

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

Present:

**The Hon'ble Justice Biswaroop Chowdhury**

**F.M.A. 374 of 2024**

***The Oriental Insurance Company Limited***

**VERSUS**

***Shrabani Sarkar and Ors.***

***With***

**C.O.T. 6 of 2023**

***Shrabani Sarkar and Ors.***

**VERSUS**

***The Oriental Insurance Company Limited & Anr.***

For the appellant/insurance company: Mr. Sanjoy Paul, Adv.

For the respondents/claimants: Mr. Jayanta Kr. Mandal, Adv.  
Mr. R. N. Basu, Adv.  
Mr. Saswata Bhattacharya, Adv.  
Mr. Sayantan Rakshit, Adv.

**Last Heard on: July 17, 2026**

**Judgment on: July 27, 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> July 2022 passed by Learned Additional District Judge Fast Track 1<sup>st</sup> Court Barasat North 24 Parganas in MAC Case No-805 of 2012. The claimants/respondents being also aggrieved by the Judgment and Award passed by the Learned Trial Judge has filed cross objection.

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

On 19.08.2012 at about 12.00 hours while the driver of the offending vehicle bearing Regd. No. WB-24C-7084 (Maruti Omni) drove the same in a rash and negligent manner endangering human life and safety to others and thereby dashed on motor cyclist namely Subimal Chandra Sarkar @ Subimal Sarkar and Rupa Mondal @ Lakshmi Mondal at Nabapally on Chak Dah-Bangoan Road. As a result the motor-cyclist namely Subimal Chandra Sarkar @ Subimal Sarkar got serious injury on his persons and he was immediately taken to Chakdah Hospital and thereafter he was referred to NRS Medical College and Hospital, Kolkata where he died in the hospital on 20-08-2012. Rash and negligent driving on the part of the driver of the offending vehicle bearing No. WB-24C-7084 (Maruti Omni) is the sole cause of the accident. 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 adduced and upon hearing the Learned Advocates for the parties was pleased to dispose of the claim case by observing and directing as follows:-

*'Hence, it is,*

**ORDERED**

*that the Motor Accident Claim Case U/s.166 of the M.V. Act be and the same is allowed on contest against O.P. No.2/Oriental Insurance Company Ltd. and ex-parte against O.P. No. 1 Nikhil Chandra Sarkar.*

*Petitioner/Claimant Subhas Sarkar and Shrabani Sarkar for themselves and on behalf of minor son named Debmalya Sarkar do get an award of Rs. 25,16,256/- (Rupees twenty five lakhs sixteen thousand two hundred fifty six) only along with 6% interest from the date of filing i.e. 01.12.2012 till payment.*

*The O.P. No. 2 is directed to issue cheques, amounting to Rs. 15,16,256/- in favour of the Petitioner Shrabani Sarkar and amounting Rs. 5,00,000/- each in favour of the Petitioner Subhas Sarkar and Debmalya Sarkar respectively, within two months from the date of this Judgment. The O.P. No.2 also will have to pay interest @6% p.a. upon the individual amounts, since 01.12.2012, the date of filing application till payment made.*

*Petitioner Shrabani Sarkar being the mother of the minor Debmalya Sarkar is to deposit the cheque amount of the compensation awarded in favour of Debmalya Sarkar, in a Nationalized Bank or Post Office in a fixed deposit*

*scheme. Debmalya Sarkar on attaining his majority is at his liberty to withdraw the fixed deposit amount or the same to be continued.*

*Let a copy of this Judgment be supplied free of costs to the O.P. No.2.*

*Petitioner will get copy of Judgment free of cost only after depositing the deficit stamp duty.*

*The Petitioner/Claimant side is liable to pay the requisite court fees on the awarded amount.'*

The Appellant Oriental Insurance Company Ltd. being aggrieved by the Judgment and Award passed by the Learned Trial Court has come up with the instant appeal. The claimants/respondents being also aggrieved by the said Award 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 the FIR was lodged against vehicle no. WB-25D/1053 but charge-sheet was submitted against vehicle no-WB-24C/7084 which makes the case of the claimant doubtful. Learned Advocate further submits that multiplier applied by the Learned Trial Court is 16, but it ought to have been 15. Learned Advocate also submits that compensation awarded is excessive.

Learned Advocate for the claimants/respondents submits that there is no plea in the written statement about non-involvement of the offending vehicle WB-24C-7084 thus the said plea cannot taken at this stage. Learned Advocate further submits that the Learned Trial Judge while considering the issue of involvement of the vehicle came to a finding by assigning reasons that vehicle WB-24C-7084 is involved. Learned Advocate also submits that the opposite party no-1 Pillion rider was examined as OPW-1 regarding the involvement of the vehicle and she stated in her evidence that the said vehicle is involved. It is also submitted by the Learned Advocate that Learned Trial Judge erred in not awarding compensation on account of loss of consortium loss of estate and funeral expenses thus the compensation awarded should be enhanced.

The following decisions are relied upon by Learned Advocate for the claimants/respondents.

**New India Assurance Co. Ltd. VS Smt. Saheli Sarkar and ors.**

Reported in 2013(3) TAC. 181 (Cal).

**Kusum Lata and others VS Satbir and ors.**

Reported in 2011(2) TAC.1(SC).

FMA-185 of 2022

**National Insurance Co. Ltd. VS Bratai Maity and ors.**

(High Court at Calcutta)

With regard to the first submission of Learned Advocate for the appellant that the FIR was lodged against WB-25D/053. Indica but charge sheet was submitted against vehicle no-WB-24C-7084 makes the case of the claimants doubtful it is to be remembered that FIR with regard to accident by rash driving may be made against known vehicle or unknown vehicle. When an FIR is lodged against unknown vehicle it is incumbent upon the police authority to identify and trace out the vehicle involved and proceed in accordance with law. In the event FIR is against known vehicle it is the duty of the Police Authority to ascertain as to whether the allegations are correct or not and then proceed against the driver of the said vehicle in accordance with law. In the instant case although FIR is lodged against vehicle no. WB-25D/053 but Police Authority upon taking up the investigation and examining FIR maker and other witnesses submitted charge-sheet against driver Josim Mondal and seized the vehicle WB-24C/7084. When investigation is conducted in accordance with law and charge-sheet submitted the same cannot be discarded without examining the Investigating officer. In the instant case the opposite party Insurance Company neither examined the investigating officer nor the driver of the offending vehicle against whom charge-sheet is submitted. Moreover the Complainant/P.W. 2 has explained how the mistake in recording the number of vehicle was made and how rectification was made. Thus the evidence of P.W. 1, O.P.W-1 and the charge-sheet is sufficient to hold that accident took place due to rash driving of vehicle no. WB-24C/7084. Thus there is no scope to interfere

in the findings of the Learned Trial Judge regarding involvement of vehicle no-WB-24C/7084 in the accident.

However with regard to the quantum of compensation it appears that age of the victim was 38, thus multiplier of 15 ought to have been applied. In the event multiplier of 15 is applied total dependency loss comes to Rs. 22,93,365/-. Further Rs. 70,000/- should be added on account of loss of consortium loss of estate and funeral expenses. Thus total compensation comes to Rs. 23,63,365/- by arithmetical calculation. However this Court is of the view that compensation of Rs. 24 Lakh is just and reasonable.

Hence it is Ordered that the Appeal FMA-374/2024 stands disposed. The Judgment and Award dated 19<sup>th</sup> July 2022 passed by Learned Additional District Judge Fast Track 1<sup>st</sup> Court Barasat North 24 Parganas in MAC. Case No-805 of 2012 stands modified to the extent that the respondents/claimants are entitled to Rs. 24,00,000/- (Rupees twenty four Lakhs) along with interest @6% p.a. from date of filing claim case till today. The appellant Oriental Insurance Company Ltd. shall deposit Rs. 24,00,000/- along with interest @6% p.a. before Registrar General High Court Calcutta. 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 no further deposit be made. The respondents/claimants will be entitled to withdraw the compensation upon compliance of necessary formalities. The balance amount be returned to the Appellant Insurance Company with accrued interest.

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.)**