

**In the High Court at Calcutta
In The Circuit Bench at Jalpaiguri
Appellate Side**

Present:

The Hon'ble Justice Biswaroop Chowdhury

FMA 23 of 2024

Tapasi Das & Anr.

Vs.

The New India Assurance Co. Ltd. & Anr.

For the Petitioner

: Mr. Subir Banerjee, Adv.
: Mr. Abhijit Raha, Adv.
: Mr. Joyprakash Roy, Adv.
: Ms. A. Ghosh, Adv.

For the Respondent

: Mr. Rishin Chakraborty, Adv.

Heard On : **20.03.2026**

Judgment On : **25.03.2026**

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 21-07-2023 passed by Learned Additional District Judge 3rd (Special Court) Jalpaiguri in MAC Case No.210 of 2022. [Tapasi Das and Anr VS The New India Assurance Company Ltd. And Anr].

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

On 09/04/2022 at about 9.30 pm the victim 'Biswajit Das' (since deceased) was going towards Garamore side from Bhabesh more side by a Motor cycle, at that time one vehicle being Registration No. WB-06E-4288 (LMV) was coming with a high speed rash and negligent manner and dashed the said Motor cycle from back on the way Garamore from Bhabesh more, P.S. NJP. District Jalpaiguri. As a result the victim (Biswajit Das) sustained grievous injuries on his person and immediately shifted him to Siliguri Dist. Hospital but the attending doctor declared him dead.

An autopsy was done by the Doctor of NBMC and Hospital Vide Siliguri P.S. U/D. Cas No. 107/2022 dt. 10/04/22 over the dead body. The accident occurred due to rash and negligent driving on the part of the driver of the offending vehicle WB-06E-4288 (LMV).

The deceased was the only bread earner of his family and due to his sudden demise the petitioners have been suffering much loss pain and shock and it will continue for a long period and loss of future earning love affection and consortium.

Pursuant to filing of this case notice was issued upon the opposite parties. Opposite party vehicle owner and opposite party New India Assurance Company Ltd, contested the case by filing written statement. ISSUES were framed and evidence was adduced.

Learned Trial Judge by Judgment and Order dated 21-07-2023 was pleased to dispose the claim case by observing and directing as follows:

Hence it is ORDERED that the claim application u/s. 166 of the M.V. Act dated 26-04-2022 is allowed on contest without any cost.

The petitioners are thus entitled to get Rs. 3,66,000/- (Rupees Three Lakh Sixty Six Thousand Six Hundred) only towards compensation from the OP. No. 2 for the road traffic accident death of victim Biswajit Das.

The O.P. No. 2/The New India Assurance Company Limited is directed to issue two A/C payee cheques each of Rs. 1,83,300/- (Rupees One Lakh Eighty Three Thousand Three Hundred) only in the name of Petitioner no. 1. Tapasi Das and 2. Pradip Das.

The O.P. No. 2 is directed to issue the cheques within a period of thirty (30) 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 an interest at the rate of 6% per annum from the date of filing of the claim application i.e. 26-04-2022 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 grounds on which the Judgment and Award of the Learned Trial Judge is assailed is firstly Learned Trial Judge ought to have considered the victim as driver and the income as Rs. 12,000/- per month. Secondly the Learned Trial Judge erred in not granting loss of future prospect, thirdly the

filial consortium ought to have been granted to the claimants, and fourthly interest ought to have been granted from the date of filing of the claim case.

Heard Learned Advocate for the appellants and Learned Advocate for the respondent no-1. Insurance Company perused the evidence adduced and the materials on record.

With regard to the first ground that the victim should have been considered as driver, and his income as Rs. 12,000/- it appears from record that the claimants did not file driving license of the victim to prove that the victim was lawfully entitled to drive, neither the claimants/appellants examined any person by whom the victim was engaged as driver, nor any document is filed to show that the victim used to earn livelihood as a driver. Thus in the absence of relevant documents, or corroborative evidence there was no scope for the Learned Trial Court to conclude that the victim was a driver.

As the occupation of victim as driver could not be proved there is no scope to proceed on the basis of Minimum Wages Act for driver. Thus the Learned Trial Court rightly proceed on the basis of notional income. However considering the Price index at this point of time the notional income of Rs. 6,000/- should be taken into consideration and future prospect 40%.

Thus notional monthly income if taken as Rs. 6,000/- the future prospect 40% being added brings the total monthly income to Rs. 8,400/-. The annual income comes to Rs. 100,800/- 50% should be deducted on account of personal expenses, thus annual dependency Loss comes to Rs. 50,400/-. The

multiplier of 17, being applied total dependency loss comes to Rs. 8,56,800/-. Further the appellants are entitled to Rs. 40,000/- each as filial consortium and Rs. 30,000/- on account of funeral expenses and loss of estate. Hence Rs. 9,66,800/- is the total compensation which the appellants are entitled from respondent no-1.

Hence this Appeal FMA 23/2024 stands disposed. The appellants are entitled from respondent no-1. New India Assurance Company Ltd. Rs. 9,66,800/- along with interest @6% per annum from the date of filing of claim case till today. The Respondent no-1 Insurance Company shall deposit the compensation amount along with interest before Registrar Circuit Bench Jalpaiguri High Court Calcutta. Such deposit shall be made within 8 weeks from the date of communication of this order. It is hereby clarified that in the event compensation awarded by Learned Trial Court is paid, balance amount shall be deposited.

The appellants shall be entitled to withdraw the deposit upon compliance of necessary formalities.

Urgent certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Biswaroop Chowdhury, J.)