40% is awarded on account of future prospect interference on account of loss of income should not be made. However, the compensation of non pecuniary heads, namely, on account of medical expenses both present and future and pain and suffering this Court is of the view that the total compensation already awarded should be enhanced to Rs.9,00,000/- which in the opinion of this Court is just and reasonable.

12. Thus, this appeal FMA 21 of 2023 stands disposed of. The judgment and award dated 14th July 2022 passed by the learned Additional District Judge, 3rd Court, Balurghat, Dakshin Dinajpur in M.A.C. Case

No. 24 of 2015 stands modified to the extent that the claimant appellant will be entitled to compensation of Rs.9,00,000/- along with interest @ 6% per annum from the date of filing of the claim case till today. The respondent No.1 New India Assurance Company Ltd. shall deposit before the learned Registrar General, High Court, Calcutta along with interest @ 6% per annum. Such deposit shall be made within eight weeks from the date of communication of this order. In the event the amount awarded by the learned Trial Court is already paid or deposited the balance amount be deposited. The appellant/claimant will be entitled to withdraw the compensation amount upon compliance of the necessary formalities. The claimant appellant shall pay the deficit Court Fees on the enhanced compensation within four weeks from date.

13. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Biswaroop Chowdhury, J.)