

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

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 955 of 2024

With

IA NO: CAN/2/2024, CAN/3/2024

National Insurance Co. Ltd.

VERSUS

Dipa Singh & Ors.

With

C.O.T. 115 of 2024

Dipa Singh & Ors.

VERSUS

National Insurance Co. Ltd.

For the Appellant/Insurance Co.:

Mr. Saibalendu Bhowmik, Adv.

For the Respondents/Claimants:

Mr. Jayanta Banerjee, Adv.
Mr. Sandip Bandypadhyay, Adv.
Mrs. Ruxmini Basu Roy, Adv.
Mr. Argha Bhattacharjee, Adv.

Last Heard on: August 03, 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 21-02-2024 passed by Learned Additional District Judge 5th Court Paschim Medinipur in MAC Case No.-25 of 2019.

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

On 20-10-2018 at about 2.05 AM (Night) over the Khajra Narayangarh Pitch Road near Malgoda more under P.S. Narayangarh, Dist-Paschim Medinipur while the victim deceased was travelling in the cabin of the offending vehicle No. WB-33C/1599 (Tata 407 Truck) as 'Khalasi' of the said vehicle which was proceeding from Markunda towards Narayangarh loaded with Boiler Chicken with excessive high speed endangering human life and safety to others rashly and negligently and lost control over the offending vehicle for which the said offending vehicle capsized by the side of the road as a result the victim deceased Rajendra Singh was run over under the said offending vehicle and died on the spot instantaneously.

The accident took place solely due to rash and negligent driving of the driver of the offending vehicle No. WB-33C/1599 (Tota 407 Truck).

Pursuant to the filing of the case notice was issued upon the opposite parties. Opposite party vehicle owner did not contest the case. However 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 of the claim case by observing and directing as follows;-

'Hence for ends of justice it is ORDERED. That the instant claim petition be and the same, is allowed on contest against Gautam Sarkar/OP 1 and the United India Insurance Co. Ltd./OP No.2.

The claimants/petitioners, namely Smt. Dipa Singh (Wife of the deceased)

2. Rajesh Singh and Rajdeep Singh (minor sons of the deceased) shall get compensation of Rs. 7,78,800/- (Rupees Seven Lakhs Seventy Eight Thousands Eight Hundred Only) along with interest @6.5% per annum since 25-01-2019 till realization of the amount.

The National Insurance Co. Ltd./OP No. 2 is directed to pay the compensation by issuing three account payee cheques to the tune of Rs. 2,59,600.00 (Rupees two Lacs Fifty Nine Thousand Six Hundred only) jointly along with interest @6.5% per annum since 24-01-2019 in the name of the claimants no-1. Smt. Dipa Singh, 2. Rajesh Singh and 3. Rajdeep Singh within 60 days from the date of this judgment.

The opposite party No-2 is directed to issue the said cheques as per the above order within two months from the date of this order in default he shall be liable to pay interest @9% per annum from the date of default till final realization of compensation amount'

The appellant/Insurance Company being aggrieved by the Judgment and Award passed by the Learned Trial Judge has come up with the instant appeal. The respondents/claimants being also aggrieved by the Judgment and Award passed by Learned Trial Judge has filed cross-objection.

Heard Learned Advocate for the appellant and Learned Advocate for the respondents/claimants. Perused the evidence adduced and materials on record.

Learned Advocate for the appellant submits that the victim was a Khalasi, and Khalasi was not covered under the policy. Learned Advocate further submits that as per charge sheet Police Authority mentioned passenger in vehicle and not Khalasi. Thus status of victim is disputed. Learned Advocate also submits that the Learned Trial Judge erred in considering the monthly income of Rs. 6,000/.

Learned Advocate relies upon the following judicial decisions:-

New India Assurance Co. Ltd. VS Asha Rani and others

Reported in (2003) 2 SCC P-223.

Ramashray Singh VS New India Assurance Company Ltd. and ors.

Reported in (2003) 10 SCC P-664.

National Insurance Co. Ltd. VS Anjana Shyam and ors.

Reported in 2007(5) Supreme 856.

Akula Narayana VS The Oriental Insurance Company Limited.

Reported in 2025 (8) Supreme 601.

Oriental Insurance Company Limited VS Premlata Shukla and ors.

Reported in (2007) 13 SCC. P-476.

Deepal Gurishbhai Soni and others VS United India Insurance Co. Ltd. Baroda

(2004) 5 SCC-385.

Learned Advocate for the claimants/respondents submits that no plea was taken in the written statement that Khalasi was not covered under the Policy and no evidence was adduced to prove the same. Learned Advocate further submits that the Learned Trial Judge erred in not considering monthly income of the deceased as Rs. 10,000/-. Learned Advocate also submits that the Learned Trial Judge ought to have considered future prospect at 25%.

The following decisions are relied upon by Learned Advocate for the claimant/respondent:-

Kirti and Anr. VS Oriental Insurance Company Ltd.

(2021) 2. SCC. 166.

Upon hearing the Learned Advocates and considering the facts of the case and the judicial decisions relied upon it is clear that an insurer can be

made liable to pay compensation only to those category of persons covered under the Policy. Thus in order to establish or deny the liability of particular categories of persons necessary pleadings should be made and evidence should be adduced. In the instant case although the vehicle owner in the written statement contended that the vehicle is covered under Insurance Policy but there is no such denial by the Insurance Company. Thus at this stage the plea that Khalasi not being covered under the policy cannot be taken. With regard to the submission of Learned Advocate for the appellant that in the charge sheet issued by the Police Authority it is not mentioned Khalasi of Vehicle but passenger of vehicle this Court is of the view that the word passenger is general term, thus by non-mentioning of word Khalasi in charge sheet is not fatal. Moreover the vehicle owner in his written statement has not denied the occupation of the victim and the vehicle owner is not examined by Insurance Company. Thus the fact that the victim being Khalasi is established.

Learned Trial Judge upon considering the evidence has rightly concluded about rash and negligent driving by driver of vehicle no. WB-33C/1559.

With regard to notional monthly income considering the fact that the claimants could not prove the income of the victim learned trial Judge considering the nature of occupation did not commit any error with regard to fixing notional income as Rs. 6,000/- per month and future prospect of 20%. However with regard to loss of consortium this Court is of the view awarding

compensation of Rs. 1,24,000/- is excessive. Thus it would be reasonable to reduce the compensation to Rs. 700,000/-.

Hence this Appeal FMA-955/2024 with COT No.-115 of 2024 stands disposed. Judgment and Award dated 21-02-2024 passed by Learned Additional District Judge 5th Court Paschim Medinipur in MAC Case No-25 of 2019 stands modified to the extent that the respondents/claimants are entitled to Rs. 700,000/- (Rupees seven lac) from the appellant National Insurance Company Limited. The appellant National Insurance Company Limited shall deposit Rs. 700,000/- along with interest @6% per annum from date of filing 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 Learned Trial Court is deposited no further deposit be made. The claimants/respondents will be entitled to withdraw the compensation upon compliance of necessary formalities. Balance amount be returned to the Appellant Insurance Company along with accrued interest if any.

TCR be sent back by Special Messenger cost to be put in by the respondents/claimants 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.)