

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

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 874 of 2025

Indusind General Ins. Co. Ltd.

VERSUS

Purabi Maity & Ors.

With

C.O.T. 122 of 2025

Purabi Maity & Ors.

VERSUS

Reliance General Ins. Co. Ltd.

For the Appellant/Insurance Co.:

Mrs. Gopa Das Mukherjee, Adv.

For the Respondent/Claimant:

Mr. Ashique Mondal, Adv.

Mr. Shahmeraz Alam, Adv.

Last Heard on: July 30, 2026

Judgment on: August 13, 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 4th March 2025 passed by Learned Judge special Court cum

Additional District Judge Asansol Paschim Bardhaman in MAC Case No. 01 of 2014.

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

On 13-05-2013 the victim Achalesh Maity son of Late Benimadheb Maity resident of Kalayachia Purba Medinipur was proceeding towards Asansol from Kolkata by driving a S.B.S.T.C. bus bearing Registration No. WB-39A/5583 through Durgapur Asansol Road (NH-2) at about 19.45 hrs, when the said bus reached near Gobinda Nagar opposite of Jasbir Singh Hotel, at that time one truck bearing Registration No. JH/09E/3884 which was running in front of the said bus, suddenly the driver of the said Truck stopped his vehicle at the middle of the said road without giving any signal. The driver of the said bus applied the hard break to avoid collision but he could not control his vehicle and collided with the truck. As a result the victim who was driving the bus and some other passengers sustained severe injuries on their person. Local people took them to S.D. Hospital Asansol for treatment. On the same day i.e. on 13.05.2013, the victim was referred to SSKM Hospital Kolkata for better treatment where he succumbed to his injuries on 14-05-2013 at about 5.45 a.m. The said accident occurred due to rash and negligent driving of the driver of the offending truck bearing No. JH/09E-3884.

Pursuant to filing of this case notice was issued upon the opposite parties. Opposite Party vehicle owner did not contest the case. However

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 hearing the Learned Advocates was pleased to dispose the claim case by observing and directing as follows:-

It is therefore ORDERED that the MAC Case be and the same is allowed ex-parte against OP No. 1 and on contest against OP No-2/Insurance Company but without costs.

The petitioners do get an award of Rs. 18,29,770/- (Rupees Eighteen Lakh Twenty Nine Thousand Seven Hundred Seventy Only) with simple interest at the rate of 6% per annum over the amount from the date of filing of the case till the full realization of the compensation amount so awarded.

The OP No. 2 insurance company is directed to make payment of the compensation amount so awarded by issuing three A/C payee cheques of equal amount in the name of the petitioner No. 1,2, and 3 as per this order within 60 (sixty) working days from the date of filing deficit Court fee, in default of which the petitioner is at liberty to recover the compensation amount so awarded by execution of the award through court of law.

After making such payment Insurance Company shall be able to recover the amount from O.P. No.1.'

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 quantum of compensation awarded by the Learned Trial Judge has filed cross-objection.

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

Learned Advocate for the appellant submits that there was contributory negligence on the part of the victim thus compensation awarded should be reduced. Learned Advocate relies upon the following Judicial decision:-

Khenei VS New India Assurance Co. Ltd. and ors.

Reported in 2015(2) TAC. 677 (S.C.).

Learned Advocate further submits that compensation awarded is excessive and should be reduced. The following decision is relied upon by Learned Advocate for the appellant in this regard:-

Rashmirekha Tripathi VS The Branch Manager (Legal Claims).

Shriram General Insurance Company Limited and ors.

SLP(c) No. 27220 of 2024.

Supreme Court of India.

Learned Advocate for the claimants/respondents submits that no evidence is adduced with regard to contributory negligence thus learned Judge rightly came to the findings of rash and negligent driving by driver of offending vehicle no-JH/09E-3884. Learned Advocate further submits that the Learned Trial Judge erred in deducting provident fund from Gross Total income. Learned Advocate also submits that compensation awarded should be enhanced.

With regard to the first submission of Learned Advocate for the appellant that there was contributory negligence of victim no evidence is adduced by Insurance Company in this regard. Moreover charge sheet of Police Authority goes to show that driver of the vehicle JH/09E/3884 is responsible for rash and negligent driving. There is no whisper of negligence of the victim. The Learned Trial Court upon considering evidence of P.W. 2 discussed in details as to why there is no contributory negligence of the victim. Thus there is no error in the finding of Learned Trial. The decision of the Hon'ble Supreme Court in the case of (Khenai VS New India Assurance Co. Ltd. and ors) is not applicable to the facts of the case as the said decision dealt with composite negligence and not contributory negligence.

Now with regard to quantum of compensation it appears that the pay slips of the victim reflects total Gross Salary for the year May 2012 to April 2013-as Rs. 3,32,301/-. The Income Tax deducted is Rs. 9973 and Profession Tax deducted is Rs. 1,800/-. As income tax deduction is not shown for 4

months, nor FORM 16 of Income Tax filed it would be proper to consider Income Tax deducted as Rs. 11,000/-. In the event income tax of Rs. 11,000/- and profession tax of Rs. 18,00/- total 12,800/- is deducted from Gross Salary Net Salary comes to Rs. 3,19,501/-. Future prospect of 15% added total annual income comes to Rs. 3,67,426.15/- 1/3rd deducted on account of personal expenses annual dependency loss comes to Rs. 2,44,950/-. The multiplier of 11 being applied total dependency loss comes to Rs. 26,94,450/-. The general damages of Rs. 84,000/- being added total compensation comes to Rs. 27,78,450/- by arithmetical calculation. However this court is of the view that compensation of Rs. 25,00,000/- is just and reasonable.

Hence this Appeal FMA-874 of 2025 along with COT No. 122 of 2025 stands disposed. The Judgment and Award dated 4th March 2025 passed by Learned Judge Special Court (Electricity Act) cum Additional District Judge Asansol Paschim Bardhaman in MAC Case No-01 of 2014 stands modified to the extent that respondents/claimants are entitled to Rs. 25,00,000/- from the appellant Indusind General Insurance Company Limited. The appellant Indusind General Insurance Company Limited shall deposit Rs. 25,00,000/- along with interest @6% 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 Learned Trial Court is deposited the balance amount be deposited.

The claimants will be entitled to withdraw the compensation upon compliance of necessary formalities. Deficit Court fees on enhanced compensation be paid within 4 weeks before Learned Trial Court.

TCR be returned by special messenger cost to be deposited by claimants within one week.

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.)