



**INTHEHIGHCOURTATCALCUTTA  
Circuit Bench At Jalpaiguri**

Present:

**The Hon'ble Justice Biswaroop Chowdhury**

***FMA 58 of 2025***

***Smt. Anjali Roy & Ors.***

***VERSUS***

***Bajaj Allianz General Insurance Co. Ltd.***

For the  
appellants/claimants:

Mr. Bikash Singha , Adv.  
Mr. Abdul Habib, Adv.

For the  
respondent  
No.1/Insurance  
Co.:

Mr. Hirak Barman, Adv.

**Last Heard on: December 17, 2025**

**Judgment on: December 19, 2025**

**Biswaroop Chowdhury,J:**

The Appellants before this Court were claimants in a case under Section 166 of the Motor Vehicles Act 1988 and is aggrieved by the Judgment and Award dated 21-02-2025 passed by Learned Additional District Judge 3<sup>rd</sup> Court Jalpaiguri in MAC case No-55 of 2022.

The case of the claimants/Appellants before Learned Trial Court may be summed up thus;

On 02-01-2022 at about 21.15 hours while the victim Sarbananda Ray was proceeding towards his residence by riding a motorcycle through the left



Kachcha flank of the road, at that time near Jalpesh More, one vehicle bearing registration No. WB-72X-9205 (Motorcycle) which was proceeding in a neck break speed being driven rashly and negligently endangering human life dashed the motor cycle of the victim and as a result the victim Sarbananda Ray sustained severe injuries on his person and immediately he was taken to Maynagari Hospital where the deceased succumbed to his injuries.

One FIR was lodged and case was started by the police authority under Section 279/338 of the Indian penal Code and charge sheet was submitted adding section 304A of the Indian Penal Code. At the time of death, Sarbananda Ray was aged about 49 years and he was a driver by profession having monthly salary of Rs. 15,000/- along with allowance of Rs. 100/- per day. The claimants being the wife, son and daughters, of the deceased were fully dependent upon the said Sarbananda Ray and as such they have filed this claim application praying for compensation to the tune of Rs. 15,00,000/- on account of accidental death of Sarbananda Ray. The Respondent no-1 Bajaj Allianz General Insurance Company Limited filed written statement and contested the case. ISSUES were framed and evidence was adduced by the parties.

Learned Trial Court upon considering the evidence adduced and hearing the Learned Advocates was pleased to dispose the claim case by observing and directing as follows:

‘Hence it is ORDERED that the instant claim application is allowed on contest but without cost.

A sum of Rs. 14,21,350/- is awarded as compensation on account of accidental of death of Sarbananda Ray along with 6% interest from the date of filing the claim application (07-02-2022) till the date of passing judgment.



The opposite party No.2/ Bajaj Allianz General Insurance Company Limited is directed to issue four A/C payee cheques and out of which three cheques each of Rs. 3,45,337.50/- in favour of petitioner No-2 Sri Ranjan Ray 3. M.S. Joli Ray and 4. M.S. Sima Ray and another cheque of Rs. 3,85,337.50/- in the name of petitioner no.1. Smt. Anjali Ray. The opposite party No. 2/Bajaj Allianz General Insurance Company Limited is further directed to issue the cheques within a period of Sixty (60) days from this date. In default of payment of the compensation amount within the stipulated period as stated above, the petitioners would be at liberty to execute the same as per law and further the same would carry on interest at the rate of 9% per annum from the date of filing of the claim application i.e. 07.02.2022 till realization of the amount.'

The Appellants/claimants being aggrieved by the Judgment and Award passed by the Learned Trial Judge has come up with the instant appeal.

The ground on which the Judgment and Award passed by the Learned Trial Court is assailed is that the monthly income of the victim was not considered as Rs. 15,000/- secondly, the parental consortium was not awarded to Respondent no-2, 3, and 4 of Rs. 40,000/- each and interest not being awarded @ 9% per annum from the date of filing till date of realization.

Heard Learned Advocate for appellant and Learned Advocate for the Respondent no-1. Perused the materials on record.

Learned Advocate for the appellant submits that the Learned Trial Judge erred in not considering the income of the victim to be Rs. 15,000/- per month in spite of salary slip being issued by the employer of the victim and marked exhibit without objection and there being the evidence of P.W. 3 brother of the employer. Learned Advocate further submits that the interest from the date of



filing of claim case till realization of compensation ought to have been granted @ 9% per annum. Learned Advocate for respondent no-1 Insurance Company submits that the compensation awarded is just and reasonable Learned Advocate draws attention to the cross examination of P.W. 3 wherein he stated that the employer does not maintain salary register with regard to payment of salary to driver and conductors.

Before proceeding to decide the issue with regard to income of the victim it is necessary to consider the evidence adduced by the claimants/appellants in this regard.

The claimants/appellant's case was that the victim was earning Rs. 15,000/- per month P.W. 1 in her examination in chief has specifically stated that her husband being the victim used to earn Rs. 15,000/- per month as monthly salary and Rs. 150/- was paid as daily food allowance. She has specifically stated the name of the employer of the victim as Sri Mrinal Kanti Dutta Ray There is nothing in Cross examination which will go to show that the victim was not employed under Sri Mrinal Kanti Dutta Ray.

P.W. 3 Palash Dutta stated that the victim used to ply vehicle owned by his brother Sri Mrinal Kanti Dutta. He identified the salary slip issued by his brother Mrinal Kanti Dutta, and the said document was marked exhibit without objection.

The ground for not accepting the Employer's certificate by Learned Trial Court was that the employer did not come to depose but his brother came to depose thus the salary certificate of the employer did not inspire much confidence.

This Court agrees with the reason cited by the Learned Trial Judge with regard to non-examination of the employer with regard to salary paid as the



employer will have full knowledge regarding salary paid and income and expenditure of the business which a person authorized by an employer may not have. Thus a Court adjudicating motor accident claims has discretion not to rely fully on the documents regarding income unless employer is examined if the document does not inspire confidence. On the other hand if the Court is of the view that considering the minimum wages schedule for the particular occupation which the victim was engaged or the market rate with regard to the particular occupation of the victim which prevails and the income reasonably required for a person to maintain his family for which a person accepts any work/employment the income alleged should be accepted the Court has discretion to accept the said income as alleged without corroboration.

In the instant case the claimants/appellants have alleged that the victim was bus driver and used to earn Rs. 15,000/- per month; As it is not unusual for a bus driver to get wages of Rs. 15,000/- per month, and a certificate to that effect is furnished by the employer, the income of the victim should be considered as Rs. 15,000/- per month. However with regard to the plea of the appellant about grant of Parental Consortium the same cannot be accepted as it will be contrary to the law laid down in the case of National Insurance company Limited VS Pronay Sethi and other reported in 2017(4) TAC. 673(S.C). The prayer for interest @9% per annum also stands rejected.

As the monthly income is taken to be 15,000/- per month, the future prospect of 10% brings the actual monthly income to Rs. 16,500/-. The annual income comes to Rs. 1,98,000/- 1/4<sup>th</sup> should be deducted on account of personal expenses and upon deduction of personal expenses which is Rs. 49,500/- annual dependency Loss comes to Rs. 1,48,500/-. The multiplier of 13 should be applied and the total dependency loss comes to Rs. 19,30,500/-.



The claimants/appellants are also entitled to Rs. 84,000/- on account of general damages. Thus total compensation which comes by calculation is Rs. 20,14,500/- to which appellants/claimants are entitled. However, this Court is of the view that Rs. 20,00,000/- (Rupees twenty lakh) is just and reasonable.

Hence this Appeal stands disposed. The Judgment and Award dated 21-02-2025 passed by the Learned Additional District Judge 3<sup>rd</sup> Court Jalpaiguri in MAC case No-55 of 2022 stands modified to the extent that the Appellants/claimants are entitled to Compensation of Rs. 20,00000/- (Rupees twenty lakh) only from the respondent no-1 Bajaj Allianz General Insurance Company Limited. As Rs. 16,54,761/- is already paid to the Appellants/claimants, the respondent no-1 shall pay Rs. 3,46,339/- (Rupees Three lakh forty six thousand two hundred and thirty nine only) along with interest @ 6% per annum from the date of filing of claim case till today. Such payment shall be made within five weeks from the date of communication of this order.

The Trial Court Records if received be sent back.

**(Biswaroop Chowdhury, J.)**