



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

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 752 of 2025

National Insurance Company Limited

VERSUS

Aapel Sekh & Anr.

With

C.O.T. 125 of 2025

Aapel Sekh

VERSUS

National Insurance Company Limited & Anr.

For the appellant in FMA 752 of 2025
and respondent no.1 in COT 125 of
2025:

Mr. Deb Narayan Ray, Adv.

For the respondent/claimant in FMA
752 of 2025 and appellant in COT 125
of 2025:

Mr. Krishanu Banik, Adv.

Mr. Tathagata Banik, Adv.

Last Heard on: August 06, 2026

Judgment on: August 14, 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 15th January 2025 passed by Learned Additional District Judge Fast Track Court Suri Birbhum in MAC Case No-247/2019.

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

On 07.02.2018 the victim namely Aapel Sekh along with Mofijul Sekh and Chanchal Sekh were proceeding towards Deucha side from their village Somthsal on fact through Paragarh Moregram highway maintaining left side of the road and by this manner at about 6.00 p.m. (evening) when they came near Daucha Punjabi Bridge on that road at that time the offending vehicle being No. WB 11B-1238 which was proceeding towards Suri side, i.e. towards the same direction with the victim, dashed the back side of the victim and other two persons and all of them sustained grievous injury in their respective person and then and there they were shifted to Suri Sadar Hospital and thereafter he was shifted to Burdwan Medical College Hospital and lastly he was shifted to CMC Vellore where various Kinds of treatment and operation were held. Mafizul Sekh who was also shifted to Suri hospital expired during treatment.

The driver of the offending vehicle being No. WB-11B-1238 was driving the vehicle at high and excessive speed and due to negligence of driver the accident took place.



Pursuant to filing of the case notice was issued upon the opposite parties. Opposite party vehicle owner did not 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 for the parties was pleased to dispose of the claim case by observing and directing as follows:-

Hence it is ORDERED that the claim petition U/S-166 of the MV Act is allowed on contest against OP. No-2 National Insurance Co. Ltd. and allowed ex-parte against OP No. 1 without costs.

The OP No. 1 and OP No. 2 are jointly and severally liable to pay the awarded amount to the petitioner.

Now the petitioner is entitled to get Rs. 9,52,288/- (rupees Nine Lakhs Fifty Two Thousand Two Hundred Eighty Eight) only along with interest @6% p.a. from the date of filing of this application i.e. from 31-08-2019 till realization of the awarded amount.

The OP. No. 2 (National Insurance Co. Ltd.) is directed to pay the awarded amount of Rs. 9,52,288/- (Rupees Nine Lakhs Fifty Two Thousand Two Hundred Eighty Eight) only with accrued interest as mentioned above by issuing an account payee cheque in the name of the claimant viz. Apel Sekh within thirty days from the date of delivery of Judgment failing which the OP



No. 2 will have to pay further interest @10% p.a. upon the awarded amount from the date of expiry of one month till realization of the awarded amount. Failing which the petitioner is at liberty to execute the same in accordance with law.

The appellant National Insurance Company Ltd. being aggrieved by the Judgment and Award passed by Learned Trial Judge has come up with the instant appeal. The respondent/claimed being also aggrieved by the quantum of compensation awarded by the Learned Trial Judge has filed cross-objection.

Heard Learned Advocate for the appellant and Learned Advocate for the respondent/claimant. Perused the evidence adduced and materials on record.

Learned Advocate for the appellant submits that the FIR was lodged after 6 days which makes the case of the claimant doubtful. Learned Advocate further submits that in the claim petition the monthly income was stated to be Rs. 3,000/- per month but by amendment the monthly income was stated to be Rs. 6,000/- thus Learned Trial Judge erred in considering monthly income to be Rs. 4000/-. Learned Advocate also submits that the compensation awarded on account of pain and suffering and loss of amenities is excessive.

Learned Advocate for the respondent/claimant submits delay in lodging the FIR is explained by FIR maker thus such delay is not fatal. Learned Advocate further submits that by virtue of amendment the claimant stated his monthly income to be Rs. 6,000/- thus the Learned Trial Judge ought to have



considered monthly income as Rs. 6,000/-. Learned Advocate also submits that compensation awarded should be enhanced.

Learned Advocate relies upon the following judicial decision:-

Ramchanrappa VS Manager Royal Sundaram Allian Co. Ltd.

Reported in 2011 ACJ (4) – 2436(SC)

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

FMA-1291 of 2010.

High Court at Calcutta.

The Oriental Insurance Co. Ltd. VS Mirya Hossain and Anr.

FMA-1281 of 2024.

(High Court at Calcutta).

With regard to the first submission of learned Advocate for the appellant with regard to delay in lodging FIR, it appears from the FIR itself that the FIR maker is father of one of the victim of accident who died, and the delay is also explained in FIR thus delay in lodging FIR is not fatal. With regard to the monthly income of the victim as the victim is not a Salaried person nor daily rated labour but self employed and did work taking contract with the truck owner by carrying and loading stone chips in the truck and as monthly income of business may vary, considering the age of the claimant it would be



reasonable to consider the monthly income to be Rs. 5,000/-. Although it is submitted by learned Advocate for the claimant/respondent that the claimant is engaged in laborious work thus 100% disability should be considered but considering the evidence of P.W. 2. Member of Medical Board that the patient suffers from post traumatic stiffness right knee and shortening right Lower Limb and that the patient cannot do laborious job for shortening of leg and stiffness, and it is not a case of amputation of leg or that claimant cannot do any work treating disablement of 50% would be reasonable.

Thus if monthly income is considered as Rs. 5,000/-. Future prospect of 40% of income added total monthly income comes to Rs. 7,000/-. Total Annual income comes to Rs. 84,000/-. By applying the multiplier of 17 total loss of income comes to 14,28,000/- Considering 50% disability loss of income comes to Rs. 7,14,000/-. Further the claimant is entitled to medical expenses of Rs. 45,328/- pain and sufferings Rs. 200,000/-. Future Medical Expenses Rs. 100,000/- Loss of Limb Rs. 100,000/-. Loss of amenities Rs. 100,000/- and for expectation of life Rs. 50,000/-. Thus total compensation comes to Rs. 13,09,328/- by arithmetical calculations. However this Court is of the view compensation of Rs. 13,00,000/- is just and reasonable.

Hence this Appeal FMA-752 of 2025 along with COT 125 of 2025 stands disposed. The Judgment and Award dated 15th January 2025 passed by Learned Additional District Judge Fast Track Court Suri Birbhum in MAC-247 of 2019 stands modified to the extent that the claimant/respondent is entitled



to Rs. 13,00,000/- from appellant National Insurance Company Limited along with interest @6% per annum from date of filing claim case till today.

The appellant National Insurance Company Limited shall deposit Rs. 13,00,000/- along with interest @6% p.a. before Registrar General High Court at Calcutta. Such deposit shall be made within 8 weeks from the date of communication of this order. The respondent/claimant will be entitled to withdraw the compensation upon compliance of necessary formalities.

Deficit Court fees be paid within 4 weeks.

TCR be returned by special Messenger Cost to be deposited by Respondent/claimant within one week.

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.)