

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

F.M.A. 50 of 2025

Smt. Sikha Saha & Another

Vs.

Partha Das & Ors.

With

F.M.A.T. (MV)/79/2024

The National Insurance Company Limited

Vs.

Smt. Sikha Saha & Ors.

With

CAN 1 of 2025

CAN 2 of 2025

**For the appellants in
F.M.A. 50 of 2025 and
for the respondent in
F.M.A.T. (MV)/79/2024**

**: Mr. Uday Sankar Sarkar
Mr. Nabanit Sengupta**

**For Oriental Insurance
Company Limited in
FMA 50 of 2025 and
Defendant no. 5 in
FMAT (MV)/79/2024**

: Mr. Bipul Ranjan Bhattacharjee

**For National Insurance
Company**

: Mr. Supriya Singh

Heard & Judgment on

: January 6, 2026

Debangsu Basak, J.:-

1. CAN 1 of 2025 is an application seeking condonation of delay of 272 days
in preferring the appeal being F.M.A.T. (MV)/79 of 2024.

2. For the ends of justice, the causes shown in the application are accepted as sufficient.
3. Delay in making and preferring the appeal is condoned.
4. CAN 1 of 2025 is, therefore, allowed.
5. Two appeals are taken up for analogous hearing as they emanate out of the same impugned judgment and order.
6. By the impugned judgment and order, learned Judge allowed a motor accident claim.
7. Of the two appeals, F.M.A. 50 of 2025 is at the behest of the heirs and legal representatives of the deceased victim. F.M.A.T. (MV)/79/2024 is at the behest of an Insurance Company.
8. Evidence led before the learned Trial Judge establishes that there was collusion between an Alto and a truck. The appellant in F.M.A.T. (MV)/79/2024 is the Insurance Company in respect of the Alto vehicle.
9. The heirs and legal representatives of the deceased victim claim that the monthly income of the deceased was taken at Rs.5,000/- per month while it should be Rs.6,338/- in terms of the minimum wage for an unskilled labour as recognized by the State of West Bengal. It is contended that the deceased victim was sitting inside the Alto vehicle while he met with the accident. Taking such monthly income of the deceased victim, the

compensation should be enhanced. Moreover, the learned Trial Judge erred in not allowing 25% as future prospect.

10. Learned advocate appearing for the appellant, Insurance Company submits that, the accident occurred due to rash and negligent driving of the truck. Charge sheet was against the driver of the truck. She contends that the evidence stated that the accident occurred due to the rash and negligent driving of the truck. Consequently, according to her, the Insurance Company of the Alto vehicle is not liable.
11. The other Insurance Company is also represented.
12. There are two issues to be considered in the two appeals. One is the quantum of compensation awarded and the other is whether or not the Insurance Company of the Alto vehicle is liable.
13. So far as the quantum of compensation is concerned, I find that the learned Trial Judge proceeded on the basis that the deceased victim was an unskilled labour. Learned Trial Judge took Rs.5,000/- per month as the income of the deceased victim.
14. However, the Circular dated June 22, 2018 of the Government of West Bengal states that Rs.6,338/- would be the minimum wages per month in respect of the unskilled labour.

15. There is no material on record to establish why Rs.5,000/- per month was taken as the income of the deceased victim. Rather the Circular of the State of West Bengal fixing the minimum wages of the unskilled labour should be taken into consideration.
16. In such circumstances, the monthly income of the deceased victim is enhanced to Rs.6,338/- per month in terms of the Circular of the State of West Bengal dated June 22, 2018.
17. Learned Trial Judge erred in not granting future prospect which is a component available to a victim. Therefore, future prospect pegged at 25% is also awarded.
18. The compensation, therefore, receivable be calculated as follows:-

Head of the Item	Compensation Assessed by the Ld. Tribunal	Assessment of the Just compensation
Monthly Income of the deceased at the time of death	Rs. 5,000/-	Rs. 6338/-
Annual Income	Rs. 60,000/-	Rs. 76,056/-

Multiplicant=Annual Income– x 14 (Multiplier)	Rs. 8,40,000/-	Rs. 10,64,784/-
Less 1/3 rd of the amount for personal living expenses	Rs. 2,80,000/-	Rs. 3,54,928/-
=	Rs. 5,60,000/-	Rs. 7,09,856/-
Add Future Prospects @ 25%	Nil	Rs. 1,77,464/-
Add General Damage	Rs. 70,000/-	Rs. 70,000/-
Total Compensation	Rs. 6,15,000/-	Rs. 9,57,320/-

19. Interest @ 6% to be paid upon the enhanced compensation amount from the date of claim application, i.e. 18.09.2019, till the realization of the amount.

20. The enhanced awarded amount should be distributed between the claimants in the following manner :-

1st claimant's share – $1/3^{\text{rd}} + 1/36$

2nd claimant's share – $1/3^{\text{rd}} + 1/36$

3rd claimant's share – $1/18^{\text{th}}$

4th claimant's share – $1/18^{\text{th}}$

5th claimant's share – 1/18th

6th claimant's share – 1/18th

7th claimant's share – 1/18th

21. So far as the liability of the Insurance Company of the Alto is concerned, it is an admitted fact that the Alto vehicle was also insured.

22. It is established at the trial that the deceased was a passenger in that Alto vehicle. Deceased expired due to the injury suffered in the collusion between the Alto vehicle and the truck. That passenger of an Alto vehicle is not insured, is not established at the trial. Therefore, the Insurance Company of the Alto vehicle is also responsible.

23. The contention, therefore, that the truck was guilty of rash and negligent driving in the facts of the present case is not relevant.

24. Learned Trial Judge directed division of the liability of 50-50 basis between two Insurance Companies.

25. In my view, the same is incorrect. Both the Insurance Companies are jointly and severally liable.

26. Impugned judgment and order of decree is modified to that extent.

27. Learned Trial Judge granted interest @6% p.a.

28. The Insurance Company involved will deposit the quantum assessed within four weeks from date with the Registrar, Jalpaiguri Circuit Bench, Calcutta High Court.

29. It is clarified that the interest awarded by the learned Trial Judge will be applicable for the enhanced amount from the date of the application till the date of the deposit.

30. F.M.A. 50 of 2025 and F.M.A.T. (MV)/79 of 2024 and the connected applications are disposed of.

(Debangsu Basak, J.)

S.D./Dd