IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 1186 of 2025

The Oriental Insurance Company Limited

VERSUS

Tapas Roy & Ors.

With

FMAT (MV) 723 of 2024

Tapas Roy & Anr.

VERSUS

The Oriental Insurance Company Limited & Ors.

For the appellant/insurance Co.:	Mr. Sucharita Paul, Adv.
For the respondents/claimants:	Mr. Jayanta Banerjee, Adv. Mr. Sandip Bandyopadhyay, Adv. Mrs. Ruxmini Basu Roy, Adv. Mr. Argha Bhattacharjee, Adv. Ms. Priyanka Samanta, Adv.
For the respondent no. 5:	Mr. Animesh Das, Adv.
For the respondent no. 3:	Mr. Rameshwar Sinha, Adv.

Last Heard on: August 18, 2026

Judgment on: September 15, 2026

Biswaroop Chowdhury, J:

The two appeals were taken up together for their interconnectiveness. The appeals were preferred by the opposite party/Oriental Insurance Company Ltd. and claimants of MAC Case No-166 of 2017 against Judgment and Award dated 24-04-2024, passed by Learned Additional District and Sessions Judge 3rd Court Krishnanagar Nadia in MAC Case No. 166 of 2017.

The case of the claimants in MAC Case No-166 of 2017 before Learned Trial Judge may be summed up thus:-

On the fateful day of accident 12-12-2026 at about 14.15 hours while the deceased was driving his sister's Scooty bearing No. WB-52A/C/4454 and was proceeding towards Krishnanagar side along with pillion rider at a moderate speed touching the extreme left side of the road very cautiously near Shanghashree Club 'at Bhaduri Nayakhali para the offending vehicle bearing No. WB-55A/A 4298 Bolero Car running at a very high and excessive speed coming from Krishnanagar side proceeding towards opposite direction, lost control and hit the said motor cycle as a result of which both the motor cyclist and the pillion rider were thrown off the road, received grievous injuries. They were taken to Nadia District Hospital Krishnanagar where the EMO declared both of them as dead. The accident was a result of rash and negligent driving of the Bolero Car by its driver only.

Pursuant to filing of the case notice was issued upon 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 Court 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 application registered as MAC Case No. 166 of 2017 is allowed on contest against the O.P. No. 3 and O.P. No.4 and ex-parte against the OP No-1 and OP No-2 ie. the owners of the vehicle.

The OP No-3 ie. Oriental Insurance Co. Ltd is directed to pay a sum of Rs. 1,77,000/- each to petitioner no-1 (Tapas Ray) and Petitioner no. 2 (Sanchita Ray) vide two separate cheques within two months from this day along with interest @ 6% per annum from the date of filing of the instant application till realization of the award failing which Oriental Insurance Co. is further liable to pay awarded amount at rate of 9% per annum from the date of filing of the instant case on the said amount till the realization/payment. However OP No-3 is exempted from paying interest from the period between 25-04-2020 and 31-12-2021 due to Covid 19 pandemic.

The petitioners/claimants are entitled to receive the cheques on payment of deficit Court fees as per rules if not paid.'

The Insurance Company being aggrieved by the Judgment and Award of Learned Trial Judge has preferred Appeal being FMA-1186 of 2025. On the other hand the claimants being aggrieved by the quantum of compensation awarded by the Learned Trial Judge preferred Appeal being FMAT(MV) – 723 of 2024.

The ground of appeal by the Insurance Company is that the victim was 17 years old and driving vehicle without driving license thus the Appellant Insurance Company should not be made liable to pay entire compensation secondly the victim driving the vehicle without license also contributed to the accident. Thirdly the interest of 9% on default of payment is excessive.

The ground of appeal by the claimants is that the learned trial Judge erred in considering monthly income as Rs. 3,000/- instead of Rs. 6,000/-. Secondly the trial Court erred in not considering the future prospect of 40%. Thirdly the Learned Trial Court erred in not awarding consortium.

Now with regard to the first submission of learned Advocate for the Oriental Insurance Company Limited that the victim was 17 years old and driving without driving license it is decided in different judicial pronouncements that driving without driving license is a ground to prosecute the driver of a vehicle, but the same cannot be ground to deprive him or his family if injury or death occurs by rash and negligent driving of another vehicle. In the instant case the Insurance Company could not prove by adducing evidence of contributory negligence of the victim.

Now with regard to quantum of compensation upon perusal of evidence adduced it appears that P.W. 1 stated that victim used to earn Rs. 6,000/- per month and was employee of Ray Shoe Store whose proprietor is Pradip Ray but considering the fact employer was not examined and considering the age of the victim it would be reasonable to consider the monthly income as Rs. 4,000/-.

In the event monthly income is Rs. 4,000/-. 40% future prospect added total monthly income comes to Rs. 5,600/- 50% should be deducted on account of personal expenses net monthly income comes to Rs. 2,800/-. The annual dependency loss comes to Rs. 35,600/-. The multiplier of 18 applied total dependency loss comes to Rs. 6,40,800/-. Further the claimants are entitled to consortium of Rs. 40,000/- each, and Rs. 30,000/- on account of loss of estate and funeral expenses. Thus total compensation which the claimants are entitled to from the Oriental Insurance Company Ltd. comes to Rs. 6,41,800/-. However this Court is of the view that compensation of Rs. 6,50,000/- is just and reasonable.

Hence the appeals FMA-1186 of 2025 along with FMAT(MV)-723 of 2024 stands disposed. Judgment and Award dated 24-04-2024 passed by Learned Additional District Judge 3rd Court Krishnanagar Nadia in MAC Case No-166 of 2017 stands modified to the extent that the claimants are entitled to compensation of Rs. 6,50,000/- from Appellant Oriental Insurance Company Ltd. along with interest @6% per annum from date of filing claim case till today. Oriental Insurance Company Limited shall deposit before Registrar General High Court Calcutta Rs. 6,50,000/- along with interest @6% p.a. within 8 weeks from the date of communication of this Order.

In the event compensation awarded by Learned Trial Court is deposited balance deposit be made. The claimants will be entitled to withdraw compensation upon compliance of necessary formalities. Deficit Court fees be paid within 4 weeks. TCR be sent by Special Messenger cost to be paid by respondents/claimants within 1 week.

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.)