

**In the High Court at Calcutta  
In The Circuit Bench at Jalpaiguri  
Appellate Side**

**Present:**

**The Hon'ble Justice Biswaroop Chowdhury**

***FMA 63 of 2025***

**Rajlakshi @ Rajluxmi Saha & Ors.**

**Vs.**

**IFFCO-TOKIO General Insurance Company Ltd. & Anr.**

**For the Appellant** : Mr. Gobinda Saha, Adv.  
: Mr. Milan Chandra Laskar, Adv.  
: Ms. Srija Bhowmik, Adv.  
: Ms. Priyanka Dey, Adv.

**For the Respondent** : Mr. Pawan Gurung, Adv.  
: Mr. Abhisek Palit, Adv.

**Heard On** : **19.03.2026**

**Judgment On** : **23.03.2026**

**Biswaroop Chowdhury, J.**

The appellants before this Court were claimants in a case under Section 166 of the Motor Vehicles Act 1988 and is aggrieved by the Judgment and Award dated 24<sup>th</sup> day of August 2022 passed by Learned Additional District Judge 1<sup>st</sup> Court at Jalpaiguri in MAC Case No. 347 of 2017.

The case of the appellants/claimants before the Learned Trial Court may be summed up thus:

On 11/08/2017 at about 4.05 p.m. while the deceased “Aloke @ Alok Saha” was proceeding towards his residence from the side of Banarhat by one pick up van bearing No-WB-73X-1698 at that time near Tin Line, NH-3D under P.S. Banarhat Dist-Jalpaiguri one bus bearing no. WB-69-1008 coming at high speed from the opposite direction going on the wrong side dashed down the said pick up van and as a result the said deceased sustained serious injuries on his person. After the accident the said deceased was taken to Banarhat PHC where the said deceased succumbed to his injuries on the same day. Subsequently the P.M. was done at Jalpaiguri Sadar Hospital.

The deceased was a business man and used to earn a sum of Rs. 23,005/- (approx) per month from said business. The present petitioners were completely dependent upon the income of the said deceased. Due to sudden demise the present petitioners have suffered much loss pain shock and the suffering will continue for a long period.

The accident took place due to rash and negligent driving on the part of the driver of the offending vehicle bearing No-WB-69-1008 (Bus).

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 although filed written statement but thereafter did not contest the case Opposite Party Insurance Company filed written statement and also contested the case. Issues were framed and evidence was adduced.

Learned Trial Judge by Judgment and Award dated 24<sup>th</sup> August 2022 was pleased to dispose of the claim case by observing and directing as follows:

Hence it is ORDERED that the petition claiming compensation stands allowed on contest against the opposite party no-2/Insurance Company and ex-parte against the opposite party no. 1.

The petitioners are entitled to get compensation of Rs. 36,97,312/- (Rupees thirty-six lakhs ninety-seven thousand three hundred and twelve only).

Insurance Company is directed to apportion the above-mentioned amount in favour of two petitioners i.e. to petitioner no. 1 Rajlakshi @ Rajluxmi Saha. Rs. 15,00,000/- petitioner no. 2/Piyali Podder @ Saha – Rs. 15,00,000/- and minor petitioner no. 3/Aradhya Saha-6,97,312/-.

Petitioners are further entitled to get interest on their amount @6% per annum. Said interest is awarded from the date of filing of this case i.e. on and from 13-09-2017.

The Insurance Company is directed to make said payment by three A/C Payee cheques in favour of the petitioners within 60 days from the date of this order i.d. OP No-1/Insurance Co. would be liable to make payment of interest @7.5% instead of 6% after the lapse of said period till the date of realization.

Petitioner no. 2/Piyali Podder @ Saha is further directed to deposit the amount awarded in favour of petitioner no.3 in a fixed deposit scheme that too

in a nationalized bank or post office (other than any co-operative bank) till she attains majority.

This Court further directs the petitioner no.2/Piyali Poddar @ Saha to deposit the certificate of fixed deposit to this Court then only cheques issues in favour of petitioner no-1 and 2 be disbursed.

Office to take note of the same very cautiously.

Petitioners are at liberty to set the award on execution after the lapse of 60 days hereof.'

The appellants/claimants 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 appellants and Learned Advocate for the Respondent no-1 Iffco-Tokio Gen. Ins Com. Ltd. Perused the evidence adduced and materials on record.

Learned Advocate for the appellants/claimants submits that the Learned Trial Judge erred in proceeding to ascertain compensation on the basis of average annual income of last three years. Learned Advocate further submits that compensation ought to have been awarded on the basis of last year income prior to the death of the victim. Learned Advocate also submits that the compensation awarded should be enhanced.

Learned Advocate relies upon the following Judicial decision.

**Shashi Kala and others VS Gangalakshmamma and anr.**

Reported in 2015 ACJ 1239.

Learned Advocate for the Respondent no-1 submits that the business of the victim was seasonal business and not permanent one thus the Learned Trial Judge did not commit any error in proceeding on the average income of the last 3 years.

In the instant case the victim was engaged in business, and in any business, income depends on the profit earned in a particular year, which may increase or decrease in the following year, which is not applicable in case of a person in service and earning salary.

In the case of Shahikala and other (supra) the Hon'ble Supreme Court observed as follows:

*'10. The deceased was aged 45 years and was doing transport business. Though the claimants have filed income tax returns for two assessment years 2005-06 and 2006-07, as per the income tax returns for the year 2006-07, the income of the assessee was Rs. 2,02,911. Tribunal did not take the income of the deceased for the assessment year 2006-07 on the ground that only the photocopy was filed and the claimants have failed to examine income tax authorities to prove the same. Instead of taking the income of the deceased as per the assessment year 2006-07, the High Court has chosen to calculate the average of the income for two assessment years 2005-06 and 2006-07.*

*Considering the age of the deceased and the nature of business he was doing, in my considered view, the High Court was not justified in so taking the average of income of the two assessment years. The deceased was aged 45 years and doing business. Admittedly, he was also owning agricultural lands. Even though agricultural income was not shown in the income tax return, it emerges from the evidence that the deceased was also doing agricultural work.'*

Upon considering the Judicial decision relied upon this Court is of the view that it would be just and proper to proceed on the victims income of the last year prior to his death.

In the event last annual income is taken into consideration it is Rs. 2,54,998/- 40%. Future prospect added to annual income the net annual income comes to Rs. 356,993/-. 1/3<sup>rd</sup> (Rs. 18,998) is deducted on account of personal expenses. Thus annual dependency loss comes to Rs. 2,37,995/-. By applying the multiplier of 16, total dependency loss comes to Rs. 38,07,920/-. Further the appellants claimants are entitled to compensation of Rs. 70,000/- on account of General Damages. Thus the total compensation comes to Rs. 38,77,920/- by arithmetical calculation. However, this Court is of the View that compensation of Rs. 39 lakh is just a reasonable.

Hence this appeal FMA 63/2025 stands disposed. The Judgment and Award dated 24<sup>th</sup> August 2022 passed by Learned Additional District Judge First Court at Jalpaiguri in MAC case no. 347 of 2017 stands modified to the extent that the appellant/claimant will be entitled to compensation of Rs. 39

lakh from respondent no. 1 Iffco-Tokio General Insurance Company Ltd, along with interest @6 per cent per annum from the date of filing of claim case till today. The respondent no. 1 Insurance Company shall deposit Rs. 39 lakh along with interest @6 per cent per annum from the date of filing of the claim case till today. In the event the amount of compensation awarded by the Learned Trial Court is already deposited the balance amount shall be deposited. Such deposit shall be made before Registrar Circuit Bench (Jalpaiguri) High Court Calcutta within 8 weeks from the date of communication of this Order. The appellants/claimants will be entitled to withdraw the compensation amount upon compliance of necessary formalities.

Urgent certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

**(Biswaroop Chowdhury, J.)**