BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL NO.2, KAMRUP (M), GUWAHATI

Present : MD.ABDUL HAKIM, M.A. LL.B, AJS
Member, M.A.C.T. No.2,
Kamrup (M), Guwahati

CNR No.ASKM050012632022
MAC Case No.1675 of 2022

1. Smt. Bhabani Basumatary
2. Miss Eshita Basumatary
3. Tuhin Basumatary
4. Tani Basumatary
5. Sri Gakhir Basumatary **Claimants**

-Versus-

1. Sri Narayan Baruah
2. Sri Tralakya Talukdar
3. Oriental Insurance Company Ltd. **Opposite Parties**

NAME OF THE ADVOCATES WHO APPEARED IN THIS CASE

1. For the claimants	:	1. Iskandar Ali Ibrahim
2. For the insurance company	:	1. Ayushman Acharyya
	:	2. Swashati Acharya

DATES OF THE CASE

1. Claim petition filed on	:	11-10-2022
2. Arguments heard on	:	28-02-2025
3. Judgment delivered on	:	28-03-2025

J U D G M E N T

1. The instant Motor Accident Claim case is arisen out of a claim petition filed by the above stated claimants, U/S 166 of the M.V. Act. 1988, seeking compensation for the death of the victim, namely **Deba Basumatary** due to injury sustained on account of a motor vehicular accident occurred on 11-06-2022 at about 10:45 A.M. at Bhalukmari on the National Highway No.15, under Rowta police station with the involvement of one Mahendra Bolero bearing registration No.AS-02-CC-9008.

2. The brief facts of the case as stated in the claim petition reveal that on 11-06-2022 at about 10:45 A.M. Deba Basumatary has met with a fatal accident while he was going by riding a motorcycle bearing registration No.AS-27-B-0124. The claimants have stated that on the way, when the deceased Deba Basumatary reached Bhalukmari on the National Highway No.15, one Bolero vehicle having its registration No.AS-02-CC-9008 being driven by its driver in a very rash and negligent manner, hit him from the back side. As a consequence of the accident, he sustained grievous injuries on his person and died during the time of treatment.

3. The claimants have further stated that the accident occurred due to the rash and negligent driving of the rider of the Mahendra Bolero. In connection with the accident police of Rowta P.S. registered the case as Rowta P.S. Case No.77 of 2022 under Sec.279/304(A)/338 of IPC.

4. At the time of accident the deceased was an owner of a pig poultry firm and he used to earn Rs.15,000/- from his occupation. In light of the above facts, the claimant has prayed before the Hon'ble Court for an award of Rs.35,00,000/- (Rupees thirty five Lakhs) only, as compensation for the death of Deba Basumatary in the motor vehicular accident. Hence this case.

5. Notices were issued to the opposite parties. On receipt of notices, she has No.3 has entered its appearances and submitted written statements in order to contest the case. None has appeared on behalf of the O.P. Nos.1 and 2 and as such the case proceeded ex parte against them.

6. The Opposite Party No.3 has stated that the claim petition is not maintainable in law or on facts and is liable to be rejected. They have denied any cause of action against them, asserting that the claimants have failed to establish the insurance company's liability to indemnify. Additionally, they have raised objections regarding the jurisdiction of the tribunal, stating that the accident occurred outside Kamrup (M) district, the claimants reside elsewhere, and the insurance policy was issued in Nagaon district. The non-joinder of necessary parties, including the insurer of the motorcycle bearing registration No.AS-27-B-0124, has also been highlighted as a ground for dismissal.

7. It has been stated that the claimants have not provided sufficient evidence to prove the deceased's income, occupation, or employment. The Opposite Party No.3 has denied that the deceased was employed or had any source of income, emphasizing the absence of income tax returns or salary certificates. They have also disputed the medical expenses claimed, stating that no supporting documents, such as treatment bills or post-mortem reports, have been submitted. The involvement of the vehicle bearing registration No.AS-02-CC-9008 in the accident has been categorically denied, with allegations that the FIR was delayed and manipulated in collusion with the police.

8. The Opposite Party No.3 has contended that the accident occurred due to the rash and negligent driving of the deceased himself, who was riding the motorcycle (registration No.AS-278-0124) without a helmet. They have stated that the claimants have suppressed material facts and that the alleged offending vehicle was not at fault. Further, they have disputed the validity of the insurance policy, driving license, and fitness certificates of the vehicle bearing registration No.AS-02-CC-9008, asserting that the insurance company cannot be held liable if these documents are found invalid.

9. It has been stated that even if the vehicle bearing registration No.AS-02-CC-9008 was involved, the contributory negligence of the deceased absolves the insurance company of full liability. The Opposite Party No.3 has reserved the right to invoke Sections 169 and 170 of the Motor Vehicles Act, 1988, to compel the production of documents and cross-examine witnesses. They have also opposed any interim relief, insisting that the claimants must first prove the genuineness of the accident, policy, and other legal compliances.

10. The Opposite Party No.3 has prayed for the dismissal of the claim petition with costs, stating that no liability can be fixed upon them. They have requested the tribunal to direct the claimants to produce all relevant documents, including the driving license, insurance policy, and police report, before granting any relief. They have further prayed that if any compensation is awarded, it should be borne by the owner or insurer of the motorcycle bearing registration No.AS-27-B-0124. The tribunal has been urged to reject the exaggerated and unsubstantiated claims made by the petitioners.

11. Upon pleadings of the parties the following issues were framed by the Tribunal:

I S S U E S

I. Whether on 11-06-2022, at about 10:45 A.M., at Bhalukmari on the National Highway No.15, under Rowta Police Station, an accident has arisen due to the rash and negligent driving of the vehicle bearing Registration No.AS-02-CC-9008 (Bolero) on the part of its driver and whether the said accident has caused the death of Deb Basumatary?

II. If so, whether the claimants are entitled to receive any compensation, and if yes, what should be the quantum and who amongst the opposite parties, is liable to pay the compensation amount?

12. During trial, the claimant No.1 has submitted her evidence on affidavit as P.W.1. the claimants have also examined one more witness namely, Sri Prasanta Gogoi as P.W.2. The opposite party No.3 has also examined one witness, in its favour, namely, Mahidhar Deka as D.W.1.

13. **P.W.1 Smt. Bhabani Basumatary** has testified that on 11-06-2022 at around 10:45 a.m., her deceased husband, Deb Basumatary, was proceeding from Rowta towards Orang on his motorcycle registration No.AS-27-B-0124) for a poultry-related business deal. She has stated that while he was riding at a moderate speed on his side of National Highway No.15, the offending Mahindra

Bolero having its registration No.AS-02-CC-9008, coming from the same direction at an excessive speed, knocked down her husband's motorcycle from behind due to rash and negligent driving. She has deposed that the impact caused him to fall and sustain grievous injuries.

14. She has further testified that with the help of locals, her injured husband was immediately taken to Rowta Model Hospital, where he received first aid before being referred to GMCH. Due to his deteriorating condition, he was admitted to Narayana Bafna Hospital from 11-06-2022 to 29-06-2022. However, owing to financial constraints, she has stated that he was later shifted to Gauhati Medical College & Hospital, where he remained admitted until his death on 26-07-2022 at around 3:00 a.m. She has deposed that the total medical expenses incurred amounted to approximately Rs.8,25,000/-.

15. P.W.1 has stated that a post-mortem examination of her husband was conducted at Gauhati Medical College & Hospital on 26-07-2022. She has testified that the accident occurred solely due to the rash and negligent driving of the offending vehicle bearing registration No.AS-02-CC-9008.

16. She has deposed that the sudden demise of her husband, aged about 38 years, has left the family, consisting of herself, her ailing father-in-law, one daughter, and two minor sons, in severe financial distress and mental agony. She has stated that her husband was engaged in pig and poultry farming, earning between Rs.15,000/- to Rs.20,000/- per month, which was the sole means of sustaining the family.

17. In conclusion, P.W.1 has testified that the accident was entirely the fault of the driver of the Mahindra Bolero bearing registration No.AS-02-CC-9008 and that the family is entitled to just compensation for their loss.

18. In support of her evidence she has submitted some documents and exhibited as Ext.1 Accident Information Report; Ext.2(1) to 2(4) GDE extract copies; Ext.3(1) & 3(2) Medical Discharge Copy & Cause of Death; Ext.4 Certified copy of Post-Mortem Report, issued from the Office of the CJM, Udalguri, BTAD; Ext.5(1) to 5(8) Certified copy of FIR, Ejahar, Charge-sheet, Seizure-lists, MVI Reports & Sketch map issued from the Office of the CJM, Udalguri, BTAD; Ext.6(1) to 6(173) Medical Bills & reports and Ext.7(1) to 7(4) Copies of Adhar cards.

19. **During her cross-examination**, P.W.1, Bhabani Basumatary, has deposed that she has not seen the accident. She has stated in her evidence on affidavit that she has come to know about the accident after hearing about it from others. She has further stated that no eyewitness has been present on the date of her testimony. She has come to know about the offending Mahindra Bolero vehicle, bearing registration No.AS-02-CC-9008, as per the version of the public. She has also deposed that the police have visited their residence. She has denied the suggestion that there has been no fault on the part of the driver of the Mahindra Bolero vehicle bearing registration No.AS-02-CC-9008. She has also denied that the accident has taken place due to the sudden application of a sharp brake by her husband while driving his motorcycle bearing registration No.AS-27-B-0124. P.W.1 has deposed that the police have not appeared to prove the police papers relating to the accident and that nobody has been present to prove the GD entries marked as Ext.2(1 to 4). She has denied the suggestion that the contents of the GD entry and the charge-sheet are false. She has also denied that the offending Bolero vehicle has been falsely implicated in collusion with the police and the owner of the said vehicle. Referring to Ext.3(1), she has stated that the nature of the disease, the prognosis, and the risks associated with the transportation of the patient have been explained to them. She has denied the suggestion that her husband has been transported from Narayana Hospital against medical advice and that such act has led to deterioration in his health, resulting in his death. She has further denied the suggestion that they have not spent Rs.8,25,000/- towards the treatment of her husband. She has admitted that Ext.6(118 to 121, 126 to 131, 134 to 142, 144 to 146, 149, 150) have not been supported by prescriptions, and that Ext.6(151) has amounted to zero rupees. She has stated that they have paddy cultivation and that her father-in-law, who is still alive, is a cultivator. She has further deposed that her deceased husband has one elder brother and one younger brother. However, she has denied the suggestion that her father-in-law, having two other sons, has not been dependent upon her deceased husband. She has also admitted that no document has been submitted to prove that her husband was a businessman. She has denied the suggestion that her husband has been unemployed at the time of the accident. She has also denied that her husband has not earned an income of Rs.15,000/- to Rs.20,000/- per month, as stated by her. She has stated that she does not know whether the Bolero vehicle is a commercial vehicle or not, and she has also deposed that she does not know whether the driver of the Bolero vehicle has possessed a valid driving licence. She has denied the suggestion that she has claimed an excessive amount of compensation and that she is not entitled to the same from the insurance company. She has further denied that, as there has been no fault on the part of the driver of the Bolero vehicle, the opposite party No.3 is not liable to pay compensation.

20. **P.W.2, Sri Prasanta Gogoi,** has deposed that he has appeared in response to the summons issued to the Superintendent of Police, Udalguri. He has stated that he is currently posted as the In-Charge (IC) at Bhairabkunda Outpost. On 11-06-2022, he was posted as Sub-Inspector (SI) Probation at Rowta Police Station. On that day, he has received information about an accident that occurred at Bhalukmari. Following this, the Officer-in-Charge (OC) SI Malay Kumar Acharjya had taken him to the place of occurrence after receiving the information. D.W.1 has testified that, upon arrival at the scene, GD entry No. Ext.2(1) has been recorded, and they proceeded to the place of occurrence. However, before they reached the location, the local people had already sent the injured person to the hospital. At the scene, D.W.1 has stated that they found a Bajaj Platina motorcycle bearing registration No.AS-27/B-0124, a helmet, and some blood scattered on the ground. Upon inquiring, the local people had informed them that a Bolero vehicle had dashed the motorcycle from behind. Following this, they went to the hospital and met the injured, who had identified himself as Deb Basumatary. D.W.1 has further testified that Ext.2(2) is the extract of the GD entry. D.W.1 has deposed that, as per the direction of the OC, he had investigated the case and revisited the place of occurrence. During his investigation, he had found the number of the offending vehicle as AS-02-CC-9008. He then sought information from the Nagaon DTO office and received details of the offending vehicle. As the owner of the vehicle was within the jurisdiction of Uluoni Police Station in Nagaon district, he had requested the OC of Uluoni Police Station to send the offending vehicle to their Police Station. Accordingly, the OC of Uluoni P.S. had sent the vehicle to their Police Station. Upon receiving the offending vehicle, D.W.1 has testified that he seized the vehicle at their Police Station. After receiving the FIR, he had called the driver, arrested him, recorded his statement, and later allowed him to go on bail. He has further deposed that the injured, Deb Basumatary, had later succumbed to his injuries on 26-07-2022 at GMCH. Finally, D.W.1 has stated that after completing the investigation, he had filed a charge-sheet against the driver of the offending vehicle, which bore registration No.AS-02-CC-9008.

21. **During his cross-examination,** P.W.2, Prasanta Gogoi, has deposed that the GD entries have been made by the Officer-in-Charge (OC). He has stated that he has not submitted the GD entry through which he came to know about the registration number of the offending Bolero vehicle. He has further testified that the OC of Rowta Police Station had informed the claimant about the offending vehicle. P.W.2 has stated that he does not know about the pendency of the GR case. He has confirmed that he has submitted the charge-sheet in the case. However, he has denied the suggestion that he has submitted the charge-sheet without conducting a proper investigation. P.W.2 has also denied the suggestion that the offending vehicle, bearing registration No.AS-02-CC-9008, was not at fault for causing the accident.

22. **D.W.1, Mahidhar Deka,** has deposed that he has been appointed by the Regional Manager of the Oriental Insurance Company Limited as an investigator. He has stated that he was entrusted with the task of investigating the driving licence number AS-2820170020847, which was shown to be issued from the office of the DTO, Baksa, Assam, in the name of Sri Tralakya Talukdar, son of Lt. Tarun Talukdar. This driver was alleged to be the driver of the vehicle bearing registration No.AS-02-CC-9008 on 11-06-2022 at about 10:45 A.M., when the accident was alleged to have occurred. As such, he has testified that he knows all the facts and circumstances of the case and that he is authorized to swear this affidavit and adduce evidence in this case on behalf of the Oriental Insurance Company Limited. D.W.1 has stated that after receiving the appointment, he has applied under the RTI Act, 2005 to the Public Information Officer in the office of the D.T.O, Baksa, Mushalpur, Assam, for the verification of the driving license No.AS-2820170020847 in the name of Sri Tralakya Talukdar. He has testified that the office of the District Transport Officer, Baksa, Mushalpur, Assam, has replied to his RTI application by letter with reference No.DTO/BKS/RTI/2023-2024, dated 06-05-2023. Upon receiving the RTI reply from the office of the D.T.O, Baksa, Mushalpur, Assam, D.W.1 has found that the driving license No.AS-2820170020847 in the name of Sri Tralakya Talukdar was a Non-Transport Driving Licence, valid only up to 01-03-2034. He has further deposed that the RTI reply regarding the verification of the driving license is enclosed and marked as Exhibit "B."

23. D.W.1 has stated that after receiving the RTI replies, he has submitted them, along with his report, to the Regional Office of the Oriental Insurance Company Limited, Guwahati. He has testified that from his findings, he concluded that the owner of the vehicle has violated the terms and conditions of the insurance policy by knowingly allowing his commercial transport vehicle to be driven by Sri Tralakya Talukdar, who did not possess a valid transport driving licence on the date of the accident. The alleged accident occurred on 11-06-2022, and on that date, the driver did not hold a valid transport driving licence.

24. D.W.1 has deposed that, based on the above facts, it has come to light that the owner of the alleged offending vehicle in the accident would be solely liable for the payment of compensation to the claimants. Since the driving licence of the driver was not valid, and he was not authorized to drive the transport vehicle on the day of the alleged accident, the Oriental Insurance Company Limited is not liable to indemnify the owner in this case. Therefore, the Oriental Insurance Company is not required to pay any compensation on behalf of the owner to the claimant. He has testified that the present claim petition is not maintainable and should be dismissed as against the opposite party No.3. The copy of the Insurance Policy is enclosed and marked as Exhibit "C." D.W.1 has concluded by stating that the Oriental Insurance Company Limited should be exempted from any liability in this case.

25. **During his cross-examination**, D.W.1 has testified that he has not stated the weight of the Bolero Pickup Van bearing registration No.AS-02-CC-9008 in his evidence on affidavit. He has deposed that he has not known the laden weight of the said Bolero Pickup Van. He has further stated that he has not known the cubic capacity of the Bolero Pickup Van. He has deposed that he has not been aware that the cubic capacity of 1493 of the Bolero Pickup Van is equivalent to a weight of approximately 1620 kg.

26. Heard argument of learned counsels for both the sides and perused the case record. The learned counsels for the parties have submitted written arguments, respectively.

DECISION AND REASONS THEREOF

27. **ISSUE NO.I** : With regard to the Issue No.1 i.e. Whether on 11.06.2022, at about 10.45 A.M., at Bhalukmari on National Highway No.15, under Rowta Police Station, an accident has arisen due to the rash and negligent driving of the vehicle bearing Registration No. AS-02-CC-9008 (Bolero) on the part of its driver and whether the said accident has caused the death of Deb Basumatary, I have heard the argument advanced by the learned counsels for the claimants, as well as the opposite parties No.3. I have also perused the documents submitted before this Tribunal;

28. The claimants have filed by the case under Sec.166 M. V. Act and thus the onus lies upon the claimants to prove the rash and negligent act of the driver of the vehicle in question.

29. P.W.1, Smt. Bhabani Basumatary, has stated that on 11-06-2022 at around 10:45 A.M., her deceased husband, Deb Basumatary, was riding his motorcycle bearing registration No.AS-

27-B-0124 at a moderate speed on his side of National Highway No. 15. She testified that the offending Mahindra Bolero, registration No.AS-02-CC-9008, was coming from the same direction at an excessive speed and struck her husband's motorcycle from behind due to rash and negligent driving. The impact caused her husband to fall and sustain grievous injuries, leading to his eventual death.

30. P.W.2, Sri Prasanta Gogoi, has testified that he was posted as Sub-Inspector at Rowta Police Station on the day of the accident. He received information about the accident and, along with the Officer-in-Charge, visited the place of occurrence. Upon reaching the scene, they found a Bajaj Platina motorcycle and evidence of a collision, with locals reporting that a Bolero vehicle had hit the motorcycle from behind. After investigating, he found the offending vehicle's registration number as AS-02-CC-9008 and subsequently seized the vehicle. He also testified that the driver was arrested, and a charge-sheet was filed.

31. From the evidence of P.W.2 it appears that he is an investigating officer and his direct involvement in the investigation of the accident. He was present at the scene shortly after the incident, recorded the GD entry, and gathered relevant evidence, including the registration number of the offending vehicle. He followed up by retrieving the vehicle, arresting the driver, and submitting a charge-sheet, which shows that his testimony is backed by the proper procedural steps and is part of the official investigation. Furthermore, his statements align with the physical evidence at the scene and the documentation submitted.

32. P.W.1 has consistently deposed that the accident was caused due to the excessive speed and negligent driving of the rider of the Mahendra Bolero, and has attributed full responsibility for the incident to the driver of the offending vehicle.

33. Though the defence cross-examined P.W.1, they could not shake her testimony or create any doubt regarding the rash and negligent driving of the Mahendra Bolero, or about the grievous injuries caused to Deb Basumatary that led to his death. The statement of P.W.1 is duly corroborated by the Accident Information Report, FIR, Charge Sheet, Seizure List, and MVI Report, which render her testimony both reliable and trustworthy.

34. Although the insurance side argued that the accident did not result from rash and negligent driving on the part of the Mahendra Bolero driver, they failed to disprove this fact. Ext.1, the Accident Information Report, clearly shows that a case, being Rowta P.S. Case No.77 of 2022 under Sections 279/304(A)/338 IPC, was registered by Rowta Police Station regarding the accident involving the Mahendra Bolero, in which Deb Basumatary was identified as the victim who lost his life due to the accident. The consistent evidence of the claimant, supported by the Accident Information Report, FIR, Charge Sheet, Seizure List, and MVI Report, firmly establish that the accident occurred due to the rash and negligent driving of the Mahendra Bolero driver.

35. The defense has not denied the occurrence of the accident but has instead focused on contesting the validity of the driver's license. The defense has raised the issue that the driver of the offending Mahindra Bolero, bearing registration No.AS-02-CC-

9008, did not possess a valid transport driving license on the date of the accident. D.W.1, the investigator for the insurance company, testified that the driver, Sri Tralakya Talukdar, held a non-transport driving license, which was not valid for operating a commercial vehicle like the Mahindra Bolero. The defense has argued that the owner of the vehicle violated the terms and conditions of the insurance policy by allowing an unqualified driver to operate the vehicle. However, the defense has not disputed the fact that the accident occurred, nor have they contested the evidence provided by P.W.1 regarding the rash and negligent driving that caused the collision. Instead, their argument revolves around the legal implications of the driver's license, suggesting that the insurance company should not be liable to compensate due to the driver's lack of a valid transport license.

36. Based on the evidence of P.W.1, the accident occurred solely due to the rash and negligent driving of the offending Mahindra Bolero, bearing registration No.AS-02-CC-9008. P.W.1 testified that her deceased husband, Deb Basumatary, was riding his motorcycle registration No.AS-27-B-0124 at a moderate speed on his side of National Highway No.15 when the Bolero vehicle, coming from the same direction at an excessive speed, collided with his motorcycle from behind. This suggests that the driver of the Mahindra Bolero was driving recklessly and failed to maintain a safe distance, leading to the impact. The severity of the accident and the injuries sustained by the victim were a direct result of the negligent driving of the Bolero vehicle, and P.W.1 has consistently denied the suggestion that her husband caused the accident due to his own negligence, such as sudden braking.

37. As a result of this accident, Deb Basumatary, the husband of P.W.1, became the victim. He sustained grievous injuries that required immediate medical attention. P.W.1 testified that her husband was first taken to Rowta Model Hospital, where he received first aid and was later referred to GMCH. Due to his worsening condition, he was subsequently transferred to Narayana Bafna Hospital before being admitted to Gauhati Medical College & Hospital. Unfortunately, despite prolonged treatment, Deb Basumatary succumbed to his injuries on 26-07-2022, about a month and a half after the accident. P.W.1's testimony, along with the documentary evidence, including medical records and post-mortem reports, clearly establishes that her husband's death was a direct result of the injuries sustained in the accident caused by the rash and negligent driving of the offending Bolero vehicle.

38. Based on the evidence of P.W.1 and P.W.2 and the supporting documents on record, it is concluded that the accident occurred due to the rash and negligent driving of the Mahendra Bolero, which resulted in the untimely death of Deb Basumatary. This issue is, accordingly, decided in the affirmative and in favour of the claimants.

39. **ISSUE NO.II**: With regard to the Issue No.II, i.e. whether the claimants are entitled to receive any compensation, and if yes, what should be the quantum and who amongst the opposite parties, is liable to pay the compensation amount, it is pertinent to mention here that the claimants(s) would be entitled to fair and just compensation. At this juncture, it is relevant to highlight that the Motor Vehicles Act, 1988 is a beneficial law. The Hon'ble Supreme Court has reiterated that the Act states that "reasonable compensation" must be given. Thus, it is important for tribunals to determine "reasonable compensation" to ensure that it is not a bonus or a windfall and at the same time, should not be paltry compensation. Tribunals should calculate the damages caused practically which should be within the scope of realistic estimates.

40. In **Nagappa v. Gurudayal Singh [(2003) 2 SCC 274]**, the Hon'ble Supreme Court noticed that, Section 168 of the Act empowers the Claims Tribunal to 'make an award determining the amount of compensation which appears to it to be just'. Therefore, the only requirement for determining the compensation is that it must be 'just'.

41. Further, in ***Sarla Verma and others Versus Delhi Transport Corporation***, reported in ***(2009) 6 SCC 121***, this Court has laid down as under:

> "16.'Just compensation' is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well settled principles relating to award of compensation. It is not intended to be a bonanza, largesse or source of profit."

42. The five judge bench of Hon'ble Supreme Court in **National Insurance Company Ltd. v. Pranay Sethi [(2017) 16 SCC 680]**, held that ………"Section 168 of the Motor Vehicles Act, 1988 deals with the concept of 'just compensation' and the same has to be determined on the foundation of fairness, reasonableness and equitability on acceptable legal standard because such determination can never be in arithmetical exactitude. It can never be perfect. The aim is to achieve an acceptable degree of proximity to arithmetical precision on the basis of materials brought on record in an individual case. The conception of 'just, etc. compensation' has to be viewed through the prism of fairness, reasonableness and non-violation of the principle of equitability".

43. In the case of ***Sarla Verma (Supra)***, the Hon'ble Supreme Court has held that, "Basically only three factors need to be established by the claimants for assessing compensation in the case of death : (a) age of the deceased; (b) income of the deceased; and (c) the number of dependents. The issues to be determined by the Tribunal to arrive at the loss of dependency are (i) additions/deductions to be made for arriving at the income; (ii) the deduction to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference of the age of the deceased." Constitution Bench in **National Insurance Company Limited- Versus Pranay Sethi and Ors.**, reported in ***(2017) 16 SCC 680*** affirmed the view taken in Sarla Verma Case.

44. P. P.W.1, Smt. Bhabani Basumatary, has stated that her deceased husband, Deb Basumatary, was aged about 38 years at the time of the accident. In support of her evidence, P.W.1 has submitted one copy certified copy of postmortem report Ext.4 which reveals that the deceased died at the age of 38 years. Thus in the light of decision of **Sarla Verma's** case, the appropriate age group is 36-40 and multiplier shall be **15 (Fifteen).** Thus, the **Multiplier-15** has to be taken for ascertaining the loss of dependency in this instant case.

45. Now coming to the question of income and occupation of the deceased, the P.W.1, Smt. Bhabani Basumatary, has stated that her deceased husband, Deb Basumatary, was engaged in pig and poultry farming. She testified that he earned between Rs.15,000/- to Rs. 20,000/- per month, which was the sole means of sustaining their family. The P.W.1 has not submitted any documents with regard to the occupation and income of the deceased. Therefore, the earning made by the deceased is not taken into consideration.

46. Now coming to the question of income and occupation of the deceased, P.W.1 has stated that the deceased, Late Basu Gowala, was working as a foreman under Amar Coal Mining Chanki, Nagaland, at the time of the accident. He was earning a monthly income of Rs.12,000/-. However, he has not submitted any documents with regard to the occupation and income of the deceased. Since the P.W.1 has failed to substantiate his evidence by producing any cogent evidence, his evidence regarding the earning of the deceased is not taken into consideration.

47. Now, the point arises whether, minimum wage can be considered in the MACT Case in absence of any certificate of income proof while computing the compensation. For the sake of removal of doubts, I have gone through judgment **Smt. Niru Bora Versus Rajendra Khardia and 2 others passed in MAC Appeal No.94 of 2018, decided on 07-09-2022,** wherein **Hon'ble Gauhati High Court has** observed that minimum wage can be considered in absence of any certificate of income proof while computing the compensation.

48. The **Hon'ble Gauhati High Court** in this case has referred to the principle of applying minimum wages when no concrete evidence is available regarding the income of a deceased individual. In the absence of documentary proof or any other reliable evidence of the deceased's earnings, the Court observed that it is appropriate to apply the Minimum Wages Act**,** particularly the minimum wages notified by the State Government at the relevant time. The Hon'ble Gauhati High Court has referred to the Supreme Court judgment in Chandra alias Chanda alias Chandraram vs. Mukesh Kumar Yadav and Others reported in **(2022) 1 SCC 198**, wherein the Hon'ble Apex Court held that in cases of self-employment, when there is no documented income proof, the minimum wages set by the State under the **Minimum Wages Act** can be applied to determine the deceased's income. The Hon'ble Gauhati High Court, therefore, based on this judgment, concluded that the minimum wages set by the State can be used as a fair basis to calculate the income of the deceased.

49. In the instant case, the claimant has failed to substantiate the claim regarding the income of the deceased with verified document. However, there is no evidence from the other side that the deceased was not engage with business of pig poultry firm. Therefore, in the light of the Niru Bora (Supra) the deceased is considered as a semi-skilled workman for the purposes of assessing compensation. Since the accident occurred in the month of June, 2022, therefore, I have considered, the minimum wage in the year, 2016 with effect from **01st January, 2022,** at the rate of **Rs.11,746.14 as per the Notification No.ACL/41/2004/3173-3241, Dated Guwahati the 20h April, 2022**.

50. The Hon'ble Supreme Court in the case of **Pranay Sethi (Supra),** held that a reasonable percentage should be added to the income of the deceased to account for future prospects, reflecting the likely increase in earnings over time. The Hon'ble Supreme Court observed that it would be unjust to ignore future prospects simply because a person was self-employed or on a fixed salary, as they too experience a rise in income due to inflation, increased cost of living, and personal efforts to enhance earnings. The Hon'ble Supreme Court standardized the addition of future prospects based on the age of the deceased. For individuals under 40, an addition of 40% was made to their income, for those aged 40 to 50, it was 25%, and for those aged between 50 and 60, it was 10% and granted no addition towards future prospect above 60 years of age.

51. Thus in this case, as the deceased was below the age of 60 years, thus there should be an addition of 10% towards the future prospect.

52. So far as the dependency is concerned, in the claim petition it is shown that the deceased has left behind him, only five, surviving heir/dependent, i.e. the claimants. However, the dependency of the claimant No.5 upon the income of the deceased has not been established. Therefore, he is not considered as dependants. Thus I have held that at the time of death, the deceased has left behind only four dependants.

53. In the **Sarla Verma (Supra),** the Hon'ble Supreme Court addressed the issue of personal and living expenses of the deceased while calculating compensation in cases of fatal accidents. The Hon’ble Supreme Court held that personal and living expenses should be deducted from the gross annual income of the deceased to determine the actual dependency of the claimant. Specifically, the Hon’ble Supreme Court stated that that where the deceased was unmarried, the deduction towards personal and living expenses of the deceased, should 50%, where the number of dependent family members is 2 to 3 where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependant family members is 4 to 6, and one-fifth (1/5th) where the number of dependant family members exceed six.

54. Therefore, in terms of the judgment of the Hon'ble Supreme Court of India in **'Sarla Verma (Supra),** I am of the view that, deduction of $1/4^{th}$ should be made to his income by way of personal expenses. Thus, the just and reasonable compensation which the claimant are entitled to was assessed as under :

Total Monthly income	Rs.11,746.14
Total Annual Net income	Rs.1,40,953.68 (11,746.14 x 12)
Future prospect 40%	Rs.1,40,953.68 x 40 ÷ 100 = 56,381.47
Total : Rs.1,40,953.68 + Rs.56,381.47 = 1,97,335.15	
Deduction $1/4^{th}$	Rs.1,97,335.15 ÷ 4 x 3 = 1,48,001.36
Multiplier	15
Total Compensation	Rs.1,48,001.36 x 15 = **Rs.22,20,020.40**

55. In the instant case the claimants are also entitled to get some amounts under Conventional Heads as per Pranay Sethi case (Supra). In the context of Motor Accident Claims Tribunal (MACT) cases, conventional heads such as Loss of Estate, Loss of Consortium and Funeral Expenses are pivotal in determining the compensation awarded to victims or their families. The Hon'ble Supreme Court of India in Pranay Sethi (Supra) has significantly influenced the way these compensations are calculated. The Hon'ble Supreme Court has specifically addressed the amounts payable under conventional heads such as loss of estate, loss of consortium, and funeral expenses. The Hon'ble Supreme Court held that the amounts for these heads should be Rs.15,000/- for loss of estate, Rs.40,000/- for loss of consortium and Rs.15,000/- for funeral expenses. Furthermore, the Hon'ble Supreme Court has stipulated that these amounts should be increased by 10% every three years to account for inflation and changing economic conditions. This case has not completed the three years from the date of accident. Hence, it is not entitled to 10% increase in the conventional heads.

56. Further the Hon'ble Supreme Court in the case of **Magma General Insurance Company Versus Nanu Ram alias Chuhru Ram reported as (2018) 18 SCC 130**, the Hon'ble Supreme Court of India has elaborated on the concept of consortium. The court explained that consortium is a comprehensive term that includes "spousal consortium," "parental consortium," and "filial consortium." Spousal Consortium refers to the companionship, care, help, comfort, guidance, solace, and affection that the deceased spouse provided. Parental Consortium is granted to children for the loss of parental aid, protection, affection, society, discipline, guidance, and training due to the premature death of a parent. This is available to all children, regardless of their dependency on the deceased. Filial Consortium pertains to the companionship, care, and support that the deceased provided to their parents. In this case, the Hon'ble Supreme Court had opined that "All children of the deceased are entitled to parental consortium, the widow of the deceased is entitled to spousal consortium and the parents of the deceased are entitled to filial consortium. Accordingly, in view of the above, the claimants are entitled to spousal consortium, parental consortium, filial consortium, funeral expenses and loss of estate as follows:

Sl No.	Conventional Heads	Amounts
1.	Filial consortium	40,000.00
2.	Funeral expenses	15,000.00
3.	Loss of Estate	15,000.00
4.	Parental consortium [40,000 x 3]	1,20,000.00
5.	Filial consortium	40,000.00
Total		**2,30,000.00**

57. The P.W.1 has submitted the bills and vouchers along with her evidence on affidavit to prove the expenditures, incurred in the medical treatment. Ext.6 (1 to 173) are those documents. I have carefully scrutinized the bills and vouchers, submitted by the P.W.1. On careful scrutiny of the medical bills and vouchers, it transpires that the claimants incurred an expenditure of **Rs.8,25,000/-** only towards the treatment of the deceased. As such, it is held that the amount mentioned above is the expenditures, incurred by the claimants for treatment of the deceased and the claimants are entitled to get this amount as medical expenses.

1. Loss of dependency	22,20,020.40
2. Conventional amount	2,30,000.00
3. Medical expenditures	8,25,000.00
Total	**: 32,75,020.40**

58. **In total, the claimants are entitled to receive Rs.32,75,020.40 as compensation.**

59. **Now the question is who is liable to pay the compensation to the claimants**. D.W.1, Mahidhar Deka, has testified that he was appointed by the Regional Manager of the Oriental Insurance Company Limited as an investigator to verify the authenticity and validity of the driving licence bearing No.AS-2820170020847. The said licence was shown to be issued by the District Transport Officer (DTO), Baksa, Assam, in the name of Sri Tralakya Talukdar, who was alleged to be the driver of the vehicle bearing registration No.AS-02-CC-9008 at the time of the accident on 11-06-2022. In the course of his investigation, D.W.1 has stated that he submitted an application under the Right to Information Act, 2005 to the Public Information Officer in the office of the DTO, Baksa, to verify the said driving licence. He has testified that, in response, the DTO office, by letter dated 06-05-2023, informed him that the licence in question was a non-transport licence, valid only up to 01-03-2034.

60. Based on the information received through RTI and his findings, D.W.1 has deposed that the licence held by the driver, Sri Tralakya Talukdar, did not authorize him to drive a commercial or transport vehicle on the date of the accident. He has stated that the vehicle involved in the accident was a Bolero Pickup Van, which is categorized as a transport vehicle, and hence, the driver was not legally permitted to drive such a vehicle with a non-transport licence. D.W.1 has concluded that the owner of the offending vehicle has violated the terms and conditions of the insurance policy by allowing an unauthorized driver to operate a transport vehicle. Consequently, he has stated that the insurance company, i.e., Oriental Insurance Company Limited, is not liable to indemnify the owner for the compensation claimed in the present case.

61. I have gone through the evidence of the D.W.1 and found that he has stated that he does not know the laden weight of the offending vehicle. On the other hand**,** the Hon'ble Supreme Court, in The case of Mukund Dewangan Versus Oriental Insurance Company Limited arising out of Civil Appeal No.5826 of 2011, specially dealt with this question and clarified that a person holding a driving license for a "light motor vehicle" (LMV) is competent to drive certain transport vehicles without needing a separate endorsement. From the details of driving license copy submitted D.W.1 it appears that the driver possessed a valid driving license under the category of Light Motor Vehicle.

62. Based on the authoritative pronouncement of the Hon'ble Supreme Court in the case of Mukund Dewangan (Supra) it has been clearly held that a person possessing a valid driving licence for a "Light Motor Vehicle" (LMV) is legally competent to drive a transport vehicle, provided the vehicle's gross weight does not exceed 7500 kg. The Hon'ble Court has clarified that such drivers are not required to obtain a separate endorsement for transport vehicles within this weight limit. The judgment makes it evident that the term "LMV" includes both private and commercial (transport) vehicles that fall within the prescribed weight specifications.

63. Accordingly, applying the ratio of the said judgment to the present case, where the offending vehicle bearing registration No.AS-02-CC-9008 is a Bolero Pickup Van, it is apparent that if the gross vehicle weight of the said Bolero Pickup Van is below 7500 kg, the driver holding a valid LMV licence cannot be considered unauthorized merely for the absence of a transport endorsement. Thus, there is no breach of policy conditions concerning the validity of the driving licence. Consequently, the defence taken by the insurance company on the issue of licence is not tenable in law, and the insurance company remains liable to indemnify the owner and pay just compensation to the claimants. This issue is, therefore, decided in favour of the claimants.

A W A R D

64. In the result, the claim petition is allowed on contest and the claimant is entitled to get total compensation amount of **Rs.32,75,020.40** for the death of the deceased. The insurance company, is directed to pay the said compensation amount to the claimantswithin 01(one) month from the date of this order to this Tribunal for onward disbursement to the claimants in time.

65. As regards to the percentage of interest I am being guided by the case law of **Mohd. Sabeer @ Shabir Hussain Vs Regional Manager, UP State Road Transport Corporation in Civil Appeal Nos.9070-9071 of 2022 (arising out of SLP (C)**

Nos.481-482 of 2019) as observed by the Hon'ble Supreme Court. Accordingly, the insurance company is directed to release the awarded amount along with interest @ 09% per annum from the **date of filling of the case i.e. 11-10-2022** till the date of payment till in favour of the claimants.

66. The insurance company is directed not to reduce the interest amount. Further the insurance company is directed to submit calculation sheet of interest amount separately before this Tribunal at the time of depositing the awarded amount.

67. Out of the amount awarded, **Rs.16,35,020.40 along with** her share of **09%** interest amount that derives from the total compensation amount i.e. **Rs.32,75,020.40** shall be released to **the claimant, the mother of deceased** to meet the immediate exigencies.

68. **Rs.40,000/- along with** his share of **09%** interest amount that derives from the total compensation amount i.e. **Rs.32,75,020.40** shall be released to the claimant No.5, the father of deceased.

69. The claimant No.1 shall open one FDR of **Rs.4,00,000/-along with** her share of **09%** interest amount that derives from the total compensation amount in her name in any nationalized bank in her locality/present address for a period of three years.

70. The claimant No.1 shall open one FDR of **Rs.4,00,000/- each along with** the shares of **09%** interest amount that derives from the total compensation amount in the name of the claimant Nos.2, 3 and 4 in any nationalized bank in her locality/present address either for a period of three years for till the claimant Nos.2, 3 and 4 attains the age of majority, whichever is later.

71. It is made clear that the above FDR shall not be withdrawn before its maturity, without prior permission.

72. The Branch Manager, of the concerned bank will be at liberty to release the FDR amount on maturity, without prior permission of this Tribunal.

73. Furnish free copy of judgment to the parties immediately.

Both the Parties are to bear the cost.

The instant case is disposed of.

74. Signed, sealed and delivered in the open Court on this the **28th day of March, 2025**, in Guwahati.

DICTATED & CORRECTED BY ME:

MD. ABDUL HAKIM,
MEMBER,
Motor Accident Claim Tribunal No.2,
Kamrup (M) Guwahati

MD. ABDUL HAKIM
M E M B E R,
Motor Accident Claim Tribunal No.2,
Kamrup (M), Guwahati

Transcribed By:

MANABENDRA MALAKAR,
STENOGRAPHER

A N N E X U R E

I. Claimants Examined

1) P.W.1 : Bhabani Basumatary

2) P.W.2 : Prasanta Gogoi

II. Opposite parties No.3 Examined

1. D.W.1 : Mahidhar Deka

III. Claimants exhibited

1. Ext.1 : accident information report
2. Ext.2(1) to 2(4) : GDE extract copies
3. Ext.3(1) & 3(2) : Medical Discharge Copy & Cause of Death
4. Ext.4 : Certified copy of Post-Mortem Report
5. Ext.5(1) to 5(8) : Certified copy of FIR, Ejahar, Charge-sheet, Seizure-lists, MVI Reports & Sketch
6. Ext.6(1 to 173) : Medical Bills & reports
7. Ext.7(1 to 4) : Copies of Adhar cards

IV. opposite parties No.3 exhibited

1. Ext.A : authority letter
2. Ext.B : copy of RTI Reply
3. Ext.C : copy of insurance policy

MD. ABDUL HAKIM,
M E M B E R,
Motor Accident Claim Tribunal No.2,
Kamrup (M), Guwahati