2026:CHC-AS:1065

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 201 of 2024

Soma De & Ors.

VERSUS

Mr. Sanjib Roy & Ors.

With

F.M.A. 120 of 2024

The New India Assurance Company Limited

VERSUS

Some De & Ors.

For the appellants/Claimants in FMA 201 of 2024:	Mr. Saswata Bhattacharya, Adv. Mr. R. N. Basu, Adv.
For the appellant in FMA 120 of 2024 and respondent No. 4 in FMA 201 of 2024:	Ms. Sayanti Santra, Adv.
For the respondent No. 2 in FMA 201 of 2024 and respondent no. 6 in FMA 120 of 2024:	Mr. Rajesh Singh, Adv.

Last Heard on: June 18, 2026

Judgment on: July 17, 2026

Biswaroop Chowdhury, J:

The instant appeals arise out Judgment and Award dated 30th August 2023 passed by Learned Judge Bench XIII. City Civil Court Calcutta in MAC No. 430 of 2018.

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

On 09-05-2018 at about 8.30 hrs the driver of the offending vehicle bearing Regd No. WB-67B-3333 (Dumper) drove the same in a rash and negligent manner endangering human life and safety to others and thereby knocked down a victimized Maruti Swift Dzire bearing Regd. No. WB-38X-7873. As a result Dr. Abhijit De along with Dr. Amitava Roy who were in the Maruti Swift Dizere received serious injuries on their persons and with the help of local people both were immediately taken to Bankura Sammilani Medical College and Hospital where the doctor declared Dr. Abhijit De brought dead and Dr. Amitava Roy got admitted in the hospital. Rash and negligent driving on the part of the driver of the offending vehicle bearing No. WB-67B-3333 (Dumper) is the sole cause of the accident.

Pursuant to filing of the claim case notice was issued upon the opposite parties. Opposite parties United India Insurance Co. Ltd. and New India Assurance Co. Ltd. appeared and contested the case by filing written statement. Opposite Party Sanjib Roy and Ranjit Kumar Mondal vehicle owners although filed written statement but did not contest the case.

ISSUES were framed and evidence was adduced. Learned Trial Judge upon considering the evidence and hearing 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 MAC claim case being no 430 of 2018 be and the same is allowed on contest against the OP No. 2 United India Insurance Company Limited and OP No. 4, the New India Assurance Company Limited and without any cost against OP No. 1 and OP No. 3.

The Claimant No. 1 Soma De i.e. the wife of the deceased is entitled to get Rs. 29,92,795/- (Twenty Nine Lakhs and Ninety Two Thousand Seven Hundred Ninety Five) and claimant Nos. 2 and 3 Debarchan De and Chhaya De are entitled to get Rs. 29,52,795/- (Twenty Nine Lakhs and Fifty Two Thousand Seven Hundred Ninety Five) each as award of compensation from OP No. 2 United India Insurance Company Limited and OP No-4, the New India Assurance Company Limited.

OP No. 2 i.e. United India Insurance Company Limited and OP No. 4, the New India Assurance Company Limited are hereby directed to pay Rs. 14,96,397/- each to claimant Soma De Rs. 14,76,397/- each to claimant No. 2 Debarchan De and Rs. 14,76,397/- each Chhaya De by separate account Payee cheques in the names of the claimants within 2 (two) months from the date of passing of the Judgment in default of which both the Insurance Companies shall be liable to pay interest @4% per annum.

The claimants have paid Court fees of Rs. 88,974/-.'

The Appellants/claimants being aggrieved by the Judgment and Award passed by the Learned Trial Court with regard to the quantum of compensation has preferred the appeal being FMA-201 of 2024. On the other hand New India Assurance Company Ltd. being aggrieved by Judgment and Award passed by the Learned Trial Court has preferred the Appeal being FMA-120 of 2024.

In the Appeal FMA-120 of 2024 Learned Advocate for the appellant New India Assurance Company Limited submits that the Learned Trial Judge erred in holding composite negligence of both vehicle no. WB-67B-3333 (Dumper) and vehicle no. WB-38X. 7873 (Maruti Swift Dzire) when evidence will go to show that accident took place due to rash and negligent driving of vehicle no. WB-67B-3333.

Learned Advocate draws attention to the evidence of P.W. 2 Dr. Amitabha Ray and submits that the evidence of P.W. 2 will go to show that accident took place due to rash and negligent driving of driver of vehicle no. WB-67B-3333 (Dumper). It is further submitted by the Learned Advocate that the victim was gratuitous passenger in the vehicle. It is also submitted that the extra-premium required to be paid in case of gratuitous passenger is not paid by the insured vehicle owner.

The following decisions are relied upon by Learned Advocate for the appellant.

Vimla Singh and ors. VS Rakesh Kumar Gupta and Anr.

Civil Appeal No. 7116 of 2025.

(Supreme Court of India).

National Insurance Co. Ltd. VS Chamundeswari and ors.

(2021) 18 SCC-596.

Oriental Insurance Co. Ltd. VS Smt. Chinnamma Joy and ors.

Civil Appeal No. 4948 of 2013

Supreme Court of India.

Reported in 2013(9) SCC-P-166.

Prabhavati and others VS Managing Director Bangalore Metropolitan Transport Corporation.

Reported in 2025(2) TAC 25 (S.C).

Nidhi Bhargava and ors. VS National Insurance Company Ltd.

Reported in 2025 SCC Online SC 872.

United India Insurance Co. Ltd. Shimla VS Tilak Singh and ors.

2006(4) SCC. 404

General Manager United Insurance Co. Ltd. VS M.Laxmi and ors.

AIR-2009 S.C. 626.

Oriental Insurance Company Ltd. VS Sudhakaran KV and others

(2008) 7 SCC-428.

New India Assurance Company Ltd. VS Sadanand Mukhi and others.

(2009) 2 SCC-P417.

Learned Advocate for the respondent United India Insurance Company Ltd. submits that the evidence will go to show that it is a case of composite negligence and not contributory negligence or exclusive negligence and the decisions relied upon by Learned Advocate for New India Assurance Company Limited deals with contributory negligence not applicable to the facts of the case.

Upon considering the evidence of P.W. 2 eye witness it will appear that the said witness stated in his examination in chief that the vehicle bearing Registration No-WB-677B-3333 (Dumper) dashed Maruti Swift Dzire from opposite direction near Junbedia more on Bankura By Pass Road which was going in normal speed keeping extreme left side of the road, and it is not a case of dashing from behind.

From the complaint submitted to the Police Authority it will appear that the complainant has mentioned negligence of drivers of vehicle No-WB-67B/3333 and vehicle No-WB38X/7873. Moreover in the charge-sheet it is stated that both the drivers of the vehicles involved. Learned Trial Judge upon considering this aspect of the matter and upon assigning reasons has come to the conclusion that drivers of both the vehicles are liable for the accident. When police authority has carried out investigation in accordance with law and submitted report observing both the drivers liable the said report cannot be discarded without examining the I.O. Thus this Court does not find any error in the findings of Learned Trial Judge regarding involvement of both the vehicles.

Now with regard to the submission of Learned Advocate for New India Assurance Company Limited that gratuitous passenger was not covered by the policy and no extra-premium paid for gratuitous passenger and with regard to the judicial decisions relied upon it is clear from the said judicial decisions that gratuitous passenger can come under the purview of policy if extra premium is paid. In the instant case the vehicle owner in his written statement has clearly stated that his vehicle was duly insured under a valid policy with the New India Assurance Co. Ltd. The Respondent New India Assurance Co. Ltd. in the written statement did not dispute the existence of policy nor disputed the liability of paying compensation on the ground extra premium not being paid. In the absence of specific denial of liability for non-payment of extra premium and non-mentioning of amount of extra-premium required in the written statement and non-adducing of evidence in this regard the plea of non-payment of extra-premium cannot be entertained for the first time in appeal. Thus the plea of exemption from liability of paying compensation cannot be sustained. Thus this Appeal FMA-120 of 2024 should be dismissed.

In the Appeal FMA-201 of 2024 Learned Advocate for the the Appellants/claimants submits that the Learned Trial Judge erred in taking into consideration the salary income only and ignoring the income tax return. Learned Advocate further submits that the Learned Trial Judge ought to have taken the Income Tax Return into consideration for ascertaining the compensation. Learned Advocate also submits that compensation awarded should be enhanced.

Learned Advocates for New India Assurance Company Limited and United India Insurance Co. Ltd disputes the submission of Learned Advocate for the claimant/appellant.

The following decision is relied upon by Learned Advocate for the claimant/appellant.

Smt. Anjali and ors. VS Lakendra Rathod and ors.

Reported in 2022 Live Law (S.C.) 1012.

Before proceeding to decide on the issue of quantum of compensation it is necessary to consider the decision of the Hon'ble Supreme Court in the case of Smt. Anjali and ors VS Lakendra Rathod and ors. The Hon'ble Supreme Court in the said case observed as follows;

'9. The Tribunal and the High Court both committed grave error while estimating the deceased's income by disregarding the Income Tax Return of the Deceased. The appellants had filed the Income Tax Return (2009-2010) of the

Deceased, which reflects the deceased's annual income to be Rs. 1,18,261/- approx. Rs. 9855/- per month. This Court in Malarvizhi and Ors (supra) has re-affirmed that the Income Tax Return is a statutory document on which reliance be placed, where available, for computation of annual income. In Malarvizhi (supra) this Court has laid as under:

'10. We are in agreement with the High Court that the determination must proceed on the basis of the income tax return where available. The income tax return is a statutory document on which reliance may be placed to determine the annual income of the deceased."

Thus upon considering the judicial decision it is clear that the income should be considered on the basis of Income Tax Return. In the instant case as Income Tax Return is proved before Learned Trial Court, the compensation should be computed on the basis of income reflected in the Income Tax Return.

In the instant case Gross Total Income as reflected in Income Tax Return is Rs. 17,97,973/-. Income Tax being deducted Net Annual Income comes to Rs. 14,98,318/-. Future prospect of 15% added-Annual dependency loss comes to Rs. 2,24,748/-. The multiplier of 11 applied Gross total Dependency Loss comes to Rs. 1,89,53,723/- 1/3rd deducted on account of personal expenses Net total Dependency Loss comes to Rs. 1,27,79,815/-. Further the claimants are entitled to Rs. 1,10,000/- on account of Loss of consortium, Loss of Estate and funeral expenses. Thus total compensation comes to Rs. 1,28,89,815/- by arithmetical calculation.

As Courts and Tribunals are empowered under Section 168 of the Motor Vehicles Act 1988 to award compensation which appears to be just Courts and tribunals after computing compensation as per arithmetical calculation and by following the guidelines laid down under law by Judicial decisions can consider as to whether the said compensation is just and reasonable. In the event Courts and Tribunals consider the compensation excessive the same may be reduced to the extent what the Court thinks fit. In the event the Court is of the view that it is required to be enhanced the same may be enhanced.

In the case of National Insurance Co. Ltd. VS Indira Srivastava reported in AIR-2008 S.C. P845 the Hon'ble Supreme Court observed as follows:-

'23. The expression just must also be given its logical meaning. However it cannot be a bonanza or a source of profit but in considering as to what would be just and equitable all facts and circumstances must be taken into consideration.'

In the case of T.N. State Transportation Ltd. VS Rajapriya and ors. reported in (2005) 6 SCC. 236 the Hon'ble Supreme Court observed as follows:-

'10. Much of the calculation necessarily remains in the realm of hypothesis and in that region arithmetic is a good servant but a bad master" since there are so often many imponderables. In every case it is the overall picture that matters' and the Court must try to assess as it can the loss suffered.'

In the instant case the victim was a Medical Officer under the State Government. The widow of the victim at present is receiving pension of Rs. 69,000/- per month. Although grant of pension or death benefits cannot deprive the dependants from claiming compensation nor the death benefits received can be adjusted from compensation computed but the said facts may be taken into consideration along with the compensation computed by arithmetical calculation to decide what should be just and reasonable compensation.

In the instant case upon considering the compensation computed which is Rs. 1,28,89,815/- and the fact the claimant no-1 is receiving pension of Rs. 69,000/- pursuant to the death of the victim, this Court is of the view that compensation of Rs. 1,00,00,000/- (Rupees one crore) is just and reasonable.

Hence the Appeal FMA120 of 2024 stands dismissed. The Appeal FMA-201 of 2024 stands disposed. The Judgment and Award dated 30th August 2023 Passed by Learned Judge Bench XIII City Civil Court Calcutta stands modified to the extent that the claimants/appellants are entitled to Rs. 1,00,00,000/- (Rupees one crore) from Respondents New India Assurance Company Limited and United India Insurance Company Limited in equal shares along with interest @6% per annum from date of filing claim case till today. The respondents New India Assurance Company Limited and United India Insurance Company Limited shall deposit Rs. 50 lakh each along with interest @6% p.a. before Registrar General High Court at Calcutta within 3 months from the date of communication of this Order. In the event compensation awarded by the Learned Trial Court is deposited the balance amount be deposited.

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

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.)