



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

Present:

The Hon'ble Justice Biswaroop Chowdhury

**F.M.A. 527 of 2025
*Bajaj Allianz General Insurance Co. Ltd.***

VERSUS

Saanvi Samanta & Anr.

With

COT 8 of 2025

***Saanvi Samanta represented by her Guardian Grandfather, Banamali
Samanta***

VERSUS

Bajaj Allianz General Insurance Co. Ltd. & Anr.

With

FMA 1421 of 2024

Bajaj Allianz General Insurance Co. Ltd.

VERSUS

Alo Samanta & Ors.

With

COT 9 of 2025

Alo Samanta & Ors.

VERSUS

Bajaj Allianz General Insurance Co. Ltd. & Anr.

For the Appellant/Insurance
Company in FMA 527/2025, FMA
1421/2024 and Respondent/Insurance
Company COT 8/2025, COT 9 of
2025:

Mrs. Sucharita Paul, Adv.

Mr. Jayanta Kumar Mandal, Adv.



For the Appellant/Claimants in COT
8/2025, COT 9 of 2025 and
Respondent/Claimants FMA
527/2025, FMA. 1421/2024:

Last Heard on: April 21, 2026

Judgment on: June 09, 2026

Biswaroop Chowdhury,J:

The above appeals being FMA-527 of 2025, and FMA-1421 of 2024 are directed against Judgment dated 20th August 2024 passed by Learned Additional District Judge Fast Track 3rd Court Sadar Paschim Medinipur in MAC case No-262 of 2022 and MAC-261 of 2022 respectively. Both the claim cases arise out of the accident dated 16-04-2022 allegedly caused by vehicle no. WB-33/5717.

The case of the claimants in MAC Case No. 262 of 2022 may be summed up thus:

On 16-04-2022 at about 9.00. AM while the deceased Barnali Samanta Nandi was coming with a vehicle being No. WB-82E/2293 which was driving also her husband with view to reach home from Kolkata towards Midnapore at that time at near Harina Bus stand at N.H.-6 road under Kharagpur (Local) Police Station suddenly one lorry with excessive high speed over took the vehicle of the victim at the extreme left side of road. The said vehicle ranover upon soiled road for that reason suddenly the area was covered with dust. The area became invisible and at that time one vehicle being WB. No. 33/5717 was



standing middle of the highway without signal (non-parking area) and deceased bounded to dash the back side of standing vehicle as a result all the occupants of the car of victims got severe injuries, and the deceased as well as her husband died on the spot, elder daughter named Sinjini was taken to Midnapore Medical College and Hospital and after few hours she was declared dead. Younger daughter named Saanvi got severe injuries on her both knee and her treatment is going on.

The accident took place solely due to rash and negligent parking at the non area parking zone and middle of the N.H.-6 road. In the event the driver of the vehicle WB-33/5717 did not keep the vehicle upon middle of the highway the accident could have been avoided.

Contribution made by the deceased to the house is invaluable and cannot be computed in terms of money. Deceased did not work by the clock, deceased was in the constant attendance of the family throughout the day and night she took care of all requirements of the husband and children, and she taught her daughters and provided invaluable guidance to them for their future life. She took care of her two daughters as a mother and to her husband as a wife and to her parents-in-Law as a daughter in law.

The deceased was a healthy person and she had a good future prospect.

In MACC-No-261 of 2022 the case of the claimants may be summed up thus:-



On 16-04-2022 at about 9.00 AM while the deceased Shamit Samanta was driving his vehicle bearing No. WB-82E/2293 with his wife and two minor daughters from Kolkata towards Midnapur at the time at near Harina Bus-stand at N-H. 6-road under Kharagpur (Local) Police Station suddenly one lorry with excessive high speed overtook the vehicle of the deceased from the extreme left side of road. The said vehicle ranover upon soiled road for that reason suddenly the area was covered with dust, the area became invisible and at that time one vehicle being No. WB-33/5717 was standing middle of the highway without signal (non parking area) and the deceased bounded to dash the back side of standing vehicle as a result all the occupants of the car of deceased got severe injuries. Deceased his wife named Barnali Samanta Nandi died on the spot elder daughter named Sinjini was taken to Midnapore Medical College and Hospital and after a few hours doctor declared her dead. Younger daughter named Saanvi got severe injuries on her both knee and her treatment is going on.

The accident took place solely due to rash and negligent parking at the non area parking zone and middle of the N-H-6 road. In the event the driver of the vehicle WB-33/5717 did not keep the vehicle upon the middle of the highway the accident could have been avoided.

The deceased was the sole bread earner of his family and family members of the deceased were dependent upon income of the deceased, and due to his premature death, family members of the deceased are passing their



days with great hardship. Growing up education, marriage protection etc. of the daughter of the deceased are seriously hampered and the children of the deceased are deprived from love, care, and guidance of her parents. Parents lost filial consortium due to death of their only son. The deceased was a well healthy person and he had a good future prospect.

Pursuant to the filing of the claim cases notices were issued upon the opposite parties, vehicle owner and Bajaj Allianz General Insurance Co. Ltd. Opposite party vehicle owner did not contest the case. However opposite party Bajaj Allianz General Insurance Co. Ltd contested the case by filing written statements. Issues were framed and evidence was adduced in both the cases.

Learned Trial Judge upon considering the evidence adduced in both the cases, and upon hearing the Learned Advocates was pleased to dispose of both the claim cases.

In MAC case No-262 of 2022 which is the subject matter of Appeal FMA-527 of 2025 Learned Trial Judge was pleased to Award Compensation of Rs. 9,17,000/-. (Rupees nine lakh seventeen thousand) together with interest @6% per annum from date of filing claim case till full liquidation.

In MAC Case-No-261 of 2022 which is subject matter of Appeal in FMA No-1421 of 2024, Learned Trial Judge was pleased to award compensation of Rs. 2,10,79,100/- along with interest @6% per annum from date of filing of claim case till realization.



The ground of challenge in the appeal FMA-527 of 2025 against the order in MAC Case No. 262 of 2022 is that firstly the offending vehicle was stationary when victim vehicle struck from behind. Secondly the accident took place at 9 a.m. in the morning in broad day light and therefore it was not a case where visibility was an issue. Thirdly the driver of the offending vehicle produced photographs of victim vehicle which showed that the vehicle was driven in high speed. Fourthly Learned Judge erred in accepting monthly income of victim as Rs. 5000/-.

The claimants have filed cross objection in the appeal challenging the quantum of compensation. According to the respondents/claimants compensation granted is inadequate and the notional monthly income should be Rs. 10,000/-.

Heard Learned Advocates for the parties. Perused the materials on record. The following decisions are relied upon by Learned Advocates.

Kirti and Anr. VS Oriental Insurance Co. Ltd. and ors.

Reported in 2021 SAR (civ) 147.

Shiv Kumar and others VS Gainda Lal and others.

Reported in 2022 (4) TAC 707 (S.L.).

Sarla Verma (Smt.) and others VS Delhi Transport Corporation and Anr.



Reported in (2009) 6 SCC-121.

National Insurance Company Ltd. VS Pronay Sethi and ors.

Reported in 2017(4) TAC 673. (S.L.)

Rasmita Biswal and ors. VS Divisional Manager National Insurance Company Ltd. and Anr.

Reported in 2022 SAR Online. (SC)-747.

Khenyei VS New India Assurance Co. Ltd and ors.

Reported in 2015 (2) TAC-677 (SC)

Kusum Lata and ors. VS Satbiz and ors.

Reported in 2011(2) TAC. 1 (S.C)

Anita Sharma and ors. VS The New India Assurance Co. Ltd. and Anr.

2021 SAR. (civ). 1.

ICICI Lombard General Insurance Co. Ltd. VS Rajani Sahoo and others.

Reported in 2025(1) TAC. 374 (S.C.)

Radha Rani and ors. VS Mohar Singh and Anr.

Reported in 2024 (2) TAC. 20 (S.C.)

Mamata and others VS Bhav Singh @ Mansingh and Another.



2022 (4) TAC-746 (S.C.)

With regard to the submission regarding ex-oneration of the vehicle being WB-33/5717 as the said vehicle was stationary it is to be remembered that mere plea that a vehicle was stationary does not absolve the owner of vehicle from liability if the said vehicle was parked in an improper place causing such accident. Learned Trial Judge upon considering the evidence has assigned reasons for coming to conclusion about negligence of driver of vehicle no. WB-33-5717 (Mini-Truck) in parking of the vehicle on the middle of the road. Upon perusal of charge sheet it appears that the police stated that the incident happened because the driver of the vehicle having registration no-WB-33-5717 parked the vehicle illegally on the road. Thus there is no error in the findings of the Learned Trial Judge about the accident caused due to negligent parking of the driver of the vehicle bearing no. WB-33-5717 (Mini-Truck) on the middle of the road.

Now with regard to the quantum of compensation as the victim was housewife there is no straight-jacket formula to consider the notional income and each case is to be decided on its own facts and on the basis of guidelines as laid down in different judicial pronouncements. However the loss suffered by members of family on the death of a housewife cannot be compensated by money. Thus the compensation which appears to the Court as just and reasonable should be awarded.



In the case of Arun Kumar Agarwal V National Insurance Co. Ltd. (2010) 9 SCC. P-218 the Hon'ble Supreme Court observed as follows:-

'26 In India the Courts have recognized that the contribution made by the wife to the house is invaluable and cannot be computed in terms of money. The gratuitous services rendered by the wife with true love and affection to the children and her husband and managing the household affairs cannot be equated with the services rendered by others. A wife/mother does not work by the clock she is in the constant attendance of the family throughout the day and night unless she is employed and is required to attend the employer's work for particular hours. She takes care of all the requirements of the husband and children including cooking of food washing of clothes etc. she teaches small children and provides invaluable guidance to them for their future life. A housekeeper or maidservant can do the household work such as cooking food, washing clothes and utensils, keeping the house clean etc. but she can never be a substitute for a wife/mother who renders selfless service to her husband and children.

27. It is not possible to quantify any amount in lieu of the services rendered by the wife/mother to the family ie. the husband and children. However for the purpose of award of compensation to the dependants some pecuniary estimate has to be made of the services of the housewife/mother. In that context the term 'services' is required to be given a broad meaning and must be construed by taking into account the loss of personal care and



attention given by the deceased to her children as a mother and to her husband as a wife. They are entitled to adequate compensation in lieu of the loss of gratuitous services rendered by the deceased. The amount payable to the dependants cannot be diminished on the ground that some close relation like a grandmother may volunteer to render some of the services to the family which the deceased was giving earlier.'

In the instant case the Learned Trial Judge upon considering different factors and upon assigning reasons took the notional income as Rs. 5,000/- per month and arrived at the compensation of Rs. 9,17,000/- which cannot be said to be meager. However considering the status of the family and the responsibility taken by the deceased Rs. 11,00,000/- compensation is considered just and reasonable. Thus the respondent no-1/claimant is entitled to Rs. 11,00,000/- (Rupees Eleven lakh) from the appellant Bajaj Allianz General Insurance Co. Ltd. along with interest @6% p.a. from date of filing claim case till realization.

Now the ground of challenge in the appeal FMA-1421 of 2024 against the Order in MAC Case No. 261 of 2022 is that, firstly the Learned Trial Court failed to appreciate that the truck driver was not negligent as the same was stationary.

Secondly the Learned Trial Judge failed to appreciate that the deceased himself contributed to the accident by driving in a rash and negligent manner.



Thirdly Learned Trial Judge failed to appreciate that the accident took place at 9 a.m. in the morning i.e. in broad daylight on the soil portion of NH 6 and therefore it was not a case wherein 'visibility' was an issue.

Fourthly Learned Judge failed to appreciate that the witness is not a summoned witness and came to depose at the request of the claimants.

Fifth Learned Trial Judge failed to appreciate that income was variable and FORM 16 of the victim was not exhibited by the claimants to prove the total income.

The respondents/claimants have challenged the quantum of compensation awarded on the ground that filial consortium is not awarded and the compensation should be enhanced.

Heard Learned Advocate for the appellant and Learned Advocate for the respondents/claimants. Perused the material on records.

With regard to the ground of the appellant that the offending truck was stationary and hence not responsible for the accident it is to be remembered that merely a vehicle is stationary does not absolve its driver with regard to accident in the event said vehicle is parked in an unauthorized place. Learned Trial Judge upon considering the evidence of 2 eye witnesses came to the conclusion that the accident took place due to the negligent parking of the vehicle being WB-33-5717. Moreover the charge sheet submitted by the Police Authority states that the incident happened because the offending vehicle



having registration no. WB-33-5717 parked the vehicle illegally on the road. Thus the charge sheet corroborates the case of the claimants. Learned Judge also made it clear that no material evidence has been produced by the opposite party Insurance Company to substantiate that the deceased was responsible for the accident in any manner.

Now with regard to the argument that P.W. 2 and P.W. 4 were not summoned witness it is to be remembered that the fact the eye witness in motor accident claim case are not summoned witness does not destroy the credibility of the said witnesses if their evidence creates confidence in the minds of Court. Moreover P.W. 2 is witness named in the charge sheet submitted by the Police Authority. The statements made by P.W. 2 and P.W. 4 in cross-examination will clearly go to show that they have witnessed the accident.

Thus there is no error in the findings of the Learned Trial Judge with regard to accident taking place due to negligent parking of the vehicle being WB-33/5717.

Now with regard to the quantum of compensation it appears that the claimants have proved the income by examining the employer of the victim. Learned Trial Judge upon considering the income of the victim and upon applying the principles as laid down, by the Hon'ble Supreme Court in the case of National Insurance Company Ltd. VS Pronay Sethi reported in AIR-2017 S.C. P-5157 has granted just and reasonable compensation. Although it is



contended by the respondents/claimants in their cross-objection about non-granting of filial consortium but the fact that the decision of Pronay Sethi does not deal with filial consortium and considering the quantum of compensation awarded by Learned Trial Court further interference is not required.

Thus this Appeal FMA-1421 of 2024 along with COT-9/2025 stands dismissed. Judgment and Award passed by Learned Additional District Judge Fast Track 3rd Court Sadar Paschim Medinipur in MAC Case No. 261 of 2022 stands affirmed. The claimants/respondents are entitled to withdraw the compensation amount if deposited including accrued interest upon compliance of necessary formalities. In the event the deposit is not made the same be made within 8 weeks from the date of communication of this order.

The Appeal FMA-527 of 2025 along with COT-8/2025 stands disposed. Judgment and Award dated 20th August 2024 passed by Learned Additional District Judge Fast Track 3rd Court Sadar Paschim Medinipur in MAC Case No. 262 of 2022 stands modified to the extent that the respondent no-1/claimant is entitled to compensation of Rs. 11 lakh along with interest @6% p.a. from date of filing of claim case till today.

Bajaj Allianz General Insurance Co. Ltd. shall deposit before Registrar General High Court Calcutta Rs. 11 lakh along with interest @6% p.a. within 8 weeks from the date of communication of this Order. In the event amount awarded by Learned Trial Court is already deposited balance amount be deposited.



The claimant/respondent will be entitled to withdraw the compensation including accrued interest if any upon compliance of necessary formalities.

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.)