IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 443 of 2025

Sakila Mondal & Ors.

VERSUS

Liberty Videocon General Insurance Co. Ltd. & Anr.

With

FMAT 747 of 2019

With

IA NO: CAN 1 of 2026

CAN 2 of 2026

Liberty Videocon General Insurance Co. Ltd.

VERSUS

Sakila Mondal & Ors.

For the appellants/claimants in FMA 443 of 2025 and respondents in FMAT 747 of 2019:

Mr. Muktakesh Das, Adv.
Ms. Sonali Bag, Adv.

For the respondent/insurance company in FMA 443 of 2025 and appellant in FMAT 747 of 2019:

Mr. Rajesh Singh, Adv.

Last Heard on: September 24, 2026

Judgment on: October 01, 2026

Biswaroop Chowdhury, J:

The above appeals, are taken up together for their interconnectiveness. The above appeals arises from Judgment and Award dated 28th March 2019, passed by Learned Additional District Judge Fast Track IV Court Krishnanagar Nadia in MAC Case No-57 of 2015.

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

On 10-12-2014, at about 4 p.m. victim Rafekul Mondal alongwith Hakim Mondal were going through Chakdah Bangaon Road, by the left side at that time one Mini Vehicle TATA 207, No.WB-51A/8783 came with high and excessive speed rash and negligently all on a sudden applied heavy break as a result the said vehicle toppled down on Rafikul Mondal as a result he received serious injuries on his person. Seeing that accident Hakim Mondal and other local people took him to Kalyani Hospital. Seeing his condition hospital authority referred him to NRS Hospital Kolkata, admitted him there and on the way of treatment victim died on 13-12-14 due to injuries. That due to high and excessive speed rash and negligent driving of the driver of vehicle No. WB-51A/8783 accident took place.

Pursuant to the filing of the case notice was issued to 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 ISSUES framed and evidence adduced was pleased to dispose of the claim case by observing and directing as follows:-

'Hence it is ORDERED that the Motor Accident Claim Case u/s 166 MV Act is hereby allowed on contest in part against OP No. 2. The Liberty Videocon General Insurance Co. Ltd. and ex-parte against OP No-1 Kabita Biswas but without any cost. The petitioners do get an award of Rs. 6,74,800/- only jointly along with interest of 6% per annum from the date of institution of this case till realization of the entire amount.

OP No-2 is directed to pay Rs. 2,01,600/- each in equal share together with interest to the petitioner no-3 and 4 Sabeda Mondal and Sohana Mondal being the mother and minor child of the victim as Rs. 2,71,600/- with interest to petitioner no. 1 widow Sakila Mondal and to issue account payee cheques accordingly. Cheques in favour of petitioner no-1 is to be handed over only upon deposit of Xerox copy of the fixed deposit certificate issued by a nationalized bank in favour of minor Sohana Mondal.

Any compensation already paid to the petitioners u/s-140 MV Act shall be deducted from the amount of compensation made herein.'

Being aggrieved by the Judgment and Award passed by the Learned Trial Judge Videocon General Insurance Co. Ltd. preferred an appeal being FMAT-747 of 2019. The claimants being aggrieved by the quantum of compensation awarded has also filed being No-FMA-443 of 2025 both the appeals were heard analogously.

Learned Advocate for the Insurance Company submits that there is delay in lodging FIR thus the case of the claimant is doubtful. Learned Advocate further submits that as per hospital report the deceased was seated in goods vehicle and was thus a gratuitous passenger hence the Insurance Company is not liable to pay compensation. Learned Advocate draws attention to the bed head ticket which states that the victim was sitting in the Lorry which overturned thus victim was a gratuitous passenger for which Insurance Company is not liable.

Learned Advocate for the claimants submits that evidence of P.W. 2 will go to show that the offending vehicle toppled and fell on the victim. Learned Advocate further submits that the Learned Trial Judge erred in considering monthly income of Rs. 3,000/- only and not awarding future prospect. Learned Advocate also submits that compensation awarded should be enhanced.

With regard to the submission of delay in lodging FIR it is held in different judicial pronouncements that delay in lodging FIR is not always not fatal. In Indian society family members of victim goes to hospital and not to Police Station. Thus delay of nine days is not fatal as the ground of delay is stated in the FIR itself.

Secondly with regard to the submission about the bed head ticket it appears from record that the information given by the person at hospital regarding accident was not examined by Insurance Company thus the said evidence cannot be relied upon. Moreover evidence of P.W. FIR and charge

sheet will go to show that the offending vehicle no-WB-51A/8783 fell on the victim. Learned Trial Judge upon assigning co-gent reasons came to the findings about involvement of vehicle WB-51A/8783. Thus the said findings should not be interfered.

However with regard to the quantum of compensation this Court is of the view that considering the nature of occupation of victim it would be reasonable to consider the monthly income of the victim as Rs. 4,000/- and future prospect at 40%. In the event monthly income is Rs. 4,000/- the Annual income comes to Rs. 48,000/- 40% future prospect added which is Rs. 19,200/- the Total Annual income comes to Rs. 67,200/- 1/3rd deducted on account of personal expenses being Rs. 22,400/- the annual dependency loss comes to Rs. 44,800/-. Multiplier of 17 applied total dependency loss comes to Rs. 7,61,600/-. Further the claimant are entitled to Rs. 84,000/- on account of loss of estate loss of consortium and funeral expenses. Thus total compensation comes to Rs. 8,45,600/- by arithmetical calculation. However this Court is of the view that compensation of Rs. 8,50,000/- is just and reasonable.

Hence this Appeals FMA-443 of 2025 and FMAT-747 of 2019 stand disposed. The Judgment and Award dated 28th day of 2019 passed by Learned Additional District Judge Fast Track IVth Court Krishnanagar Nadia is modified to the extent that claimants are entitled to Rs. 8,50,000/- from Liberty Videocon General Insurance Company Limited alongwith interest @6%

per annum from the date of filing claim case till today. Liberty Videocon General Insurance Company Limited shall deposit before Registrar General High Court Calcutta Rs. 8,50,000/- alongwith interest @6% per annum. 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 already deposited balance deposit be made. The claimants will be entitled to withdraw the compensation upon compliance of necessary formalities.

The deficit Court fees be paid within 4 weeks. TCR be sent by Special Messenger cost to be put in by claimants within 10 days.

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.)