

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

Present:

The Hon'ble Justice Biswaroop Chowdhury

FMA 26 of 2024

Tripati Roy & Ors.

Vs.

National Insurance Co. Ltd. & Anr.

For the Petitioner

: Mr. Subir Banerjee, Adv.
: Mr. Abhijit Raha, Adv.
: Ms. Arunima Goon, Adv.
: Mr. Joyprakash Roy, Adv.

For the Respondent Bank

: Ms. Supriya Singh, Adv.
: Ms. Susmita Ghosh, Adv.

Heard On : 25.03.2026

Judgment On : 27.03.2026

Biswaroop Chowdhury, J.

The Appellant 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 06-07-2023 passed by Learned Additional District Judge Fast Track 1st Court, Jalpaiguri in MAC case No. 225 of 2017 [Tripati Roy and Ors- VS The National Insurance Company Ltd. and Anr.

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

On 29-05-2017 at about 12.00 P.M. when the victim Atul Chandra Roy (since deceased) was standing beside the road near Sanyashittan Mandir at that time one Bus being No. WB-57B-1778 was coming with a high speed rash and negligent manner and dashed him from his back side on Pucca road, near Sanyashitthan Mandir, under P.S. Matigara (NBMC. OP) District-Darjeling. As a result he sustained grievous injuries on his person and immediately shifted to the NBMC and Hospital Siliguri but the attending doctor declared him dead.

The accident occurred due to rash and negligent driving on the part of the driver of the offending vehicle being No. WB-57B-1778 (Bus).

The deceased was the only bread earner of his family and due to his sudden demise all the petitioners have been suffering much loss pain and shock and it will continue for a long period.

Pursuant to the filing of the claim case notice was issued upon the opposite parties. Opposite party vehicle owner did not contest the case, however opposite party National Insurance Company Ltd. contested the case. ISSUES were framed and evidence was adduced By Judgment and Award dated 06.07.2023 Learned Trial Judge disposed the claim case by observing and directing as follows:

Hence, it is ORDERED that the instant case filed u/s. 166 of Motor Vehicles Act 1988 is allowed on contest as against the opposite party No-2/National Insurance Company Ltd. and ex-parte against the Opp.No. 1/owner.

The petitioner/claimants Tripathi Roy, Sbamamayi Roy and Manab Roy do get an award of Rs. 8,50,000/- (Eight Lakhs fifty thousand only) in total in this case in equal share.

The opposite party no-2/National Insurance Company Ltd. is directed to pay the awarded amount to the above named petitioners/claimants, within two months from the date of this order and in default, OPP No. 2 will be liable to pay the award with interest @6% from the date of filing of the application till recovery. If the Opp. Party No.2 fails to comply the Order the petitioners/claimants shall be at liberty to put the award in execution in accordance with law.

However considering the entire aspects this Tribunal passes no order as to cost.”

The appellants/claimants being aggrieved by the judgment and award passed by the Learned Trial Judge has come up with the instant appeal.

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 Learned Trial Judge erred in proceeding to ascertain compensation on the basis of notional income of Rs. 6,000/- instead of Rs. 9,000/-. Learned Advocate further submits that the minimum wages as per notification dated 01-07-14 issued by Labour Commissionerate Labour Department in non-municipal/Panchayat area was

Rs. 7018/- per month which definitely has increased in course of time. Learned Advocate also submits that the compensation awarded should be enhanced.

Learned Advocate relies upon the following judicial decision:-

Latika Paul and ors. VS Oriental Insurance Company Limited and Anr.

FMA-27 of 2024.

Learned Advocate for the respondent no-1 Insurance Company submits that the claimants/appellants appellants have neither proved the occupation of the victim nor his income thus the Learned Trial Judge rightly proceeded on the notional income of Rs. 6,000/- per month.

Upon perusal of the evidence adduced it will appear that P.W. 1 in his examination in chief has stated that the victim was by profession an employee under M/S Birendra Nath Sarkar Vill Baravita P.O. and P.S. Rajganj Dist Jalpaiguri and private tutor and he used to earn Rs. 9,000/- per month.

In the cross examination although the suggestion was put regarding income of the victim but no suggestion was put regarding the victim being an employee under M/S. Birendra Nath Sarkar and a private tutor. The specific particulars mentioned about the employment of the victim gives ground to believe that the victim was an employee under M/S. Birendra Nath Sarkar. Although the claimants/appellants could not prove the income of the victim, but considering the notification under Minimum Wages Act in the year 2014

which is Rs. 7018/-, the age of the victim and the number of dependants it would be reasonable to consider the notional income of the victim to be Rs. 8,000/- per month.

Thus if the monthly income is considered as Rs. 8,000/- per month annual income comes to Rs. 96,000/-. Future prospect of 25% being added net annual income comes to Rs. 1,20,000/- $\frac{1}{3}$ rd should be deducted on account of personal expenses, and annual dependency loss comes to Rs. 80,000/-. The multiplier of 13 applied the total dependency loss comes to Rs. 10,40,000/- further the claimants/appellants are entitled to Rs. 70,000/- on account of loss of estate funeral expenses and loss of consortium. Thus total compensation comes to Rs. 11,10,000/- by arithmetical calculation. However this Court is of the view that compensation of Rs. 11,00,000/- is just and reasonable.

Hence this Appeal FMA 26 of 2024 stands disposed. The Judgment and Award dated 06.07.2023 passed by Learned Additional District Judge Fast Track 1st Court Jalpaiguri in MAC Case No-225/2017 stands modified to the extend that the appellants are entitled to compensation of Rs. 11,00,000/- along with interest @6% per annum from the date of filing of claim case till today.

The respondent no-1 National Insurance Company Limited shall deposit before Registrar High Court Calcutta Circuit Bench at Jalpaiguri Compensation amount along with interest within 8 weeks from the date of communication of

this order. In the event the compensation amount awarded by the Learned Trial Court is paid or deposited balance amount be deposited.

The appellants/claimants will be entitled to withdraw the compensation amount including accrued interest if any upon compliance of the 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.)