

05.03.2026

Sl. No.: 23

Court No.9

BM

FMA 15 of 2026

ARATI DHARA & ORS.

VS

THE ORIENTAL INSURANCE CO. LTD. & ANR

Mr. Jayanta Banerjee

... for the appellants/claimants

Mr. Rajdeep Bhattacharyya

... for the respondents/Insurance Company

1. By consent of the parties, the matter is taken up for hearing.

2. The appellant before this court was a claimant in a case under Section 163A of the Motor Vehicle Act and is aggrieved by the Judgement and Award dated 11th April, 2013 passed in MACC No.33 of 2010.

3. The case of the appellants/claimants may be summed up thus:-

“ On 22.08.2009 at about 3AM while the deceased was proceeding towards Dignagar from Bagdia bazaar i.e. Krishnagar side from Kolkata side by a cycle near Bagdia bazaar, the offending vehicle bearing no.:WB-52A/5937 Ambassador car running at a very high and excessive speed proceeding towards same direction lost control and dashed behind the cycle as well as the cyclist as a result of which, the cyclist was thrown on the road causing serious multiple injuries. He was immediately taken to Nadia District Hospital where he succumbed to his injuries.

The accident was due to rash and negligent driving of the aforesaid Ambassador car by the Driver.

The complaint case lodged before Police authority and the case was instituted under Section 279/304A of the IPC.”

4. Pursuant to the filing of this case, notice was issued upon the Insurance Company and the vehicle owner. The Insurance Company contested the case by filing written objection. The learned Trial Judge by Judgement and Award dated 11th April, 2013 disposed of the claim case by observing and directing as follows:-

“ Hence, it is

o r d e r e d

that the M.A.C Case No.33 of 2010 is allowed in part on contest against the O.P No.2 The Oriental Insurance Company Limited and exparte against the O.P. No.1, owner of the vehicle. The petitioner do get compensation of Rs.2,49,000/-(Rupees Two Lac Forty Nine Thousand) from the O.P No.2 The Oriental Insurance Company Ltd.

The O.P No.2 The Oriental Insurance Company is directed to make such payment by issuing account payee cheque of Rs.99,000/-(Rupees nine-nine thousand) in favour of the petitioner no.1 Arati Dhara and account payee cheque of Rs.50,000/-(Rupees fifty thousand each in favour of the petitioner no.2 Prosen

Dhara, petitioner no.3 Sanjoy Dhara and petitioner no.4 Jayanta Dhara respectively.

The O.P No.2 The Oriental Insurance Co. Ltd. is further directed to make such payment within 15 (fifteen) days from the date of receipt of this order, failing which the petitioners will be entitled to an interest @9% per annum from the O.P No.2 till realisation of the entire amount of compensation.

Let a copy of this judgement be handed over to the learned lawyer for the Insurance Company at once for compliance of the order.”

5. The claimants/appellants being aggrieved by the Judgement and Award passed by the learned trial Judge have come up with the instant appeal.

6. Heard the Learned Advocate for the appellant and the Learned Advocate for the respondent no.1 Insurance Company.

7. Perused the materials on record.

8. Learned Advocate for the appellant submits that the learned trial Judge awarded inadequate compensation and has not arrived at compensation by taking the monthly income which ought to have been taken.

9. Learned Advocate further submits that as per Section 164 of the Motor Vehicle Act, 1988 which is the beneficial legislation, the compensation amount should be Rs.5 lacs in a case under Section 163A of the Motor

Vehicle Act. Learned Advocate for the Insurance Company disputes the submission of the Learned Advocate for the appellant.

10. Upon hearing the Learned Advocate and considering the facts of the case and the provision contained in Section 164 of the Motor Vehicle Act, 1988 which is a beneficial legislation. This Court is of the view that as per Section 164 of the statute, the appellants/claimants are entitled to Rs.5 lac compensation on the death of the victim.

11. Hence, this appeal stands disposed of. The Judgement and Award dated 11.04.2023 passed by the learned District Judge, Nadia in MAC Case No.33 of 2010 stands modified to the extent that the appellants/claimants are entitled to compensation of Rs.5 lacs along with interest @6% per annum from the date of filing of the claim case till today.

12. The respondent no.1 Oriental Insurance Company Limited shall deposit before the learned Registrar General, High Court, Calcutta Rs.5 lac along with interest @6% per annum from the date of filing of the claim case till today. Such deposit shall be made within eight weeks from the date of communication of this order. However, it is made clear that if the compensation awarded by the learned trial Judge is already paid or deposited the balance amount shall be deposited.

13. The appellants/claimants will be entitled to withdraw the deposit upon compliance of the necessary formalities.
14. The appeal stands disposed of.
15. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Biswaroop Chowdhury, J.)