IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 1766 of 2025

Asit Dutta

VERSUS

The Bajaj Allianz General Ins. Co. Ltd. & Anr.

For the appellant: Mr. Sanat Kumar Mullick, Adv.

For the respondents: Mr. Saumalya Ganguli, Adv.

Last Heard on: March 31, 2026

Judgment on: May 22, 2026

Biswaroop Chowdhury, J:

The appellant before this Court was a claimant in a case under Section 166 of the Motor Vehicles Act 1988 and is aggrieved by the Judgment and Award dated 30th July 2025 passed by Learned Judge Bench III City Civil Court Calcutta.

The case of the claimant/appellant before the Learned Trial Court may be summed up thus:

On 1-1-2020 at about 5.45 PM. Jharna Dutta wife of the claimant was walking through Aurobindo Sarani from east to west direction for her personal business. When she reached near the Premises No. 62 Aurobindo Sarani all of a sudden the offending Auto Rickshaw bearing registration no. WB-04H/7292 came with a high speed in a rash and negligent manner endangering human life and safety of others through the same road and from the same direction and dashed the victim from her behind for which she fell down on the road and sustained grievous injuries all over her person. She was removed and admitted to Medical College and hospital where she succumbed to her injuries on the same night at about 10.15 p.m. Rash and negligent driving on the part of the driver of the offending vehicle was the cause of the accident.

Pursuant to the filing of the case notice was issued upon the opposite parties. Opposite party Bazaz Allianz General Insurance Co. Ltd. contested the case by filing written statement, however opposite party vehicle owner did not contest the case. ISSUES were framed and evidence was adduced. By Judgment and Award dated 30th day of July 2025 Learned Trial Court was pleased to dispose of the claim case by observing and directing as follows:

'Hence ORDERED that the claim case be and the same is hereby allowed on contest against the OP No. 2 Bajaj Allianz General Insurance Co. Ltd and ex-parte against the OP. No-1 the owner of the offending vehicle. The claimant namely Asit Dutta is entitled to get a total amount of Rs. 20,34,000/- (Rupees Twenty Lakh and Thirty Four Thousand only) towards full compensation along with interest @6% per annum from the date of filing of the instant case till full and final realization subject to payment of Court Fees upon the entire amount. The claimant is directed to pay the Deficit Court Fees positively within thirty days from this date. The OP No. 2 Insurance Company is directed to pay the above compensation amount along with interest at the aforesaid rate to the claimant by issuing an account payee cheque in the name of the claimant, through this Tribunal positively within sixty days from this date in default the claimant would be at liberty to execute the order in accordance with law. The claim case is thus disposed of.'

The appellant/claimant being aggrieved by the quantum of compensation awarded by the Learned Trial Judge has come up with the instant appeal.

Heard Learned Advocate for the appellant/claimant and Learned Advocate for the respondent no-1 Bazaz Allianz General Insurance Company Ltd. perused the evidence adduced and materials on record.

Learned Advocate for the claimant/appellant submits that the Learned Trial Judge erred in considering the yearly income to be Rs. 2,40,000/-. Learned Advocate further submits that the Learned Trial Judge further erred in deducting 50% on account of personal expenses. Learned Advocate also submits that the compensation awarded should be enhanced.

Learned Advocate for the respondent no-1 Insurance Company submits that the claimant has furnished income tax return of only 2 years thus there is no error on the part of the Learned Trial Judge regarding award passed.

Upon perusing the evidence adduced it appears from evidence of P.W. 4 that income tax return was submitted on 07-8-2019 for assessment year 2019-2020, which is prior to the death of the victim and income tax return for the assessment year 2020-21 was submitted on 09-10-2021. Thus it is not a case where the first income tax return being filed after the death of the victim. Moreover the income of the 2nd year has reduced and the same is relied upon by the claimant. It further appears that accounts were also maintained and submitted with income tax return. Thus the Income Tax Return cannot be viewed with suspicion, when officer of the Income Tax Department is examined.

Thus the gross income should be considered as Rs. 2,95,524/- per annum. The income tax of Rs. 948/-deducted brings the net income to Rs. 2,94,576/-. For convenience the annual income is considered as Rs. 2,94,500/-. Future prospect of 25% being Rs. 73,625/- added brings the total annual income to be Rs. 3,68,125/- 1/3rd on account of personal expenses being Rs. 1,22,341/- upon deducted annual dependency loss comes to Rs. 2,45,784/-. By applying the multiplier of 13 total dependency loss comes to Rs. 31,95,192/-. Further the claimant is entitled to Rs. 70,000/- on account of General Damages. Thus total compensation comes to Rs. 32,65,192/- and the same is taken as Rs. 32,65,200/- being nearest figure, which in the opinion of this Court is just and reasonable compensation.

Hence this Appeal FMA-No-1766 of 2025 stands disposed. Judgment and Award dated 30th July 2025 stands modified to the extent that the claimant/appellant is entitled to Rs. 32,65,200/- along with interest @6% per annum from date of filing of claim case till today. The respondent no-1 Bazaz Allianz General Insurance Company Ltd. shall deposit before Registrar General High Court Calcutta Rs. 32,65,200/- along with interest 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. Claimant/appellant will be entitled to withdraw the compensation amount 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.)