

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

Present:

The Hon'ble Justice Biswaroop Chowdhury

**F.M.A. 1502 of 2024
IA NO:CAN 3 of 2025**

National Insurance Company Limited

VERSUS

Md. Asgar Ali @ Asgar Laskar & Anr.

With

COT 3 of 2025

Md. Asgar Ali @ Asgar Laskar

VERSUS

National Insurance Company Limited & Anr.

For the appellant/insurance company
in FMA 1502 of 2024 and
respondent/claimants no.1 in COT 3
of 2025:

For the respondents in FMA 1502 of
2024 and appellant/claimants in COT
3 of 2025:

Mrs. Sucharita Paul, Adv.

Mr. J.K. Mandal, Adv.

Mr. Anup Kr. Bag, Adv.

Mr. Sayantan Rakshit, Adv.

Last Heard on: February 17, 2026

Judgment on: April 28, 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 25-07-2024 passed by Learned Judge Bench XIII. City Civil Court Calcutta in MAC case No-16 of 2013. The claimant/respondent no-1 being also aggrieved by the Judgment and Award passed by Learned Trial Judge has filed a cross objection being COT. No-3 of 2025. The case of the claimant/respondent no-1 before the Learned Trial Court may be summed up thus;

On 4-10-2012 at about 23.15 hrs the driver of the offending vehicle vide registration No-CG-05B/6453 (Lorry) was proceeding along KP Road and the driver of another vehicle bearing No. WB-03A/5145 was also proceeding along KP Road with number of passengers on it. Thereafter the driver of the offending vehicle vide registration No. CG-05B/6453 (Lorry) drove the same at a high speed in a rash and negligent manner endangering human life and safety and dashed and collided with vehicle ie. TATA-407 bearing No. WB-03A/5145 near Fly over. As a result of which the passenger of vehicle No. WB-03A/5145 sustained serious injury and they were taken to SSKM Hospital and from there the respondent no-1/claimant was taken to Desun Hospital and Heart Institute.

The accident occurred solely due to rash and negligent driving of the driver of the Truck vide Regd. No- CG-05B/6453 (Lorry). The victim Asgar Ali was an auto driver and he used to earn Rs. 6,000/- per month and due to accident he became permanently disabled.

Pursuant to filing of this case notice was issued upon the opposite parties. Opposite party owner of vehicle C G 05B/6453. (Lorry) did not appear and contest the case. Opposite Party National Insurance Company Limited filed written statement and contested the case. ISSUES were framed and evidence was adduced.

The 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 MACC case Being No. 16 of 2013 be and the same is allowed on contest against O.P. No. 2 i.e. National Insurance Company Limited and without any cost to O.P. No. 1.

The Claimant/Appellant namely Md. Asgar Ali alias Asgar Laskar is entitled to get Rs. 11,56,600/- (Rupees Eleven Lakhs Fifty Six Thousand and Six Hundred) as award of compensation along with interest @ 7.5% per annum from the date of filing of the claim case excluding the period on and from March, 2020 to February, 2022 (Corona Pandemic period) from O.P. No. 2 i.e. National Insurance Company Limited.

O.P. No. 2 i.e. National Insurance Company Limited is hereby directed to pay Rs. 11,56,600/- (Rupees Eleven Lakhs Fifty Six Thousand and Six Hundred)

to the Claimant/Applicant along with interest to the tune of 7.5% per annum from the date of filing of the claim case excluding the period on and from March, 2020 to February, 2022 (Corona Pandemic period) by account payee cheque within two months from the date of passing of this Judgment in default of which the O.P. No. 2 i.e. National Insurance Company Limited shall be liable to pay interest @4% per annum.

The Claimant/Appellant has paid Court Fees of Rs. 10,000/- and he is directed to pay deficit Court Fees of Rs. 1566/-.'

The appellant National Insurance Company Ltd. being aggrieved by the Judgment and Award passed by Learned Trial Court has come up with the instant appeal. The respondent no-1/claimant being also aggrieved by the Judgment and Award passed by the Learned Trial Judge has filed cross objection.

Heard Learned Advocate for the appellant and Learned Advocate for the respondent no-1. Perused the evidence adduced and materials on record.

Learned Advocate for the appellant submits that the case involves composite negligence and the Learned Trial Judge erred, in directing insurer of vehicle CG-05B/6453 (Lorry) to pay entire compensation when it is a case of composite negligence of vehicle No-WB-03A/5145 and vehicle No-CG-05B/6453 (Lorry) Learned Advocate further submits that the Learned Trial Judge erred in considering the monthly income of the victim/injured to be Rs.

6,000/- per month. Learned Advocate also submits that the compensation awarded should be reduced.

Learned Advocate for the claimant/respondent no-1 submits that the Learned Tribunal did not consider functional disability as 100% inspite of having 65% physical disability. Thus the compensation awarded should be enhanced.

The following decisions are relied upon by the Learned Advocates:

Khenyei VS New India Assurance Company Ltd. and Ors.

Reported in (2015) 9 SCC. 273.

ICICI Lombard General Insurance Company Ltd. VS Smt.Sabita Ghorai and ors.

2018(2) TAC. 747 (Cal).

TO. Anthony. VS Karvaran and others.

Reported in (2008) 3 SCC. P-748.

Jithendran VS New India Assurance Co. Ltd. and Anr.

Reported in 2021 SAR Online (SC)-613.

Raj Kumar Das VS United Insurance Company Ltd. and Anr.

FMA-No. 1291 of 2010.

High Court at Calcutta.

FMA No-1281 of 2024.

Oriental Insurance Co. Ltd. VS Mirja Raja Hossain.

High Court at Calcutta.

This Court has considered the facts of the case and the judicial decisions relied upon.

Upon perusal of the FIR it will appear that 3 vehicles namely CG005B/6453 the alleged offending vehicle WB-03A/5145 in which the injured/claimant was travelling and another unknown vehicle.

Although P.W. 3 eye witness deposed about rash and negligent driving by driver of vehicle C40-05B-6453 (Lorry) but such statement is not corroborated in F.I.R. In the FIR it is stated that there was rash and negligent driving by vehicle bearing no-CG-05B/6453 (Lorry), vehicle bearing no-WB-03A/5145 and an unknown vehicle. In the absence of charge sheet it cannot be concluded that accident took place solely due to rash and negligent driving by vehicle no. CG-05B/6453. Hence there is composite negligence of two vehicles which is apparent.

Now with regard to the quantum of compensation it appears from the evidence adduced by the claimant respondent no-1 that the claimant could not prove that his occupation was auto driver thus the Learned Court proceeded on the notional income of Rs. 6,000/- per month, without considering a specific

occupation. Thus there is no error with regard to the compensation awarded. However with regard to interest this Court is of the view that interest should be @6% per annum from date of filing of claim case till today.

Now the point for consideration is whether the case is bad for non joinder of necessary parties as the accident involves two vehicles. For this purpose enlightenment can be got from the decision of Khenei VS New India Assurance Company Limited reported in (2015) 9 SCC. 273.

In the said case Hon'ble Supreme Court observed as follows:

22.1 In case of composite negligence, the plaintiff/claimant is entitled to sue both or any of the joint tortfeasors and to recover the entire compensation as liability of joint tort feasers is joint and several.

22.2 In the case of composite negligence apportionment of compensation between two tortfeasors vis-à-vis the plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them.

22.3 In case all the joint tortfeasors have been impleaded and evidence is sufficient, it is open to the Court/Tribunal to determine inter se extent of composite negligence of the drivers.

However determination of the extent of negligence between the joint tortfeasors is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of the payment to the plaintiff/claimant to the extent it has satisfied the liability of the other. In case

both of them have been impleaded and the apportionment/intent of their negligence has been determined by the Court/Tribunal in the main case one joint tortfeasor can recover the amount from the other in the execution proceedings.

22.4 It would not be appropriate for the Court/Tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tortfeasors. In such a case impleaded joint tortfeasor should be left, in case he so desires, to sue the other joint tortfeasor in independent proceedings after passing of the decree or award.'

Thus considering the decision of the Hon'ble Supreme Court in the case of Khenyei VS New India Assurance Company Limited (supra) this Court is of the view that as owner of vehicle being WB-03A/5145 is not impleaded it would be just and reasonable to direct the appellant National Insurance Company Limited to satisfy the compensation amount awarded and then proceed to recover whole or part of the same in accordance with law, from the said vehicle owner.

Hence this Appeal FMA-1502 along with COT No. 03 of 2025 stands disposed. The Principal compensation awarded by the Learned Judge Bench XIII City Civil Court Calcutta in MAC Case No. 16 of 2013 is upheld. However with regard to interest the claimant/respondent is entitled to @6% interest per annum from the date of filing of claim case till today. The appellant Insurance Company shall pay the claimant/respondent no-1 Rs. 11,56,600/- along with

interest @6% per annum by depositing the same before Registrar General High Court at Calcutta 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 respondent no-1/claimant is permitted to withdraw compensation amount along with interest as observed above upon compliance of necessary formalities. The balance amount if any along with accrued interest be returned to the appellant National Insurance Company Limited.

The appellant upon depositing the compensation amount if not already deposited may proceed in accordance with Law against owner of vehicle being WB-03A/5145 or more vehicles if the said vehicle numbers appear from investigation report of Police Authority.

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.)