

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

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 311 of 2025

New India Assurance Co. Ltd.

VERSUS

Nirupa Bouri & Ors.

For the appellant:

Mr. Sanjoy Paul, Adv.

For the respondents:

Mr. Amit Ranjan Roy, Adv.

Last Heard on: July 30, 2026

Judgment on: September 30, 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 29th September 2022 passed by Learned Additional District Judge First Court Asansol in MAC case no. 165/2007. The case of the claimant before the Learned Trial Court may be summed up thus:-

On 30.8.2007 at about 3.50 P.M. victim Prem Bauri was returning from Sarbari more to his residence, Neturia by his Motor Cycle being no. WB-

38T/5565. When he reached at Bhamuria more a pickup van being no. WB-37A/2338 dashed his Motor Cycle by rash and negligent manner at Bhamuria More. As a result he fell down from his Motor Cycle and sustained severe injuries in his person. He was shifted to Harmardih Hospital but on the way to hospital he died. The accident occurred due to rash and negligent driving of the driver of the said vehicle being no. WB-37A/2338 (pickup van).

Pursuant to filing of this case notice was issued upon the opposite parties. Opposite party vehicle owner did not contest the case. However 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 of claim case by observing and directing as follows:-

'Hence, it is,

ORDERED

That the MAC Case No. 165/2007 be and the same is allowed on contest against the O.P. No. 2 The New India Assurance Company Ltd. without cost and ex-parte against O.P. No. 1 the owner of the offending vehicle.

The total compensation amount payable by the O.P. No-2 Insurance Company amounting to Rs. 16,35,680/-.

The claimants do get an award of Rs. 16,35,680/- in this proceedings. The petitioner has filed D.C.F. on the claim amount of Rs. 16,00,000/-. Since the awarded amount is Rs. 16,35,680/-, so the petitioner has to pay D.C.F. on the excess awarded amount. The petitioner has to file D.C.F. on the excess awarded amount.

The claimant No. 1 Nirupa Bouri the widow do get an award of Rs. 2,80,950/- (Rupees Two Lakh Eighty thousand Nine hundred fifty only) in this proceedings and Claimant Nos. 2 to 6 children of the deceased do get an award of Rs. 2,70,946/- (Rupees Two lakh Seventy thousand Nine hundred forty six) each with interest @6% per annum from the date of filing of the application till realization of the amount.

The O.P. No. 2 The New India Assurance Company Ltd. is directed to pay compensation to the claimant No. 1 the widow of the deceased amounting to Rs. 2,80,950/- (Rupees Two lakh Eighty thousand Nine hundred fifty only) and claimant Nos. 2 to 6 children of the deceased amounting to Rs. 2,70,946/-. (Rupees. Two Lakh Seventy thousand Nine hundred forty six) through this tribunal by six A/C payee cheques within two months hereof with interest @6% per cent on the amount of awarded compensation from the date of filing of the application till the date of realization in full.

Let the copies be handed over to the O.P. No.2 The New India Assurance Company Ltd. free of cost for information.'

The appellant Insurance Company being aggrieved by the judgment and award passed by the Learned Trial Judge has come up with the instant appeal.

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

Learned Advocate for the Appellant submits that the premium cheque issued by the vehicle owner was dishonoured thus the Learned Trial Judge erred in directing the Appellant Insurance Company to pay the compensation amount. Learned Advocate further submits that the Learned Trial Judge ought to have directed the vehicle owner to pay the compensation. Learned Advocate also submits that the compensation awarded is excessive.

Learned Advocate also relies upon the following judicial decision:-

Dedappa and Ors. VS The Branch Manager National Insurance.

Reported in AIR-2008 S.C. 767.

Learned Advocate for the respondents claimants submits that the appellant Insurance Company could not prove that decision of cancellation of policy was communicated to the vehicle owner, and was within his knowledge thus the Liability of the Insurance Company remains in this case. Learned Advocate further submits that the Judgment and Award of the Learned Trial Court need not be interfered with, regarding liability of Insurance Company.

With regard to the first submission of Learned Advocate for the appellant that policy was cancelled it appears from the Judgment of the Learned Trial

Judge that the Learned Judge considered the evidence of O.P.W. 1 where he stated that he cannot say whether Debashree Mukherjee was informed about the dishonour of the cheque or not. The said witness further deposed in his cross-examination that in the relevant time postal department did not accept registered post with A/D for that reason they could not sent the letter to Debashree Mukherjee by registered post with A/D. Upon considering the said evidence Learned Trial Judge observed as follows:-

‘It appears from the insurance certificate as well as the letter of intimation Ext.F that the address of the registered owner is as Debashree Mukherjee S.B. Garai Road Asansal Dist-Burdwan West Bengal-713301 but astonishingly in the address mentioned in the envelop ‘Asansol’ has not been mentioned. So it cannot be said that the intimation letter sent through the courier service in its proper address. It is the liability of the insurance company to sent the intimation at the proper address of the owner of the offending vehicle. So considering, the decision of the Hon’ble Court aforementioned and from the conduct of the insurance company, it is clear that intimation of dishonour of cheque in respect of the premium of the insurance company not informed to the owner of the pick up van.’

Thus from the observation of the Learned Trial Court it is clear, that the fact of dishonour of cheque was not brought to the knowledge of the vehicle owner. It is to be remembered that Motor Vehicle claim Legislation is a beneficial legislation where protection of third party interest is involved and the

object of third party insurance is to protect the interest of third party and their families by payment of compensation by the Insurance Company for the loss suffered due to accident. Thus on one hand it compensates the loss suffered by third parties in case of accident and on the other hand relieves the vehicle owner from the burden of paying compensation. As third party insurance is a statutory obligation of the vehicle owner it is incumbent on the Insurance Company to make best endeavour to bring to the knowledge of vehicle owner about dishonour of cheque so that the vehicle owner can take steps forthwith to make payment of Insurance Premium and in the meantime does not bring the vehicle on the road. Further it is also incumbent upon the Insurance Company to intimate the Regional Transport Authority so that the said Authority can take steps to prevent the uninsured vehicle being brought on road. In the event the vehicle owner is not informed about dishonour of cheque he cannot take steps to do the needful and in case of accident third party will find it extremely difficult to proceed against vehicle owner and recover compensation and the vehicle owner will also be in a helpless position if the compensation is exorbitant. Hence the object of the Legislation will not be fulfilled. Thus the vehicle owner has to be informed about dishonour of cheque along with intimation to Regional Transport Authority.

Hence there is no error in imposing liability upon Insurance Company by Learned Trial Judge to pay the compensation.

Now with regard to the quantum of compensation this Court is of the view that the Learned Trial Judge erred in considering 1/5th deduction on account of personal expenses of victim and granting parental consortium to the claimants. In view of this Court deduction on account of personal expenses shall be 1/4th and parental consortium should be deleted.

In the event annual income is Rs. 79,000/-, future prospect of 40% being added total annual income comes to Rs. 1,10,600/- 1/4th being deducted on account of personal expenses which is Rs. 27,650/- annual dependency loss comes to Rs. 8,29,50/-. The Multiplier of 16, applied total dependency loss comes to Rs. 13,27,200/-. Further the claimants are entitled to Rs. 84,000/- on account of General Damage.

Hence total compensation which comes by arithmetical calculation is Rs. 14,11,200/-. However this Court is of the view that compensation of Rs. 14 lakh is just and reasonable.

Hence this Appeal FMA-311/2025 stands disposed. The Judgment and Award dated 29th September 2022 passed by Learned Additional District Judge First Court Asansol in MAC Case No. 165 of 2007 stands modified to the extent, that the claimants respondents are entitled to compensation of Rs. 14,00,000/-. The Appellant Insurance Company shall deposit before the Registrar General High Court Calcutta Rs. 14,00,000/- alongwith interest @6 per cent per annum from date of filing claim case till today. Such deposit shall be made within 8 weeks from the date of communication of this Order. In the

event compensation awarded by the Learned Trial Court is deposited, no further deposit be made. The claimants respondents are entitled to withdraw the compensation in equal shares upon compliance of necessary formalities. The balance amount if any be returned to the appellant Insurance Company alongwith accrued interest if any.

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.)