

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

Present:

**The Hon'ble Justice Biswaroop Chowdhury**

**F.M.A. 1854 of 2025**

**With**

**IA NO: CAN 3 of 2026**

***Chalomandalam MS General Insurance Company Limited***

**VERSUS**

***Narayan Dey & Ors.***

For the appellant:

Mr. Soumalya Ganguli, Adv.

For the respondents/claimants:

Mr. Saswata Bhattacharya, Adv.

**Last Heard on: June 12, 2026**

**Judgment on: June 19, 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 19<sup>th</sup> August 2025 passed by Learned Additional District Judge 1<sup>st</sup> Court South 24 Parganas at Alipore in MAC Case No-1023 of 2023.

The case of the claimant respondent no. 1 and 2 before Learned Trial Court may be summed up thus:

On 31.08.2023 at about 3.30 a.m. (morning) the driver of the offending vehicle bearing registration no. WB-23F/7262 (Tata Intra) drove the same at a high speed endangering human life in rash and negligent manner along with Kalyani Road and reached near Indian Gas Godown under Ghola P.S. dashed one pedestrian namely Koushik De as a result the victim fell down on the road side and sustained severe injuries all over his body. Immediately after the accident the victim was removed to Panihati S.G. Hospital by the help of local people where the doctor declared death.

After the accidental sudden death of the victim the claimants lost their growing up son who was the only one bread earner of the family.

Pursuant to the filing of the case notice was issued upon the opposite parties.

Opposite party vehicle owner did not contest the case. 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 and upon hearing the Learned Advocates was pleased to dispose of the claim case by observing and directing as follows:

The claim petition is allowed on contest against Opposite Party No. 2 and ex-parte against Opposite Party No-1.

The claimants Narayan Dey and Smt. Archana Dey are entitled to a compensation of Rs. 31,45,000/- (Rupees Thirty-One Lakhs Forty Five Thousand only) with interest @6% per annum from the date of filing of the claim application till the date of realization.

The Opposite Party No. 2 Cholamandalam MS General Insurance Co. Ltd., is directed to deposit the aforesaid amount with interest before this Tribunal within 60 days from the date of this Order.'

The appellant 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/Insurance Company and Learned Advocate for the respondent/claimant. Perused the evidence adduced and materials on record.

Learned Advocate for the appellant submits that the Learned Trial Judge erred in awarding compensation when the Post mortem report states that the deceased was brought dead at Panihati State General Hospital with a road traffic accident with his own bike. Learned Advocate further submits that the eye witness stated that it took 2 minutes to reach the spot will go to show that he did not witness the accident.

Learned Advocate for the respondents/claimants submits that mere remark in the post-mortem report that the victim met with an accident while driving his motor bike should not be relied upon when there is no evidence that the person or police authority who brought the body witnessed that the victim was riding motor cycle. Learned Advocate further submits that the evidence of

P.W. 2 will go to show that he witnessed the accident and then proceeded to the spot in less than two minutes which will not disprove that he did not see the accident. Learned Advocate also submits that the Learned Trial Judge rightly passed the award of compensation which may not be interfered with.

Learned Advocate relies upon the following Judicial decisions:-

**Sumita and others VS Rajasthan State Road Transport Corporation and ors.**

Reported in (2020) 13 SCC 486.

**National Insurance Company Ltd. VS Chamundeswari and ors**

Reported in (2021) 18 SCC. 596.

**Sucheta Mishra and ors. VS Divisional Manager National Insurance Co. Ltd.**

Reported in 2023 (2) TAC 355(S.C.)

Now with regard to the first submission of Learned Advocate of the Appellant that Post Mortem report states that the victim suffered accident while riding his bike no evidence is adduced by the Insurance company in that regard, and no motor bike is found at the place of occurrence and no motor bike is seized by the Police Authority during course of investigation. Moreover P.W. 1 father of the victim in his cross examination has stated that his son never went to attend duty by bike.

With regard to the submission of Learned Advocate for the appellant that P.W. 2 went to place of occurrence within two minutes after the accident this Court is of the view evidence should be read as a whole. Upon perusing evidence of P.W. 2 it appears that in cross examination he stated that the accident took place within 100 meters from him. It will further appear that he along with other people took the victim to hospital. Although he stated that it took him less than two minutes to reach place of occurrence does not mean it took 2 minutes to reach and it may be any time less than two minutes.

The said statement will also not disprove that the said witness did not see the accident. The evidence of the said witness and the charge-sheet will prove the case of the claimants.

Learned Trial Judge upon considering the evidence both oral and documentary rightly arrived at the conclusion and awarded compensation to the claimants/respondents. Thus this court does not find any error in the Judgment and Award passed by the Learned Trial Judge.

Thus this Appeal FMA 1854 of 2025 stands dismissed. Judgment and Award passed by Learned Additional District Judge 1<sup>st</sup> Court Alipore South 24 Parganas in MAC Case No. 1023 of 2023 is affirmed. The claimants/respondents are entitled to withdraw the compensation amount if deposited before Registrar General upon compliance of necessary formalities. In the event compensation amount is not deposited the same be deposited within 8 weeks from the date of communication of this Order.

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.)**