

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

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 1486 of 2024

National Ins. Co. Ltd.

VERSUS

Surjendu Bikash Jana & Anr.

With

C.O.T. 20 of 2025

Surjendu Bikash Jana

VERSUS

National Insurance Co. Ltd. & Anr.

For the Appellant:

Mr. Sucharita Paul, Adv.

For the Respondent/Claimants:

Mr. Jayanta Banerjee, Adv.
Ms. Ruxmini Basu Roy, Adv.
Mr. Argha Bhattacharjee, Adv.

Last Heard on: July 22, 2026

Judgment on: August 01, 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 31-07-2024 passed by Learned Additional District Judge 4th Court Paschim Medinipur in MAC Case No-394 of 2018.

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

On 28/11/2017 at about 12.30 hrs the victim was proceeding from Barangi side towards Gomunda Bazar on foot through the left side of the sole-patta Mohanpur Pitch Road and at that time near weigh Bridge at Vill: Gomunda under P.S. Mohanpur one Motor cycle bearing No: WB-34AK/8299 came from his back side i.e. from Barangi side with a very high speed and in rash and negligent manner and dashed the victim. As a result he fell down on the Road and the Motor cycle ran over through his right leg causing crash injuries and multiple fractures on right leg and bleeding injuries all over his body. Immediately after the accident local people admitted the injured at Bagda Mohanpur Rural Hospital at Mohanpur and due to seriousness of the injuries, then and there he was referred to higher center for better management and accordingly his relatives took him to Bhubaneswar Odisha and admitted him there in a private hospital named VIVEKANANDA HOSPITAL on that day on 28/11/2017 and several operations were done there. Thereafter during his treatment doctors stated that his right leg is to be amputated and thereafter to save his leg his relatives got him discharged on risk bond on 03/12/2017 and admitted him in another renowned Private Hospital named KRISHNA HOSPITAL at Cuttack. But his right leg was amputated below knee in Krishna

Hospital and he was discharged on 18/12/2017. Thereafter his treatment is continuing. About Rs. 400,000/- (Rupees four lakhs) has been spent for his medical treatment and he became a full handicapped person.

The accident took place solely due to rash and negligent driving of the driver of the Motor cycle bearing No: WB-34AK/8299.

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 was pleased to dispose the claim case by observing and directing as follows:-

‘Hence it is ordered that the MAC Case No. 394 of 2018, be and the same is allowed on contest without cost against the OP No. 2 National Insurance Company Limited and in ex-parte against the owners of the vehicle without costs.

Opposite Party no-2 National Insurance Company Limited is directed to pay the compensation of Rs. 20,23,522/- (Rupees Twenty Lakh Twenty three thousand five hundred Twenty Two only) to petitioner by account payee cheque within two months hereof with the interest as stipulated above from the date of filing of the application till realization of the amount.’

The appellant National Insurance Company Limited being aggrieved by the Judgment and Award passed by the Learned Trial Court has come up with the instant appeal. The claimant being aggrieved by the quantum of compensation has filed cross-objection.

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

Learned Advocate for the Appellant Insurance Company submits that the FIR was lodged after long period from the date of incident which makes the case of claimant doubtful.

Learned Advocate further submits that the Learned Trial Judge erred in considering the income of the claimant as Rs. 10,000/- without proper proof.

Learned Advocate also submits that the compensation awarded is excessive and the same should be reduced.

Learned Advocate for the claimant/respondent submits that the claimant was under treatment and the delay in lodging FIR is explained. Learned Advocate further submits that the Learned Trial Judge erred in not considering future prospect to determine the compensation. Learned Advocate also submits that the compensation awarded should be enhanced.

With regard to the first submission of Learned Advocate for the appellant regarding delay of lodging FIR it is held in different Judicial decisions that in Indian Society family members of the injured rushes to hospital and not to

Police Station. Thus delay in lodging FIR is not fatal. In the instant case pursuant to accident claimant was admitted to hospital for a long period. His leg was amputated and after discharge from hospital he lodged FIR after about 16 days. Thus this delay is not fatal.

With regard to the second submission of Learned Advocate for the appellant that the claimant failed to prove the income this Court is of the view that as the evidence of occupation and income of claimant is corroborated by the evidence of P.W. 4 Chandan Bera the evidence with regard to income should not be disbelieved.

However with regard to non-consideration of future prospect as submitted by Learned Advocate for the claimant this Court is of the view that future prospect ought to have been considered.

Thus future prospect of 25% added to monthly income of Rs. 10,000/-. Total monthly income comes to Rs. 12,500/-. The yearly income comes to Rs. 1,62,500/-. As disability suffered is 50% and the multiplier to be applied is 15. Loss of earning capacity comes to Rs. 12,18,750/-. Upon adding compensation during treatment period, Medical expenses, transportations charge, pain and suffering, loss of amenities and comfort, which are Rs. 1,50,000/- Rs. 3,33,522/-, Rs. 50,000/-, Rs. 200,000/- and Rs. 1,50,000/- respectively the total compensation comes to Rs. 21,02,272/- by arithmetical calculation. However this Court is of the view that compensation of Rs. 21,00,000/- is just and reasonable.

Hence this appeal FMA 1486 of 2024 along with COT-20/2025 stands disposed. Judgment and Award dated 31/07/2024 passed by Learned Additional District Judge 4th Court Paschim Medinipur in MAC Case No-394 of 2018 stands modified to the extent that the respondent/claimant is entitled to Rs. 21,00,000/- (Rupees Twenty one Lakh) from the Appellant, National Insurance Company Limited along with interest @6% per annum from date of filing claim case till today.

The Appellant National Insurance Company Limited shall deposit Rs. 21 lakh 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, the balance amount be deposited.

The respondent/claimant will be entitled to withdraw the compensation upon compliance of necessary formalities. The deficit Court fees of enhanced compensation be paid within 4 weeks.

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.)

