

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

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 2 of 2024

With

IA NO: CAN/2/2026

The New India Assurance Company Ltd.

VERSUS

Ajoy Dey & Anr.

COT 23 of 2024

Ajoy Dey

VERSUS

The New India Assurance Company Ltd. & Ors.

For the appellant/Insurance Co.:

Ms. Sayanti Santra, Adv.

For the respondents:

Mr. Ashique Mondal, Adv.

Mr. Shahmerez Alam, Adv.

Last Heard on: October 05, 2026

Judgment on: October 15, 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 21-09-2023 passed by Learned Additional District Judge Fast Track 5th Court Alipore South 24 Parganas in MAC Case No-925 of 2018.

The case of the claimants Respondent before the Learned Trial Court may be summed up thus;

On 23-10-2017 at about 1-20 hrs the victim was standing near Kalitala More and the offending vehicle bearing No. WB-19D-6344 dashed the victim as a result the victim sustained serious injuries on his person and specifically compound fracture at left arm and left leg which caused permanent disablement. Pursuant to filing of the 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 upon hearing the Learned Advocates was pleased to dispose of the case 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 on contest against OP No. 2/The New India Assurance Company Ltd. on contest but without cost and ex-parte against OP No-1/owner Swapan Kumar Ghosh without cost.

The claimant/victim namely Sri Ajay Dey do get compensation of Rs. 47,84,242/- (Rupees Forty Seven Lakhs Eighty four Thousand Two hundred

Forty two only) from OP No.2/The New India Assurance Company Ltd. together with interest @7% p.a. from the date of filing till realization.

The OP No.2/The New India Assurance Company Ltd. is directed to issue account payee cheque for the aforesaid amount in the name of the claimant Sri Ajay Dey within 60 days from this day.

The claimants will be at liberty to put this award into execution in accordance with law in case the OP No.2/The New India Assurance Company Ltd. fails to comply the order within the stipulated period.

Any compensation if already paid to the claimants u/s.140 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 claimant is directed to furnish photo identity proof and challan showing payment of deficit court fee before receiving the cheque.'

The Appellants being aggrieved by the Judgment and Award passed by the Learned Trial Court has come up with the instant appeal. The claimant/respondent no-1 being also aggrieved by the quantum of compensation awarded has filed the cross-objection.

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

Learned Advocate for the appellant submits that the FIR is lodged after 3 and half months from date of incident thus the case of the claimant is doubtful

Learned Advocate further submits that there is inconsistency in different statements.

Learned Advocate also submits that the claimant/respondent could not prove the medical expenses as most of the medical expenses was incurred as the claimant was a diabetic patient. It is submitted by the Learned Advocate that pay slip was not furnished from the month prior to accident till the claimant was given posting to the post of starter from the post of driver. It is further submitted that the claimant is earning more in the post of starter than that of driver. It is also submitted that compensation awarded is excessive and the same must be reduced.

Learned Advocate for the claimant submits that the claimant who himself is a witness has proved the case.

Learned Advocate further submits that the report of the Medical Board with clearly go to show the extent of disability.

Learned Advocate also submits that the claimant after the accident was given the post of a starter, and the job of a starter is to record the time thus salary of starter is less than the driver.

It is submitted by the Learned Advocate that the claimant was on leave from November 2017, to November 2019 thus there is no scope to produce the said slips as submitted by Learned Advocate for the Insurance Company.

It is further submitted that the Medical Expenses and percentage of disability is higher and the compensation awarded should be enhanced.

With regard to the first submission of Learned Advocate for the appellant/insurance company about delay in lodging FIR it is held in different judicial pronouncements that mere delay in lodging FIR is fatal. In Indian Society family members of injured persons after accident rushes to hospital and not to Police Station. In the instant case the claimant being injured in accident and hospitalized cannot be blamed for delay in lodging FIR as the FIR was lodged by wife of another injured person. The Learned Trial Judge with regard to the accident considered the evidence of P.W. 1 and P.W. 6 and came to the conclusion of rash and negligent driving by driver of vehicle no. WB-19D-6344. Thus there is no scope to interfere in such findings.

As the claimant proved the nature of disablement his loss of salary after accident learned Trial Judge upon considering the certificate issued by the Medical Board and the pay slip of the claimant arrived at the decision of awarding compensation of Rs. 47,84,242/-. However with regard to non-filing of pay-slip for the period of two years although the claimant was on medical leave but the pay which he received prior to accident is not filed and at present the claimant is receiving more salary, than what he receiving prior to accident. It is on the basis of the pay-slip which relates to the period of two years after date of accident where there is general enhancement of salary of staffs the compensation is ascertained. However the pay slip prior to accident ought to

have been filed. Thus in the instant case it would be reasonable to reduce the compensation to Rs. 45,00,000/- (Rupees forty five lac)

Hence this FMA-2 of 2024 alongwith COT-23 of 2024 stands disposed. The Judgment and Award 21-09-2023 passed by Learned Additional District Judge 5th Fast Track Court South 24 Parganas at Alipore stands modified to the extent that claimant/respondent is entitled to compensation of Rs. 45 lakh. The Appellant New India Assurance Company Limited shall deposit before the Registrar General High Court Calcutta Rs. 45 lakhs alongwith 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 trial court is already deposited no further deposit be made. The claimant/respondent is entitled to withdraw the compensation upon compliance of necessary formalities. Balance amount alongwith accrued interest be returned to the appellant Insurance Company.

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.)