

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

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 1480 of 2024

Magma HDI Gen. Ins. Co. Ltd.

VERSUS

Sk. Kasem & Anr.

With

COT 23 of 2025

Sk. Kasem @ Sk. Kashim Ali

VERSUS

Magma HDI Gen. Ins. Co. Ltd.

For the Appellant/Insurance Co.:

Mr. Rajesh Singh, Adv.

For the Respondent/Claimant:

Mr. Soujanya Bandyopadhyay, Adv.
Mr. Manas Dutta Chowdhury, Adv.

Last Heard on: July 28, 2026

Judgment on: October 08, 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 22nd November 2022 passed by Learned Judge 8th Bench City Civil Court Calcutta in MAC Case No-29 of 2016.

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

On 27-06-2015 at about 13.30 hrs the victim SK. Kashem Ali @ SK. Kasem was standing upon the road side as a pedestrian in front of garage bus stand at Santragachi near Kona Expressway suddenly a Trailer being registration No. WB-65A-9059 which was coming from Calcutta at a very high speed and also in a rash and negligent manner and thereby loosing control dashed back side of the victim. As a result of the said accident SK. Kasem Ali @ SK. Kasem sustained severe lethal injuries and was removed to Medical College and Hospital Calcutta where he was admitted from 27-06-2015, to 14-07-2015 in the said Hospital and thereafter his treatment was done at home by some private medical practitioner. He is still under treatment. A sum of Rs. 200,000/- has already been spent for medical score.

Rash and negligent driving on the part of the driver of the said offending vehicle was the sole and prime cause of the pathetic accident.

Pursuant to the filing of the case notice was issued to 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 claim case by observing and directing as follows:-

‘Hence it is ORDERED that the Motor Accident Claim Case be and the same is allowed on contest against opposite party no.2/Insurance Company and ex-parte against the opposite party no-1.

The petitioner/claimant does get an award of Rs. 42,47,160/- (Rupees forty two lakh forty seven thousand one hundred sixty only).

The petitioner/claimant does further get interest at the rate of 9% per annum on the entire amount as stated above from the date of filing of the claim petition that is 18.01.2016 till actual payment.

The opposite party no-2/Insurance Company is directed to pay the said amount of compensation by way of issuing a cheque in the name of the petitioner/claimant through this Tribunal within one month from this day.

There will however be no order as to costs.’

The Appellant HDI General Insurance Company Limited being aggrieved by the Judgment and Award passed by Learned Trial Judge has come up with the instant appeal. The claimant being also aggrieved by the quantum of compensation awarded has filed cross objection.

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

Learned Advocate for the appellant submits that the Learned Judge erred in holding that the claimant injured lost 50% of earning capacity as there was no evidence of loss of earning capacity. Learned Advocate further submits that the claimant did not furnish any evidence to show that his business income is reduced by 50%. Learned Advocate also submits that the interest rate is exorbitant.

It is submitted by the Learned Advocate that the compensation awarded is excessive and the same should be reduced.

Learned Advocate relies upon the following Judicial decision:-

Raj Kumar VS Ajay Kumar and ors.

Reported in MANU/SC/1018/2010.

Uttar Pradesh Road Transport Corporation VS Vibhor Fialok and Anr.

Civil Appeal No.(s) 1337-1338 of 2019.

(Supreme Court of India)

Learned Advocate for the respondent submits that the claimant suffered fracture of both legs left chest and 6'7' ribs with fracture of some other vital

organs and it cannot be said that the disablement is only restricted to his lower limbs.

Learned Advocate further submits that the trade license of the victim are for the year 2011-2012, 2012-2013, 2013-2014, hence it is crystal clear that the victim could not renew his trade license meaning that his business has been closed down.

Learned Advocate also submits that evidence of P.W-11, and income tax return of 2016-2017 will go to show that the income of the victim has drastically fallen down.

Learned Advocate relies on the following judicial decisions:-

Chanappa Nagappa Muchalagoela VS Divisional Manager, New India Insurance Company Ltd.

Reported in 2020(1) TAC-321(SC).

Uttar Pradesh Road Transport Corporation VS Vibhor Fialak and Anr.

Civil Appeal No(S) 1337-1338 of 2019.

(Supreme Court of India)

Before proceeding to decide on the material in issue it is to be remembered that it is held in different judicial pronouncements that where the claimant suffers a permanent disability as a result of injuries, the assessment

of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity.

In the case of Raj Kumar VS Ajay Kumar (supra) the Hon'ble Supreme Court observed as follows:-

'13. We may now summarise the principles discussed above :

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.'

In the instant case the claimant/victim was doing business by engaging employees hence it is not such business where the business depends upon his own physical fitness and intellectual skills exclusively. Thus in such a situation there is no ground to presume that the business of the claimant is closed. Moreover in examination in Chief nowhere the claimant stated that due to disability business is closed.

Although the income tax return will go to show that income of the victim has fallen but the same cannot be attributed solely due to disability. However as the business is that of garments income to some extent also depends upon the participation and hard work of owners also thus it cannot be presumed that the business income will not at all be affected, as the claimant/victim who has suffered disability will not be able to participate actively and may not be able to do hard work for business prospect thus there will be some loss of earning capacity of the claimant/victim. As it is difficult to calculate always as to the loss suffered by a victim in road accident, Courts and Tribunals in accordance with the provision of Section 168 of the Motor Vehicles Act 1988 should award compensation which in the opinion of this Court is just and reasonable.

Upon considering the nature of disablement and the nature of business of the claimant and the evidence adduced this Court is of the view that total compensation of Rs. 30 lakh is just and reasonable.

Hence this Appeal FMA-1480 of 2024 alongwith COT 23/2025 stands disposed. Judgment and Award dated 22nd July 2024 passed by Learned Judge 8th Bench City Civil Court Calcutta stands modified to the extent that the claimant respondent is entitled to Rs. 30 lakh alongwith interest @6% per annum from date of filing claim case till today. The appellant MAGMA HDI GENERAL INSURANCE COMPANY Limited shall deposit Rs. 30 lakh alongwith interest @6% per annum from date of filing claim case till today. Such deposit shall be made before Registrar General within 8 weeks from the date of communication of this Order. In the event Compensation awarded by the Trial Court is already deposited no further deposit be made. The claimant will be entitled to withdraw the compensation upon compliance of necessary formalities. Balance amount alongwith accrued interest if any be returned to the appellant/insurance companies.

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.)