

05.03.2026

Sl. No.: 3

Court No.9

BM

FMA 1796 of 2025

REBINA KHATUN & ORS.

VS

**THE NEW INDIA ASSURANCE COMPANY LTD. &
ANR**

Mr. Amit Ranjan Roy

... for the appellants/claimants

Mr. Avishek Das

Mr. Soubhik Dey

... for the respondents/Insurance Company

1. Learned Advocates for the parties are present.
2. The appellants before this court were claimants in a case under Section 166 of the Motor Vehicle Act, 1988 and is aggrieved by the Judgement and Award dated 15th September, 2022 passed by learned Additional District Judge, Katwa, Purba Bardhaman in MAC Case No.13 of 2019.
3. The case of the claimants/appellants before the learned trial Judge may be summed up thus :-

“ The accident occurred due to rash and negligent driving of the driver of the offending Hyundai car bearing No.WB42N/1228 when the victim Md. Akbal Hossen along with his friend Saiful Islam were coming from Kirnagar towards Daskal gram village through Suri Katwa road as pedestrian on the left side of the road and near Daskaigram railgate the said offending Hyundai car coming in high speed from Kirnagar side and

dashed the victim and Saiful Islam and as a result they fell down on the road side and the victim received severe injuries in all over the body and then and there the victim was brought at Bolpur S. D Hospital but the M.O. of the said hospital declared him dead. The P.M examination was done over the dead body of the victim by the M.O. of Bolpur S. D Hospital. The victim was a Artificial Organ Setter and working under the Auxein Medical Pvt. Ltd, and used to earn Rs.16,100/- per month as salary from the said concern and he was only earning member of the family and he was only 26 years old at the time of motor accidental death. He had bright future prospect. The petitioners are legal heirs of the victim deceased and have been suffering irreparable loss for the unfortunate motor accidental death of the victim Md. Akbal Hossain.”

4. Pursuant to the filing of the case notice was issued. Neither the Insurance Company nor the vehicle owner appears to contest the said case. Thus, the case was taken up for ex-parte hearing.

5. By Judgement and Award dated 15th September, 2022 the learned Additional District Judge, Katwa Burdwan was pleased to dispose of the claim case by observing and directing as follows :-

“ Hence, it is

O r d e r e d

that the MAC case being No.13/19 be and the same is allowed exparte against OP no.2. The New India Assurance Company Limited and dismissed against OP No.1 owner(exparte) but without cost.

The petitioners do get an award of compensation amounting Rs.25,14,600/- (Rupees twenty five lakhs fourteen thousand six hundred only) together with interest @6% per annum from the date of filing of this case till realization from OP/owner.

OP No.2 The New India Assurance Company Limited do pay the aforesaid compensations amounting Rs.25,14,600/- (Rupees twenty five lakhs fourteen thousand six hundred only) together with accrued interest.

OP No.2 The New India Assurance Company Limited is directed to issue three equal crossed cheques of Rs.8,38,200/- (Rupees eight lakhs thirty eight thousand two hundred only) in favour of the above named petitioners within one month from the date of filing of this case.

Petitioner no.1 being the mother as well as natural guardian of the petitioner no.2 i.e. minor applicant is given liberty to receive the cheque, if

deposited by the OP insurance of the said minor applicant with the undertaking that she will deposit that cheque into any fixed deposit scheme of any nationalized bank in her name and will not encash the same till attaining her majority. She may withdraw the interest from the fixed deposit for her maintenance.”

6. The appellants/claimants being aggrieved by the quantum of compensation awarded by the learned trial court has come up with the instant appeal.

7. Heard learned advocate for the appellant and the Learned Advocate for the respondent no.1 Insurance Company.

8. Perused the material on record.

9. Learned Advocate for the appellants submits that the learned trial Judge erred in awarding future prospect of Rs.3 lacs which is not consistent with the Judgement passed by the Hon’ble Supreme Court of India in the case of National Insurance Company Limited vs. Pranay Shethi reported in (2017) 16 SCC 680.

10. Learned Advocate for the appellants further submits that the compensation awarded on account of funeral expenses is meagre and the amount ought to be enhanced.

11. Learned Advocate also submits that the compensation awarded by the Learned Tribunal should be enhanced.

12. Learned Advocate for the respondent no.1 Insurance Company submits that the appellants and claimants were unable to prove the income before the learned trial court and employer of the victim was not examined.

13. Upon hearing the learned advocates and considering the facts of the case, this Court is of the view that as the respondent no.1 Insurance Company did not contest the case, the learned trial Judge had to proceed ex-parte.

14. Upon considering the case at the ex-parte stage the learned trial Judge has considered the document furnished by the claimant and have recorded the satisfaction of awarding compensation by accepting income of Rs.16,100/- per month. Moreover, it appears that the nature of work and the documents submitted by the claimant the fact of the deceased earning Rs.16,100/- cannot be totally disbelieved. Thus, this Court does not find any error of accepting Rs.16,100/- per month, as income of the victim.

15. Now with regard to future prospect granted by the learned trial Judge this court is of the view that on the monthly income 40% future prospect ought to have been considered by the learned trial Judge and the

compensation ought to have been ascertained thereafter.

16. In the event, the monthly income is Rs.16,100/- and it is considered for the purpose of this case to be Rs.16,000/-, the future prospect of 40% comes to Rs.4,000/-. Thus, the monthly income is Rs.20,000/- per month. One third should be deducted on account of personal expenses. So upon deducting personal expenses, the monthly income comes to Rs.13,500/-. The annual dependency loss comes to Rs.1,63,000/-. As the victim was 17 years old, the multiplier of 17 should be applied and thus, the total dependency loss comes to Rs.27,54,000/-. Further, the appellants are entitled to consortium of Rs.1,10,000/- on account of consortium for spouse, filial consortium and general damages. Thus, Rs.28,64,000/- is the total compensation which the appellants are entitled to from the respondent no.1 Insurance Company by arithmetical calculation. However, this court is of the view that Rs.28,00,000/- is just and reasonable compensation.

17. Hence, this appeal FMA 1796 of 2025 stands disposed of. The Judgement and Award dated 15th September, 2022 passed by the learned Additional District Judge, Katwa, Purba Bardhaman in MAC Case No.13 of 2019 stands modified to the extent that the claimants/appellants are entitled to compensation of

Rs.28 lac along with interest @6% per annum from the date of filing claim case till today. The respondent no.1/Insurance Company shall within eight weeks from the date of communication of this order deposit before the Registrar General, High Court, Calcutta Rs.28,00,000/-(Rupees Twenty Eight Lac) along with interest @6% per annum from date of filing claim case till today.

18. It is further made clear that in the event the compensation awarded by the learned trial court is already paid or deposited the balance amount shall be deposited before the Registrar General, High Court, Calcutta.

19. The appellants/claimants will be entitled to withdraw the compensation upon compliance of the necessary formalities.

20. As it is submitted by the Learned Advocate that the amount awarded by the learned trial Judge at Rs.25,14,600/- is already received along with interest @ 6% per annum, the balance amount along with interest be deposited within eight weeks from the date of communication of this order.

21. The appellants will be entitled to receive the compensation amount in equal share. The amount may be withdrawn upon compliance of necessary formalities.

22. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Biswaroop Chowdhury, J.)