



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

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 1048 of 2025

National Insurance Co. Ltd.

VERSUS

Nila Bauri & Ors.

COT 150 of 2025

Nila Bauri & Ors.

VERSUS

National Insurance Co. Ltd. & Anr.

For the Claimants/Respondent: Mr. Saikat Sen, Adv.

Last Heard on: November 18, 2025

Judgment on: January 15, 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 28th February 2025 passed by Learned Additional District Judge 4th Court Asansol Paschim Bardhaman in MAC Case No-51 of 2017. The Respondent no. 1 to 3 being also aggrieved by the Judgment and Award passed



by the Learned Trial Judge has also filed counter objection being COT-150 of 2025.

The case of the claimants/respondent no. 1 to 3 may be summed up thus:

On 21-08-2017 at about 5.30 p.m. the victim/deceased Santa Bauri@ Bauri was returning to his residence from his work place i.e. from Ukra Station by riding his own motor cycle bearing no. WB/54C 4810 at a moderate speed and by observing the traffic rules ie through Raniganj-NH 60. While he reached near Maa Laxmi Patch, at that time suddenly one Alto Car bearing Registration No. WB-38Z/3498 came at a tremendous speed from the back side and dashed Santa Bauri in a rash and negligent manner without blowing any horn. As a result the victim Santa Bauri @ Bauri sustained grievous and multiple bleeding injuries on his head, hand leg and other parts of his body. He was taken to Mission Hospital Durgapur in a critical conditions where the victim succumbed to his injuries on 23-08-2017. Over the incident a complaint was lodged and investigation was taken up by the Police Authority. On completion of investigation charge sheet was submitted against the driver of the offending vehicle. The claimants prayed for compensation of Rs. 40,00,000/- (Rupees forty lakhs).

The Appellant National Insurance Company Limited contested the case by filing written statement. The owner of the vehicle being respondent no-4 although appeared but did not contest the case.



ISSUES were framed and evidence was adduced. Upon considering the evidence adduced and upon hearing the parties Learned Trial Court was pleased to dispose the claim case by observing and directing as follows:

Hence it is, ORDERED that the claim petition u/s. 166 of the M.V. Act is allowed on contest against the O.P. No. 2 i.e. National Insurance Co. Ltd. insurer of the offending vehicle bearing Registration No-WB 38Z/3498 (Alto Car) with costs and allowed ex-parte against OP No-1 without costs.

The petitioners do hereby get an award for Rs. 49,04,284/- (Rupees Forty Nine Lakhs Four Thousand Two Hundred and Eighty Four only) as compensation and interest on the above @ 6% per annum from the date of filing of the case i.e. from 8.11.2017 till realization and proportionate costs of the case.

OP. No. 2 i.e. National Insurance Co. Ltd. is directed to pay the awarded amount of Rs. 49,04,284/- (Rupees Forty Nine Lakhs Four Thousand Two Hundred and Eighty Four only) along with accrued interest as mentioned above, by issuing four numbers of separate account Payee cheques in favour of the claimants OP. No-2 is further directed to issue A/C payee cheque of the share of minor children of the deceased namely Subrata Bauri and Supriya Bauri in the name of their legal guardian i.e. claimant No. 1 Nila Bauri is accordingly directed to deposit the share of her minor children (daughter and son) in a fixed deposit scheme in a Nationalized Bank till their attaining majority.



OP. No-2 i.e. National Insurance Company Ltd. is accordingly directed to issue three numbers of separate account payee cheques in favour of the claimants in the following manner:-

Sl. No.	Name of the claimant	Amount
1.	Smt. Nila Bauri.	Rs. 16,61,428/-
2.	Smt. Nila Bauri. (on behalf of her minor daughter Supriya Bauri.)	Rs. 16,21,428/-
3.	Smt. Nila Bauri. (on behalf of her minor son Subrata Bauri.)	Rs. 16,21,428/-

along with accrued interest as mentioned above within thirty days from the date of delivery of Award. Failing which the OP.2 will have to pay further interest @9% p.a. upon the awarded amount from the date of expiry of thirty days till realization of the awarded amount. Failing which the Petitioners are at liberty to execute the same in accordance with law.

It is mentioned here that any amount awarded and paid in any other case arisen out from same cause of action including a case u/s-140 of the MV Act 1988 to the petitioners for this accident be adjusted against this awarded amount.'



The Appellant National Insurance Company Limited being aggrieved by the Judgment and Award dated 28th February 2025 passed by the Learned Trial Court has come up with the instant appeal. The Respondent no-1, 2, and 3 also being aggrieved by the Judgment and Award dated 28th February 2025 passed by the Learned Trial Judge has filed a counter objection.

It is the contention of the appellant that the Learned Trial Judge failed to consider the delay in FIR which creates doubt about the involvement of the offending Vehicle No-WB-38Z/3498 (Alto Car). It is further contended that the Learned Judge failed to appreciate that there was contributory negligence on the part of victim. It is also contended that the Learned Judge erred in considering the income of the victim as Rs. 31,900/- per month. The respondents no. 1 to 4 in their cross objection have contended that the Learned Trial Judge erred in applying the multiplier of 14 instead of 15 since the deceased was 40 years 6 months at the time of accident.

Heard Learned Advocate for the appellant Insurance Company and Learned Advocate for respondent no. 1 to 3/claimants. Perused the materials on record.

Learned Advocate for the appellant submits that the Learned Trial Court erred in not taking into consideration the issue of delay in lodging FIR to ascertain as to whether vehicle WB-38Z/3498 was involved in the accident. Learned Advocate further submits that the Learned Trial Judge erred in



considering the income of the victim to be Rs. 31,900/-. Learned Advocate also submits that there was contributory negligence of the victim.

Learned Advocate for the respondent no. 1 to 3/claimants submits that the multiplier to be applied ought to be 15 and not 14, thus the compensation awarded is inadequate. Learned Advocate further submits that no evidence was adduced by Insurance Company regarding contributory negligence. Learned Advocate relies upon the following judicial decision.

Meera Devi and Another VS HRTC and others.

Reported in (2014) 03 SC. CK. 0078.

With regard to the first submission of the Learned Advocate for the appellant it appears that delay in lodging the FIR is 3 days which in the opinion of this Court is not fatal. In the case of Ravi VS Badri Narayan and others reported (2011) 4 SCC. P-693 the Hon'ble Supreme Court while considering issue of delay in lodging FIR with motor accident observed as follows:-

‘It is well settled that the delay in lodging the FIR cannot be a ground to doubt the claimant’s case. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the Police Station immediately after an accident. Human nature and family responsibilities occupying the mind of kith and kin to such extent that they give more importance to get the victim treated rather than to rush to the police station.’



Upon considering the period of delay which is 3 days and the case of Ravi (supra) this Court is of the view that this delay is not the ground to doubt the involvement of the offending vehicle WB-38Z/3498. Moreover the Learned Trial Judge upon considering the evidence both oral and documentary came to the findings about the involvement of vehicle being WB-38Z/3498. Thus there is no scope to interfere with this issue.

With regard to the contributory negligence nowhere from the evidence of the claimant's witnesses it appears that there was contributory negligence on the part of the victim. The Appellant Insurance Company has not adduced any evidence with regard to contributory negligence.

In the case of Meera Devi (supra) the Hon'ble Supreme Court while deciding the issue of contributory negligence was pleased to observe as follows:-

'To prove the contributory negligence there must be cogent evidence. In the instant case there is no specific evidence to prove that the accident has taken place due to rash and negligent driving of the deceased scooterist. In the absence of any cogent evidence to prove the plea of contributory negligence the said doctrine of common law cannot be applied in the present case. We are thus of the view that the reasoning given by the High Court has no basis and the compensation awarded by the Tribunal was just and reasonable in the facts and circumstances of the case.'



Now with regard to the second submission of Learned Advocate for the appellant that the Learned Trial Judge ought not to have considered income of the victim as Rs. 31,900/- this Court finds from pay slip and the Judgment of the Learned Trial Court that from Gross Total pay of Rs. 32,160/- of the victim upon deducting profession Tax and Income Tax amounting to Rs. 278/- the Annual Income of Rs. 31,622/- was considered to ascertain compensation. Thus the Learned Trial Court took all relevant provisions to ascertain the just and reasonable compensation. Although it is argued by the respondent no. 1 to 3/claimants that multiplier 15 ought to have been applied but as in the view of this Court the compensation of Rs. 49,04,284/- is just and reasonable no interference in this regard is made.

Hence this Appeal being 1048 of 2025 and Counter objection COT No. 150 of 2025 fails and the same are dismissed The Judgment and Award dated 28th February 2025 passed by Learned Additional District Judge 4th Court Asansol Paschim Bardhaman in MAC Case No-51 of 2017 stands affirmed. However the direction to pay further interest @ 9% p.a. in the event awarded sum is not paid within 30 days is hereby set aside. The respondents no-1, 2, and 3 are permitted to withdraw the awarded sum along with interest @ 6% per annum from date of filing claim case till date of deposit along with accrued interest after compliance of all necessary formalities. The residuary amount along with accrued interest shall be returned to the Appellant Insurance Company.



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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.)