



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

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 1831 of 2025

United India Insurance Co. Ltd.

VERSUS

Rohid Seikh & Anr.

For the Appellant/Insurance Co.:

Mr. M. P. Chakraborty, Adv.

Ms. Ratnadipa Karmakar, Adv.

For the Respondent/Claimant:

Mr. Sima Ghosh, Adv.

Last Heard on: August 20, 2026

Judgment on: September 10, 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 7th May 2025 passed by Learned Additional District Judge Fast Track Second Court Berhampore Mursidabad in MAC case no. 499 of 2018. The case of the claimant respondent before the Learned Trial Court may be summed up thus:-



On 7.5.2019 at about 12.00 hours when the injured was going to Berhampore from his house by his cycle and when he reached near Murshidabad at that time the offending vehicle bearing no. WB 57-4281 (Bus) coming from Bhukuri side with high speed drove the vehicle rash and negligently and dashed the injured. As a result the injured sustained severe injury on his person his spinal cord totally broken. Local people immediately took the claimant to Murshidabad Medical College and Hospital and from there he was referred to Kolkata on 9.5.2019 for better treatment. Lastly the injured was admitted in Good Samaritan Hospital for better treatment on 13.5.2019 and treated there up to 20.5.2019. Operation was done there. The accident was caused due to rash and negligent driving of the driver of the offending vehicle.

Pursuant to 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 it is ORDERED that the instant claim application under Section 163A of M.V. Act be and the same is allowed against OP No. 2/United India Insurance Company Ltd. on contest but without cost and ex-parte against the OP no. 1/owner without cost.



The claimant Rohit Sekh do get an award of compensation of Rs. 16,64,393.00 (Rupees sixteen lakhs sixty four thousand three hundred ninety three only.) as compensation along with 6% simple interest per annum on the said amount of compensation to be calculated from the date of filing of this case i.e. 20/12/2019 within 90 (ninety) days from the date of passing of this order failing which claimant is at liberty to put the order into execution with further interest @09% from the date of order till the date of realization.'

The appellant United India Insurance Co. Ltd. being aggrieved by the Judgment and Award passed by Learned Trial Judge has come up with the instant appeal.

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

Learned Advocate for the appellant submits that there was delay of 86 days in lodging the FIR thus the case of the claimant respondent is doubtful. Learned Advocate further submits that the claimant is receiving his pension and there is no loss of income of the claimant. Learned Advocate also submits that the compensation awarded should be reduced.

Learned Advocate for the claimant/respondent submits that Learned Trial Judge assigned reasons for arriving at the conclusion thus no interference be made.



With regard to the first submission of Learned Advocate for the appellant that there was delay in lodging FIR it is held in different Judicial pronouncements that mere delay in lodging FIR is not fatal. In India family members of the injured rushes to hospital and not to Police Station. In the instant case FIR maker has explained the grounds of delay in the FIR. Thus delay in lodging FIR in the instant case is not fatal.

In the instant case it will appear from evidence adduced that although the claimant has suffered disability but there is no loss of income. Thus it is necessary to consider some judicial pronouncements.

In the case of T.J. Parameshwar-reppa VS The Branch Manager New India Assurance Co. Ltd and Ors. reported in MANU/SC/1510/2022, the Hon'ble Supreme Court observed as follows:-

'10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. In most of the cases the percentage of economic loss, that is, the percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent Disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity and consequently if the evidence produced show 45% as the permanent disability will hold that there is 45% loss of future earning



capacity. In most of the cases equating the extent (percentage) of loss of earning capacity to the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation.

11. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured, and after assessing the loss of earning capacity in terms of a percentage of the income it has to be quantified in terms of money to arrive at the future loss of earning (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases on appreciation of evidence and assessment, the Tribunal may find that the percentage of loss of earning capacity as a result of the permanent disability is approximately the same as the percentage of permanent disability in which case of course the Tribunal will adapt the said percentage for determination of compensation.'

In the case of Anoop Maheswari VS Oriental Insurance Company Ltd. reported in MANU/SC/1233/2025 the Hon'ble Supreme court observed as follows:

'The disability to be assessed for the purpose of awarding compensation arising from a motor accident is the functional disability which reduces the earning capacity of the claimant and not strictly the medical disability. In the present case, admittedly the claimant was running a business and the claimant has already been fitted with a prosthetic limb to ensure his mobility.



In the above circumstance the order of the High Court holding the disability to be 50% for the purpose of computing loss of income as relatable to the loss of earning capacity is correct and within the parameters to be considered for assessing the loss of income arising from a motor accident which led to disability of the victim. The disability assessed at 50% is the functional disability and is quite reasonable.

The Hon'ble Court further observed as follows:-

'9. However since just compensation is granted we do not find any reason to award compensation for loss of future prospectus. It is clear that the claimant though has suffered a disability which has been determined to be 50%, there is no difficulty in continuing with the business and the claimant has also been fitted with a prosthetic leg which ensures his mobility and continuance of the business. The 40% enhancement in the annual income for taking into account the future prospect is found to be improper, especially in the context of 50% disability having been reckoned for the purpose of loss of earning capacity and the claimant enabled to continue his business.'

Thus upon considering the judicial decisions it will be clear that the compensation on loss of earning capacity due to disability cannot be applied mechanically on the percentage of disability as percentage of economic loss as loss of earning capacity. What requires to be assessed is the effect of the permanent disability on the earning capacity of the injured.



In the instant case the source of income of the claimant is pension. It appears from the statement of the claimant in cross examination that his pension has increased at present what he used to receive prior to accident. Thus there is no loss of pension. However as every person has certain contribution in his family by his domestic work which although does not fetch any monetary income but some notional income should be taken into consideration. Being unable to discharge service for the family or himself some expenses may be incurred by doing the work by outsider or inducting an outsider for help these aspects being taken into consideration some compensation should be awarded on account of loss of notional income.

In the instant case as the claimant/respondent no-1 did not loose regular monthly income on account of pension compensation of Rs. 16,64,398.00/- is excessive. In the view of this Court compensation of Rs. 10 lakh is just and reasonable.

Hence this appeal FMA-1831 of 2025 stands disposed. Judgment and Award dated 7th May 2025 passed by Learned Additional District Judge Fast Track 2nd Court Berhampore Murshidabad in MAC Case No-499 of 2019 stands modified to the extent that the claimant/respondent is entitled to Rs. 10 lakh from the appellant United India Insurance Company Ltd. The Appellant United India Insurance Company Limited shall deposit Rs. 10 lakh alongwith interest @6% per annum from date of filing claim case till today. Such deposit shall be made before Registrar General High Court Calcutta within 8 weeks from date of



communication of this Order. In the event compensation awarded by Trial Court is deposited no further deposit be made.

The claimant/respondent will be entitled to withdraw compensation amount upon compliance of necessary formalities. Balance amount if any along with accrued interest be returned to the appellant.

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.)