

03.07.2026
Sl. 12
Subadip
Ct.No.-4

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE**

FMA/2/2026

**THE NEW INDIA ASSURANCE COMPANY
LIMITED
VS
NILA ROY (SARKAR) AND ORS.**

Mr. Rishin Chakraborty
...for the Insurance Co.

Mr. Gobinda Saha,
Ms. Srija Bhowmik,
Mr. Milan Ch. Laskar,
....for the respondents

1. The New India Assurance Company Ltd. being the appellant filed this appeal being aggrieved by and dissatisfied with the Judgment and Award dated 5th May, 2025 passed by the learned Judge, Motor Accident Claims Tribunal -cum- Learned Additional District Judge, 2nd Court, Siliguri in M.A.C. Case No. 63 of 2017.

2. By the said judgment and award, the Tribunal has allowed the application for compensation filed under Section 166 of the Motor Vehicles Act, 1988 on contest against the opposite party nos. 2 and 3 and ex parte against opposite party no.1 and awarded a compensation to the tune of Rs. 16,95,000/-

only from the opposite party no.2/Insurance Company along with interest @ 4% per annum thereon from the date of filing of the application, i.e. 19.08.2017 till realization of the said compensation and the same is directed to pay within sixty days from the date of the order.

3. The facts of the case are essential for the purpose of disposal of this appeal are that on 13.03.2017 at about 3.00 p.m. the victim was dashed by the truck bearing registration No. WB73C-1443 at Bhujari Para. The said accident was caused due to rash and negligent driving on the part of the driver of the said vehicle. As a result, the victim, namely, Pradip Sarkar, succumbed due to the serious injuries.

4. The claimants have examined four witnesses to prove their case, i.e. PWs. 1, 2, 3 and 4 and exhibited number of documents including the certified copy of post-mortem report, formal FIR, complaint, seizure list and insurance policy.

5. The Tribunal, after assessment of the evidence adduced by the claimants, found death of the victim was caused due to the motor traffic accident. The accident was taken

place due to rash and negligent driving of the driver of the offending truck No. WB73C-1443.

6. The learned counsel appearing on behalf of the appellant submits that this appeal has been filed by the Insurance Company only with regard to the income assessed by the Learned Tribunal in higher side. Though, the claimants have failed to prove the actual income of the victim, no documentary evidence produced before the Learned Tribunal to prove the actual income. However, the Learned Tribunal has assessed a sum of Rs. 8,000/- income per month of the victim at the time of accident only on the basis of surmises and conjectures and, that is required to be reduced to Rs. 6,000/- as a national income, if the claimants are unable to prove the actual income of the victim prior to the accident.

7. Learned counsel has placed reliance upon the two judgments i) ***Angad Tiwari & Anr.-vs-National Insurance Co. Ltd. and Anr.*** reported in ***2025 ACJ 312*** and ii) ***Hachhen @ Hachhena @ Hasen Ali and Another Vs. United India Insurance Company Ltd. and Anr.*** reported in ***2026 (1)***

T.A.C. 850 (Cal.) to support of his contention that in both the cases the Hon'ble Courts assessed Rs. 6,000/- per month as notional income of the victim when claimants failed to prove the actual income.

8. On the other hand, the learned counsel appearing on behalf of the respondents/claimants vehemently opposes the prayer of the learned counsel appearing on behalf of the Insurance Company and submits that the learned Tribunal has rightly assessed the income of the victim as notional income to the tune of Rs. 8,000/- per month considering the present economic conditions and market prices. Therefore, the impugned judgment and award requires no interference by this Court as the Learned Tribunal has rightly assessed the income and allowed the compensation as aforesaid. Therefore, the appeal is liable to be dismissed.

9. Heard the submissions of the learned counsels appearing on behalf of the respective parties and on perusal of the materials on record, this Court finds there is no dispute as regard to the accident and death of the victim in the present case. There is also no dispute

regarding the compensation amount awarded by the Learned Tribunal in connection with other heads.

10. The only issue involves in this appeal is to consider whether the Learned Tribunal rightly and/or wrongly assessed the income of the victim at the time of the accident even failed to prove the income of the victim by the claimants?

11. In the present case, the claimants have contended that the victim was a businessman of a hotel and restaurant situated at Ghughudanga, Kharija Berubari, within the District- Jalpaiguri and used to earn Rs. 15,000/- per month from the said business and maintained his six family members including himself.

12. However, from the perusal of the record, this Court does not find any documents produced regarding the income of the victim. But, the Trade Licence of the business issued by Kharija Berubari-I Gram Panchayat valid from 2016 to 2017 was produced and exhibited before the Learned Tribunal. So, the claimants proved at least that the victim was a businessman and running a

hotel and restaurant so he must have such income from which he maintained his family members.

13. The Learned Tribunal considered and assessed Rs. 8,000/- per month income of the victim considering the present day's economic status and hike of the market prices and even taking into consideration of an unskilled labour. In this regard, the learned counsel appearing on behalf of the respondents has drawn attention to a circular dated 24th January, 2017 issued by the office of the Labour Commissioner, Government of W.B. wherein it is mentioned that a minimum rate of the wages for unskilled labour for zone 'A' shall be from 1st January, 2017 to 30th June, 2017 @ Rs. 7,546/- per month. Zone 'A' describes the person who resides the area under Municipal Corporations, Municipalities, notified areas/authorities, development authorities, thermal power plants areas including industrial township areas. Victim comes within zone 'A' area. Therefore, even this Court considers an unskilled labour could earn Rs. 7,546/- per month in the year 2017 then the Learned Tribunal has rightly assessed the

income of the victim @ Rs. 8,000/- per month as round off found correct. In the present case, the accident took place in the year 2017.

14. The Judgment relied by the learned counsel appearing on behalf of the appellant is not applicable in the present case since the facts and circumstances of the present case is totally different from those cases. In the present case, the claimants have at least proved that the victim was a businessman and running a hotel and restaurant by producing trade licence. Therefore, the appeal is devoid of merits and the judgment and award dated 5th May, 2025 calls for no interference.

15. Accordingly, **FMA 2 of 2026** is **dismissed** without order as to costs. Connected applications, if any, are also, thus, disposed of.

16. The impugned Judgment and Award under challenge is hereby affirmed.

17. It is informed that no awarded amount has been deposited as yet. However, only Rs. 25,000/- has been deposited as a statutory deposit for filing the appeal. The insurance company is directed to deposit the entire awarded amount together with interest

less Rs. 25,000/-, already deposited as statutory amount, as per direction of the Learned Tribunal within two months from this Judgment before the Learned Registrar, Circuit Bench of Calcutta High Court at Jalpaiguri.

18. The Learned Registrar, Circuit Bench of Calcutta High Court at Jalpaiguri is directed to disburse the compensation amount to the claimants in the mode and manner stipulated by the Learned Tribunal in the aforesaid judgment and award.

19. Let a copy of this Order along with TCRs, if received, be sent to the Learned Tribunal for information.

20. Interim order, if any, stands vacated.

21. All parties shall act in terms of this order duly downloaded from the official website of this Court.

22. Urgent certified photocopy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Ajay Kumar Gupta, J.)