

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

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 554 of 2023

National Insurance Company Limited

VERSUS

Smt. Sukla Singh @ Suparna Singh

With

F.M.A. 262 of 2026

National Insurance Company Limited

VERSUS

Brihaspati Bar @ Behaspati Bar And Anr.

For the appellant/insurance company: Mr. Rajesh Singh, Adv.

For the respondent: Mr. Niranjana Maity, Adv.
Mrs. Indrani Ghosh, Adv.

Last Heard on: June 30, 2026

Judgment on: July 10, 2026

Biswaroop Chowdhury, J:

The instant appeals FMA 554 of 2023 and FMA 262 of 2026 have been preferred against the Judgment and Award dated 29-04-2023 passed by Learned Additional District Judge Fast Track 5th Court Alipore South 24

Pargans in MAC Case No. 34 of 2016 and Judgment and Award dated 11.07.2025 passed by Learned Additional District Judge 5th Fast Track Court Alipore in MAC Case No. 31 of 2016. Both the claim cases under Section 166 of the Motor Vehicles Act 1988 arose out of accident dated 10-11-2025 involving vehicle no. WB-58F-5663. The appeals were heard analogously due to their interconnectiveness.

The case of the claimants in MAC Case No. 34 of 2016 before Learned Additional District Judge Fast Track 5th Court Alipore may be summed up thus:-

On 10-11-2015 while the victim Monojit Singh @ Monjit Singh and others were standing by the eastern side of Diamond Harbour Road near Khariberia the driver of offending vehicle No. WB-58F-5663 (Tata Sumo) was proceeding with his vehicle towards Amtala from Kolkata side rashly, carelessly and negligently and thereby dashed against a stationary TATA ACE and also pedestrians namely Monjit Singh and others who sustained fatal injuries on their persons and Monjit Singh died on the same day after the accident.

Rash, careless and negligent driving of the driver of the offending vehicle no. WB-58F-5663 (Tata Sumo) was the sole cause for this pathetic accident.

The applicants have suffered financial loss besides their perpetual pain shock and mental agony.

The case of the claimants in MAC Case No. 31 of 2016 may be summed up thus:-

On 10-11-2015 while the victim Brihaspati @ Behaspati Bar along with others was standing by the eastern side of Diamond Harbour Road near Khariberia in order to bring the green vegetables from Amtala Market the driver of offending vehicle No. WB-58F/5663 (Tata Sumo) was proceeding with his vehicle towards Amtala side from Kolkata side rashly carelessly and negligently and thereby dashed against a stationary TATA ACE car and also the pedestrians namely Pramila Bar, Brihaspati Bar and others with great force and as a result she suffered severe injuries on her person becoming permanently disabled. The accident took place due to rash and negligent driving by driver of offending vehicle no. WB-58F-5663.

The Learned Trial Judge disposed of the claim case being 34 of 2016 by observing and directing as follows:-

Hence it is ORDERED that the Motor Accident claim case under Section 166 MV Act is hereby allowed on contest against OP-2 National Insurance Company Ltd. and ex-parte against OP-1 but without any order as to costs.

The petitioners/claimants do get an award of Rs. 11,52,200/- only jointly along with interest at the rate of 6% per annum from the date of institution of this case till the realization of the entire amount.

The OP-2 is directed to pay the aforesaid amount to the three petitioners [wife, son and mother of the deceased] in equal share and to issue account payee cheques accordingly.

Any compensation already paid to the petitioners/claimants under Section 140 MV Act shall be deducted from the amount of compensation made herein.'

Claim Case MAC Case No. 31 of 2016 was disposed by the Learned Trial Judge by observing and directing as follows:-

Hence it is ORDERED that the instant claim application under Section 166 of the MV Act be and the same is allowed ex-parte against OP No. 1/Sankar Banerjee and on contest against OP. No. 2/National Insurance Co. Ltd. but without cost upon any of the parties.

The victim namely Brihaspati @ Behaspati Bar do get compensation of Rs. 13,85,564/- (Rupees Thirteen Lakhs Eighty Five Thousand Five Hundred Sixty Four only) from OP No. 2/National Insurance Co. Ltd. together with interest @6% p.a. from the date of filing till realization excluding the covid-19 pandemic period from March 2020 to December 2021.

The OP No. 2/National Insurance Co. Ltd is directed to issue an account payee cheque for the aforesaid amount in the name of the victim Brihaspati @ Behaspati within 90 days from this day.

The victim shall be at liberty to put this award into execution in accordance with law in case the OP No-2/National Insurance Co. Ltd. fails to comply the order within the stipulated period.

Any compensation if already paid to the victim U/S 140 of MV Act shall be deductible from the award of compensation made hereinabove.

Bench clerk is directed to assess the deficit court fees if any forthwith. The victim is directed to furnish photo-identity proof and deficit court fee before receiving the cheque.'

Appeal FMA 262 of 2026 is instituted against Judgment and Award dated 11.07.2025 passed in MAC Case No. 31 of 2016 by Learned Additional District Judge 5th Fast Track Court Alipore, and Appeal FMA 554 of 2023 is instituted against Judgment and Award dated:- 29/04/2023 passed by Learned Additional District Judge 5th Fast Track Court Alipore in MAC-34 of 2016.

Both the Appeals FMA 554 of 2023 and FMA 262 of 2026 were heard analogously for their interconnectwiness.

Mr. Singh Learned Advocate for the Appellant Insurance Company submits that on 10/11/2015 at 4.30 am in the morning accident took place and F.I.R. was lodged against unknown vehicle which resulted in FRT. Learned Advocate further submits that during pendency of investigation claim case was filed, and evidence was given after seven years without any statement made to

Police Authority which makes the case of the claimant doubtful. Learned Advocate also submits that when nothing was found on the basis of statement of eye witness compensation could not be awarded.

With regard to the compensation awarded to legal heirs of Monjit Singh which is the subject matter of the appeal FMA-554 of 2023, Learned Advocate for the appellant Insurance Company submits that the Learned Trial Judge erred in considering the monthly income of the victim as Rs. 6,000/- per month although he was a day labourer and as per Minimum wages Act Rs. 5,000/- ought to have taken into consideration as monthly income of the victim. Learned Advocate submits that compensation awarded is excessive.

With regard to the compensation awarded to Brihaspati Bar @ Behaspati Bar the injured victim which is the subject matter of FMA-262 of 2026 Learned Advocate submits that the compensation awarded is excessive. Learned Advocate further submits that the disability certificate was not issued by the Board of Government hospital but by an individual doctor who did not treat the patient, and unless medical board has examined the patient issuing disability certificate by an individual doctor declaring 80% disability is bad in Law. Learned Advocate also submits that Learned Judge erred in considering monthly income of the injured as Rs. 7,345/- under minimum wages law for unskilled labour.

Learned Advocate for the claimants/respondents submits that there is no plea in the written statement that the vehicle was implanted thus at this stage

the plea cannot be taken. Learned Advocate draws attention to deposition of I.O. as P.W. 2, where he stated about visiting the hospital and house of injured person and he stated that it was his duty. Learned Advocate also draws attention to the Letter dated 18/02/2016 addressed by Sri Badal Chandra Sardar to the Superintendent of Police Alipore South 24 Parganas that he came to know from Tapan Ghata, Tanu Gaji, and Joydev Bar that vehicle number WB-58F 5663 Tata Sumo was involved in the accident.

With regard to the quantum of compensation Learned Advocate for the respondents/claimants submits that Learned Trial Judge upon considering the occupation of victim and evidence rightly awarded the compensation, in both the claim cases.

Upon hearing the Learned Advocates and considering the facts of the case it appears that complaint was lodged pursuant to the accident and FIR was registered against unknown vehicle, about accident caused due to rash and negligent driving. When an FIR is lodged with regard to accident by rash and negligent driving against unknown vehicle it is incumbent upon the Police Authority to make best endeavour to identify and trace out the vehicle involved, and then proceed in accordance with law. Although Police report in claim cases corroborates incident of rash and negligent driving and compensation case depends upon the evidence of eye witnesses but investigation by Police Authority is necessary to proceed against offending drivers in Criminal Court. In the instant case the Police Authority has failed to identify, and trace out the

offending vehicle and has submitted FRT in the Court of Magistrate. Thus the claimants had to depend on the eye witnesses and other relevant documents to prove the claim case.

Upon perusing the materials on record it appears that on 03-05-2016 the I.O. of the case produced Badal Chandra Sardar Gazi Mohammed Kabir, and Panu for recording the statements U/S-164 CrPC before the Learned Magistrate and the recording was complete on 30/06/2016. Again on 01-03-2017 it appears that Ayazul SK surrendered in the said case and prayed for bail.

On 18/02/2016 Badal Chandra Sardar the complainant/informant made representation to the superintendent of Police Alipore South 24 Parganas that he came to know from Tapan Ghata, Tanu Gaji and Jaydev Bar about involvement of vehicle no-58F 5663.

P.W. 3 Jaydev Bar in his examination in Chief has stated as to how the accident took place and who were injured in the accident. In his cross-examination he stated that he took Monjit Singh to Amtala BPHC. Nothing could be shaken with regard to the accident taking place due to rash and negligent driving by WB-58F 5663 and that he was examined by the Police Authority. Further nothing has come out in cross-examination that save and except than WB-58F 5663 any other vehicle were involved or there was contributory negligence of the victim and injured persons.

Further from the report of the Investigator of the Insurance Company and Letter issued to the Investigator by the Insurance Company it appears that the Investigator was required to submit report on the aspects quoted as follows:-

- ‘1. To substantiate the report with documentary evidence
2. Records viz FIR charge sheet seizure List MVI Report GR Record and Post Mortem Report.
3. Statements from FIR maker as well as eye witnesses
4. Driving license verification from RTA together with certificate
5. Statement from owner of the vehicle as well as the Driver to be obtained.
6. Policy copy covering date of accident to be obtained from the vehicle owner.
7. Income verification from employer
8. Hospital verification and the amount of bill paid.
9. Besides any other relevant point depending upon merit of the case should be looked into.’

Thus from the letter of the Insurance Company it is clear that the Investigator was appointed to conduct independent investigation and not merely to collect report from Police Authority and submit his report on the basis findings of Police Authority. Amongst the particulars to be obtained was statement from vehicle owner and driver of which there is mention of evidence

of OPW 1. As the object of investigation by Insurance Company is to ascertain the particulars of the accident and to see that genuine claims are honoured and frivolous claims are dismissed investigation by Insurance Company should not insist merely on Police report but other relevant materials collected independently. As in order to honour a claim it is not necessary to prove the same beyond reasonable doubt like criminal cases Police report regarding non-establishment of rash and negligent driving or non identification of vehicle is always not fatal. In the instant matter the vehicle number was supplied to the investigator thus it was necessary to mention about the statement of vehicle owner and driver of the concerned vehicle in his report. Thus from the letter to the investigator and the silence of the investigator to mention in his report about statement made by vehicle owner or driver although he was specifically instructed is a ground to draw inference that the investigator did not get any statement from vehicle owner or driver denying involvement.

The evidence of P.W. 3 and the letter addressed to superintendent of Police South 24 Parganas, statements made before Judicial Magistrate U/S-164 CrPC and surrender by one person namely Ayajul SK. inspires confidence in the mind of Court and makes the case of the claimants believable. When vehicle number is mentioned in the letter addressed to the superintendent of Police and statement made before Learned Magistrate U/S-164 CrPC as vehicle number 58F 5663 and not WB-58F-5663 the missing letters WB is not fatal in the compensation claim case although it may be fatal in the Criminal Case.

The Insurance Company in the instant case has also not examined the driver who surrendered in the criminal case, regarding rash driving instituted by Police Authority which could have been done.

Learned Trial Judge upon considering the evidence of P.W.-3 and the materials on record has assigned reasons for arriving at the findings that there was rash and negligent driving by driver of offending vehicle no-WB 58F/5663. Learned Trial Judge further upon considering the occupation of the victim as day labour considered the notional income as Rs. 6,000/- per month which in the opinion of this Court is just and reasonable. Thus no interference is required with regard to the Judgment and Award passed by the Learned Trial Judge.

Thus this Appeal FMA-554 of 2023 should be dismissed.

With regard to the findings of the Learned Trial Judge in MAC-31 of 2016 it also appears that the Learned Trial Judge upon considering the evidence of P.W. 6 and other materials on record upon assigning reasons came to a finding about rash and negligent driving by driver of vehicle no. WB-58F/5663. In view of the above discussion this Court is of the view that there is no error in such findings.

However with regard to the findings of Learned Trial Judge regarding compensation treating notional income as Rs. 7,345/- per month applying the minimum wages for unskilled labour this Court is of the view that as the claimant was not labour but was self employed the minimum wages law cannot

be applied. Thus considering the nature of occupation notional monthly income may be considered Rs. 7000/- per month. As the disability certificate was not issued by Medical Board the percentage of disability may be considered as 40% and not beyond.

In the event the monthly income is taken to be Rs. 7,000/- adding future prospect of 40% the net monthly income comes to Rs. 9,800/-. Loss of earning should be computed as follows:-

Rs. $9,800 \times 12 \times 15 \times 40\% =$ Rs. 7,05,600/-. Thus loss of earning capacity is Rs. 7,05,600/-. Further the claimants are entitled to Rs. 1,60,000/- on account of medical expenses incurred Rs. 10,000/- on account of future medical expenses, Rs. 5,000/- on account of pain and sufferings and Rs. 50,000/- on account of loss of amenities. Thus total compensation comes to Rs. 9,80,600/- by arithmetical calculation. However this Court is of the view that compensation of Rs. 10,00,000/- (Rupees ten lakh) would be just and reasonable.

Hence this Appeal FMA 262 of 2026 stands disposed by modifying the Judgment and Award dated 11-07-2025 passed by Learned Additional District Judge 5th Fast Track Court Alipore in MAC Case no. 31 of 2016 to the extent that the claimant/Respondent will be entitled to Rs. 10,00,000/- (Rupees ten lakh) along with interest @6% per annum from the date of filing claim case till realization excluding the covid-19 Pandemic period from March 2020 to December 2021. The appellant National Insurance Company Limited shall

deposit Rs. 10,00,000/- along with interest @6% per annum before Registrar General High Court Calcutta within 8 weeks from the date of communication of this order. In the event the compensation awarded by Learned Trial Court is already deposited no further deposit be made.

The respondent/claimant will be entitled to withdraw Rs. 10,00,000/- along with interest @6% per annum as observed above Balance amount if any with accrued interest be returned to the appellant National Insurance Company Ltd.

The Appeal FMA 554 of 2023 stands dismissed. The Judgment and Award dated 29-04-2023 passed by Learned Additional District Judge Fast Track 5th Court Alipore South 24 Parganas in MAC 34 of 2016 is affirmed. The appellant shall deposit the compensation awarded by Learned Trial Judge along with interest within 8 weeks before Registrar General High Court Calcutta in the event it is not deposited. The claimants/respondents will be entitled to withdraw the compensation upon compliance of necessary formalities.

Both the Appeals FMA 554 of 2023 and FMA 262/2026 stands disposed.

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)