

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

Present:

The Hon'ble Justice Biswaroop Chowdhury

**F.M.A. 64 of 2025
*Kalpana Halder***

VERSUS

S.B.I General Insurance Company Limited

For the Appellant:

Mr. Jayanta Banerjee, Adv.

Mr. Sandip Bhandyopadhyay, Adv.

For the Respondent:

Ms. R. Basu Roy, Adv.

Mr. Argha Bhattacharjee, Adv.

Mr. Aniruddha Singh, Adv.

Last Heard on: March 12, 2026

Judgment on: April 23, 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 11-09-2024 passed by the Learned District Judge Nadia in MAC Case No. 370 of 2016.

The case of the appellant/claimant may be summed up thus;

On 05/10/2016 at about 9.00 hrs while the deceased was standing beside the wide road at Road Station in front of Sri Hari Seba Sangha in the twinkling of an eye the, offending vehicle bearing no. WB-41D/5499 truck coming from Nabadwip town running at a very high and excessive speed proceeding towards Krishnanagar side lost control and hit the deceased as a result of which he received grievous injuries. He was taken to Nadia Dist Hospital seeing his critical condition, he was referred to NRS Hospital, Kolkata but on the way to Kolkata he succumbed to injuries within half an hour at Badkulla, so the dead body was returned to Nadia Dist Hospital and the MO declared him brought dead. The autopsy over the dead body was held at Nadia Dist Hospital on 06/10/2016 bearing PM. No. 106/2016 in connection with Kotwali P.S. u/d Case No. 547/2016 dt. 06/10/16.

The accident was the result of rash and negligent driving of the Truck by its driver only. There was no negligence on the part of the deceased himself who was standing and waiting for the purpose of his business.

Pursuant to the filing of the case notice was issued upon the opposite party vehicle owner and opposite party Insurance Company. Opposite party vehicle owner did not appear to contest the case. Opposite party Insurance Company contested the case by filing written statement.

ISSUES were framed and evidence was adduced. Learned Trial Judge upon considering the evidence adduced and upon hearing the Learned

Advocates was pleased to dispose the claim case by observing and directing as follows:

Hence it is ORDERED that the instant MAC case under Section 166 of the Motor Vehicles Act 1988 is allowed ex-parte against the opposite party no-1/owner of the offending vehicle (TATA-407) and on contest against the opposite party no.2/Insurer of the offending vehicle (TATA-407) but in the facts and circumstances of the case without making any order as to costs.

The petitioners/claimants do hereby get an award of compensation amounting to Rs. 5,28,960/- (Rupees Five Lakh Twenty Eight Thousand Nine Hundred and Sixty only) in total plus an amount of interest to be calculated on this amount @6% per annum from the date of filing of this case i.e. on 16/12/2016 till the date of actual realization of the same.

The opposite party no. 2/the SBI General Insurance Company Limited is hereby directed to issue two account payee cheques amounting to Rs. 2,64,480/- (Rupees Two Lakh Sixty Four Thousand Four Hundred and Eighty only) each in favour of the petitioners/claimants plus an amount of interest to be calculated on the aforesaid cheque amounts @6% per annum from 16.12.2016 till the date of such payment within sixty days from the date of this award in default the entire amount shall carry interest @9% per annum from the date of this award till the date of actual realization of the entire amount.

The petitioners/claimants are directed to make payment of the balance/additional court fees if not paid, within a period of thirty days from the

date of this award and it is made clear that only after payment of the same the instant award shall become effective.'

The appellant/claimant being aggrieved by the Judgment and Award passed by the Learned Trial Court has come up with the instant appeal.

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

Learned Advocate for the appellant submits that the Learned Trial Judge erred in considering the notional income of the victim to be Rs. 3,300/- when the victim was a vegetable vendor. Learned Advocate further submits that the compensation awarded should be enhanced. Learned Advocate relies upon the following Judicial decision.

SMT. SARATHI BARMAN VS Reliance General Insurance Company Ltd.

Civil Appeal No. 2138 of 2026.

(Supreme Court of India).

Learned Advocate for the respondent no-1 submits that the appellants/claimants did not furnish any document with regard to the occupation that he was a vendor thus the Learned Trial Court did not commit any error by considering the notional income of the victim to be Rs. 3,300/- per month.

Upon perusing the evidence adduced it appears that P.W. 1 specifically stated that the victim who was her son used to deal in Green Vegetables at Krishnanagar Patra Market. This statement is accepted by the Learned Trial Court. However the Learned Trial Court refused to accept the income of Rs. 7,500/- as contended by the claimants due to non-furnishing of any documents with regard to said income. Further the decision relied upon by the claimant/appellant being. Jeyarani and Another VS Manager, Bajaj Allianz General Insurance Company Ltd. and Another cannot be applied as the decision related to Mason but this case relates to vegetable vendor.

It is to be remembered that when the claimants in motor accident claim case fails to prove both income and occupation Courts and Tribunals may proceed on the basis of notional income considering the price index. But where Courts and Tribunals are convinced about the occupation of the victim notional income cannot be general in nature but it has to be considered and decided with respect to the particular business or service.

In case a person/victim is employed on wages in a particular work the minimum rate of wages as fixed for the said occupation by Government Authority should be taken into consideration. In other case of small business or occupation where wages do not apply notional income with regard to the said occupation should be fixed on basis of some guess work or if there is some judicial decision on that issue by considering the said decision and above all

the income which in the opinion of the Court would be just and reasonable to presume.

In the case of Smt. Sarathi Barman (supra) the Hon'ble Supreme Court in the case of Vegetable vendor considered notional income as Rs. 9,000/-.

Considering the occupation of the victim and decision of the Hon'ble Supreme Court in the case of Smt. Sarathi Barman and the year when the accident took place it would be reasonable to consider the notional income of the victim to be Rs. 6,000/- per month. In the event notional income is Rs. 6,000/- per month, 40% should be added on account of future prospect. Thus total monthly income comes to Rs. 8,400/-. 50% should be deducted on account of personal expenses and the net monthly income comes to Rs. 4,200/-. The annual dependency loss comes to Rs. 50,400/-. The multiplier of 18 brings the total dependency loss to Rs. 9,07,200/-.

Further the appellants claimants are entitled to Rs. 40000/- each on account of filial consortium and Rs. 30,000/- of account of loss of estate and funeral expenses. Thus total compensation comes to Rs. 10,17,200/- by arithmetical calculation. However in the view of this Court Rs. 10,00,000/- (Rupees ten lakh) compensation is just and reasonable.

Hence this Appeal FMA-64 of 2025 stands disposed. The Judgment and Award dated 11-09-2024 passed by Learned District Judge Nadia in MAC Case No-370 of 2016 stands modified to the extent that the Appellants/claimants

are entitled to Rs. 10,00,000/- (Rupees ten lakh) from respondent no-1. SBI General Insurance Company Limited.

The respondent no-1 shall deposit before Registrar General High Court Calcutta Rs. 10,00,000/- (Rupees ten lakh) along with interest @6% p.a. from date of filing of the claim case till today. Such deposit shall be made within 8 weeks from the date of communication of this order. In the event compensation awarded by the Learned Trial Court is paid the balance amount be deposited.

The appellants will be 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.)