

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

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 1201 of 2025

Future Gen India Ins. Co. Ltd.

VERSUS

Salma Bibi & Ors.

With

C.O.T. 147 of 2025

Salma Bibi & Ors.

VERSUS

Future Gen India Ins. Co. Ltd. & Anr.

For the Appellant/Insurance Co.:

Mr. Rajesh Singh, Adv.

Mr. Aniruddha Singh, Adv.

For the Respondent/Claimant:

Mr. Jayanta Kr. Mandal, Adv.

Mr. Sayantan Rakshit, Adv.

Last Heard on: July 27, 2026

Judgment on: August 05, 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 19th September 2024 passed by Learned Additional District

Judge Re-Designated Court at Paschim Medinipur in MAC Case No. 650 of 2021.

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

On 15-08-2021 at about 6.30 P.M. deceased was proceeding by walking from Chaturibhara bazaar Naryangarh P.S. by the extreme left side of OT. Road to reach his house after end of work of Mason when the deceased reached near bazaar near by Narayangarh P.S. at that time one TATA Ace vehicle bearing No. WB-33E/1949 was coming from back side with High Speed and rash and negligent manner suddenly dashed behind the deceased as result deceased was thrown out on the OT Road and sustained bleeding and grievous injuries over head as well as all over body. Local people immediately came to the spot and deceased was immediately take to MMCH Government Hospital at Midnapore for treatment but just after arrival the attending doctor declared dead. After accident local people detained the offending vehicle and caught the offending driver and some people assaulted the driver.

The accident took place due to rash and negligent driving by driver of offending vehicle no. WB-33E/1949 and driver of offending vehicle was fully responsible for the accident. The deceased was energetic good health of 21 years and sole earning member of the family.

Pursuant to filing of the case notice was issued upon the opposite parties. Opposite party vehicle owner although appeared but did not contest

the case by filing written statement. 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 claim case by observing and directing as follows:-

Hence it is ORDERED that the instant claim petition U/S. 166 of the MV Act is allowed on contest against OP. No.-2 and ex-parte against OP No-1 without cost.

The claimants are entitled to an award of Rs. 8,86,000/- from OP No. 2 for the accidental death of SK. Halim.

The claimant no. 1 Salma Bibi and claimant no. 2 Sabina Khatun being the wife and minor daughter of the deceased shall be awarded Rs. 300,000/- each where as claimant no-3 SK. Diddik being the father of the deceased shall be awarded Rs. 100,000/- and claimant no-4 Momena Nesha Bibi being the mother of the deceased shall be awarded Rs. 1,86,000/-.

OP. No. 2 is directed to issue four numbers of account payee cheques of the above mentioned amount in favour of the above four claimants within 3 months plus interest @6% per annum from the date of filing of the case upto 19.09.2024 within 18.12.2024 failing which petitioners/claimants will be at liberty to put the decree in execution.

The amount @ Rs. 300,000/- plus accumulated interest awarded in favour of minor claimant no. 2 Sabina Khatun will be kept in fixed deposit in a nationalized bank till her attaining majority. The cheque amounting to above stated amount plus accumulated interest in the name of claimant no-1, claimant no. 3 and claimant no. 4 will not be handed over to them until fixed deposit certificates upto date of her attaining majority in the name of the minor is not produced before this Court.

OP No. 2 is directed to issue account payee cheques of the above amount in favour of the above claimants within 18-12-2024.

OP. No. 2 shall be liable to pay further interest at the rate of 6% per annum after 18.12.2024 till payment if payment is not made within 18.12.2024.'

The appellant being aggrieved by the Judgment and Award passed by the Learned Trial Court has come up with the instant appeal.

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 vehicle No-WB-33E/1949, is implanted in the instant case.

Learned Advocate further submits that evidence of OPW-1 Jiten Doloi will go to show that vehicle no-WB-33E/5748 was involved in accident but the

said vehicle owner is not impleaded due to the fact that the said vehicle was not insured. Learned Advocate also submits that the case is not maintainable against the vehicle owner WB-33E/1949 and appellant Future General India Insurance Co. Ltd.

Learned Advocate for the claimants/respondents submits that the evidence of eye witness being P.W. 2 will go to show vehicle WB-33E/1949 is involved. Learned Advocate further submits that the opposite party no-1 could not produce documents showing involvement of vehicle No-WB-33E/5748 in the accident. Learned Advocate also submits that compensation awarded is inadequate as future prospect is not considered by Learned Trial Judge.

Upon perusal of the materials on record it appears that claimants examined P.W. 2 who has claimed himself to be eye witness, and exhibited the charge-sheet submitted by Police Authority. On the other hand the Opposite Party Insurance Company has examined OPW-1 Jiten Doloi and OPW. 2. Sr. Legal Officer of Future General Insurance Company Limited. Although evidence of P.W.-2, and the charge-sheet shows involvement of vehicle no-WB-33E/1949 but evidence of O.P.W.-1 will go to show involvement of Vehicle No.-WB-33E/5748.

Upon perusing the evidence of OPW-1 this Court is of the view that OPW-1 who is charge-sheeted by the Police Authority for rash and negligent driving has admitted that he was driving vehicle which met with an accident but clarified that the vehicle which he was driving was WB-33E/5748 and not WB-

33E/1949, and that he was owner of the vehicle being WB-33E/5748 the vehicle not being insured was not impleaded the evidence cannot be discarded simply on the ground that the evidence of Insurance Company is not supported by documents.

It is to be remembered that when statement made by any party to a proceeding or a witness has the effect of exposing him to civil liability or criminal liability the said statements should not be disbelieved. In the instant case the statement of OPW-1 has the effect of exposing himself both to criminal liability and civil liability namely punishment for rash driving and compensation for loss. Thus his statement should not be disbelieved merely on the ground that no documents is furnished showing involvement of vehicle no-WB-33E/5748.

However as in the cross-examination of OPW. 2 it is suggested that there is collusion between Insurance Company and OPW-1 and in Examination in Chief of OPW-1 there is contention that there is collusion between claimants and Police Authority the Judgment and Award should be set aside and the matter should be remitted to the Learned Trial Court to reconsider the matter. The Appellant Future General India Insurance Co. LTD. will be entitled to examine the vehicle owner of WB-33E/1949 Respondent Sek Nurislam, as well as the I.O. Narayangarh P.S. Case No-202/2021 date 15/08/2021. Upon considering the evidence of vehicle owner WB-33E/1949, and evidence of I.O. or such other witnesses which the parties deem fit to examine, Learned Trial

Judge shall consider the issue of involvement of vehicle and quantum of compensation. However if the Learned Trial Judge is of the view that vehicle no-WB-33E/5748 is involved the said vehicle owner be impleaded as required under law as well as the Insurance Company if the said vehicle was insured at the time of accident. Upon hearing the said vehicle owner the Learned Trial Judge shall finally decide the issue and quantum of compensation. On the other hand if the Learned Court comes to finding of involvement of vehicle no-WB-33E-1949 earlier findings will remain and quantum of compensation can be considered.

As the claimants are pursuing this case for 5 years and the fact accident is established by a vehicle due to rash and negligent driving the claimants should not be made to suffer further and part of the hardship should be mitigated by permitting the claimants to withdraw Rs. 5 lakh along with 6% interest from date of filing claim case till today. This withdrawal is without prejudice to the rights of the parties. In the event involvement of vehicle WB-33E/1949 is established the balance amount of compensation shall be paid by Appellant to the claimants as per the Award to be passed by Learned Trial Court after reconsideration. However if the Learned Trial Court is of the view that involvement of WB-33E/5748 is established the balance amount of the award is to be paid by owner of WB-33E/5748, or Insurance Company if any to the claimants, and Rs. 5 lakh along with interest can be recovered from vehicle owner WB-33E/5748 or Insurance Company as the case may be by Appellant Future General Insurance Company Ltd. in accordance with law.

Hence this Appeal FMA-1201 of 2025 stands allowed in part. The Judgment and Award dated 19th day of September 2024 passed by Learned Additional District Judge Re-Designated Court at Paschim Medinipur in MAC-Case No-650 of 2021 is set aside. The matter is remitted to the Learned Trial Court to reconsider the case in terms of the observation and direction made hereinabove. The respondents/claimants will be entitled to withdraw Rs. 5 lakh which is deposited along with interest @6% per annum from date of filing claim case till today. Such withdrawal is without prejudice to the rights of the parties and is subject to final decision of Learned Trial Court as observed above.

COT-147/2025 stands dismissed.

The Balance amount along with accrued interest be returned to 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.)