

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

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 339 of 2025

National Insurance Co. Ltd.

VERSUS

Kartick Samanta & Anr.

With

C.O.T. 133 of 2025

Kartick Samanta

VERSUS

National Insurance Co. Ltd. & Anr.

For the Appellant/Insurance Co:

Mr. Sanjay Paul, Adv.

For the Respondent/Claimant:

Mr. Amit Ranjan Roy, Adv.

Last Heard on: July 13, 2026

Judgment on: July 23, 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 September 2024, passed by Learned Additional District

Judge Second Fast Track Court Tamluk Purba Medinipur in MAC Case No. 618 of 2021. The claimants respondents being also aggrieved by the Judgment and Award passed by the Learned Trial Court has filed cross-objection.

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

On 03-04-2021 at about 11.45 p.m. when the victim was standing near Hakalya bus stoppage for returning home at Radhamani-Panskura Pitch road after seeing function of Hakalya Bazar at that time one Bolero Rick up bearing no. WB-29A/5534, which was coming from Radhamani Side towards Panskura side with extreme high speed endangering to human life and safety in a rash and negligent manner without blowing any horn dashed the victim with great force. As a result the victim sustained grievous bleeding injury all over the body specially on head and fracture on left leg. After accident the victim was taken to Ratna Hospital at Cuttack Odissa for better treatment. He was treated there from 12-04-2021 to 03-05-2021 his left leg was amputated there from above knee. He obtained permanent disablement certificate from PMDH W.B. upto 80%. The accident was caused due to rash and negligent driving on the part of the driver of the offending vehicle bearing No. WB-29A/5534 (Bolerio Pick up).

The victim was Mason by his profession before accident. He is the only earning member of his family. Due to the said accident the victim became disabled person. He is not able to do his normal and professional work. His income has been stopped now. He is facing great economic crisis.

Pursuant to the filing of this case notice was issued upon the opposite parties. Opposite Party Vehicle owner although filed written statement but thereafter did not contest the case. The 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 the claim case by observing and directing as follows:-

Hence it is ORDERED

- a) that the instant case be and same is allowed ex-parte against the OP No-1 and on contest against OP No-2 but without any order as to costs.
 - b) The Petitioner/Claimant do get an award of compensation to the tune of Rs. 20,82,479/- (Twenty Lakh Eighty two Thousand Four hundred Seventy Nine only) from OP. No.-2/National Insurance Company Ltd. along with interest @ 6% per annum from the date of filing i.e. 09.11.2021.
 - c) The O.P. Insurance Company is directed to issue an account payee cheques as above within two months from the date of this order failing which the Insurance Company shall liable to pay interest to the tune of 8% per annum for the delay in making such payment.
40. Copy of Award be given to the National Insurance Company Ltd. for information and necessary compliance.'

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 said Judgment has filed a cross objection.

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

Learned Advocate for the appellant submits that the complaint was lodged after 5 months thus the case of the claimant is doubtful. Learned Advocate further submits that although P.W. 2 mentioned about Road Traffic Accident but from where he came to know is not mentioned. Learned Advocate also submits that the Learned Trial Judge erred in considering the monthly income of the victim as Rs. 7696/- without proof of occupation and income.

Learned Advocate for the respondents/claimants submits that the Learned Trial Judge erred in reducing the functional disability without assigning reasons. Learned Advocate further submits that the minimum wages ought to have been considered as Rs. 9,304/- as Mason is a skilled worker as per Government Notification. Learned Advocate also submits that the compensation awarded should be enhanced.

With regard to the first submission of Learned Advocate for the appellant that the case of the claimant is doubtful as there was five months delay in lodging the FIR it is held in different Judicial decisions that mere delay in

lodging FIR is not fatal. In Indian Societies family members of injured rushes to hospital and not to Police Stations. It appears from record that the victim was at hospital from 11-04-2021 till 03-05-2021. As his left leg was amputated he appeared before Medical Board on 27-08-2021 obtained disability certificate and thereafter FIR was lodged by his brother. As the claimant was not in a position to move freely and had to depend on his brother for lodging FIR. Claimant cannot be blamed for delay.

Now with regard to the statement of P.W. 2 it appears that he deposed that Kartick Samanta was admitted at Ratna Hospital and discharged on 03-05-2021 and he identified the discharge certificate issued by the hospital. Although in the discharge certificate it is not mentioned as to from which source the Hospital Authority came to know as submitted by the appellant the same is not fatal. It is to be remembered that in discharge certificate it is not necessary to mention from which source the history of the patient is recorded but it is necessary to state in brief about, Patients' history of disease or injury. In the said Exhibit 8, it is mentioned R.T.A. It is only when the patient is admitted the hospital Authority in admission papers records the history as well as the source from where it is received. On the basis of admission papers and treatment papers 'Discharge summary' is prepared. Thus non-mentioning of source of information is not fatal.

Now with regard to the submission of Learned Advocate for the appellant that the claimant was unable to prove occupation it will appear from claim

petition that the claimant/injured has stated himself to be mason. In examination in chief also the claimant contended that he is mason. Nothing has come out in cross-examination to dispute about the occupation of the claimant as a mason. As the occupation of the claimant is established although the income is not proved it would be reasonable to consider the income of victim as provided in the Circular issued by the Government of West Bengal dated 31/12/2020 which took effect from 1st January 2021 to 30th June 2021. As per the said circular mason comes under the category of skilled Worker. The minimum wages rate of skilled worker is Rs. 9,304/- per month, which may be rounded to Rs. 9,000/-.

With regard to submission of Learned Advocate for the respondent/claimant that the percentage of disability is reduced to 70% this Court is of the view that as it is mentioned in the certificate of disability to be reviewed after 10 years it is not unreasonable to consider the percentage of disability as 70% instead of 80%.

In the event the monthly income of the victim is considered as Rs. 9000/- the loss of yearly income would be Rs. 75,600/-. The multiplier of 18 being applied loss of income due to functional disability comes to Rs. 13,60,800/-. Future prospect 40% being added total loss of income due to functional disability comes to Rs. 19,05,120/-. Further the claimant is entitled to Rs. 1,53,400/- on account of medical expenses Rs. 100,000/- on account of

pain and suffering Rs. 100,000/- on account of loss of amenities of life and Rs. 100,000/- on account of loss due to disability and disfigurement.

Thus total Compensation comes to Rs. 23,58,520/- by arithmetical calculation. However this Court is of the view that compensation of Rs. 23,00,000/- is just and reasonable.

Hence this Appeal FMA-339 of 2025 along with COT 133 of 2025 stands disposed. Judgment and Award dated 7th September 2024 passed by Learned Additional District Judge Second Fast Track Court Tamluk Purba Medinipur in MAC Case No. 618 of 2021 stands modified to the extent that the claimant/respondent no-1 is entitled to compensation of Rs. 23,00,000/- from the Appellant National Insurance Company Limited along with interest @6% p.a. from date of filing claim case till today. The appellant National Insurance Company Ltd. shall deposit Rs. 23,00,000/- (Rupees Twenty Three Lakh) along with interest @6% p.a. before Registrar General High Court Calcutta. 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 already deposited the balance amount be deposited.

The claimant/respondent will be entitled to withdraw the compensation upon compliance of necessary formalities. TCR be sand by Special Messenger lost to be put in by respondent/claimant.

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.)