



M.A.C.C. No. 32 of 2021
CNR No. WBBD09-000244-2017
J.O. Code – WB01024

**IN THE COURT OF ADDITIONAL DISTRICT JUDGE, FAST TRACK COURT, DURGAPUR AND
MOTOR ACCIDENT CLAIMS TRIBUNAL, DURGAPUR, DISTRICT : PASCHIM BARDHAMAN.**

Present: Sri Girijananda Jana, (WB01024), Judge, M. A. C. T.

Monday, the 10th day of August, 2026

Arising out of M. A. C. C. No. 72 / 2017

(A Case under Section 166 of Motor Vehicle Act, 1988.)

1. Bhagwati Shaw,

2. Asha Shaw & 3. Dep Shaw (minors represented by
their mother Bhagwati Shaw) Petitioners

Versus

Md. Biswas Opposite Party No. 1.

and

Chola Mandalam MS General General Insurance Co. Ltd. .. Opposite Party No. 2.

This Case coming on for final hearing on 14.07.2026 in presence of

Mr. Ayub Ansary ----- Advocate for Petitioners

Mr. Chiradip Roy ----- Advocate for Opposite Party No. 2.

and having stood for consideration to this day the 10th day of August, 2026 the
Court delivered the following Judgment:-

J U D G M E N T

1. This is an application under section 166 of the Motor Vehicles Act filed by the petitioners on 10.04.2017, seeking compensation to the tune of ₹ 10,50,000/- added with 50% future prospect+ 10% interest from the date of filing of the claim application till its realization on account of death of Sanjoy Kumar Shaw.
2. Petitioners' case in a nutshell is that on 17.02.2017 at about 05:30 P. M. while the victim, Sanjoy Kumar Shaw was proceeding towards Muchipara side from

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Banskopa More on foot through the left side of NH-2 and when he reached near Sakha Hotel at L & T More under the jurisdiction of Kanksa P. S., at that time one Truck bearing its registration No. WB-41D/1811 suddenly came with high speed from the same direction and driven by its driver in a rash and negligent manner dashed the victim from behind. As a result, the victim fell down by the side of the road and sustained severe bleeding injury over his chest and legs. With the help of local people, he was taken to the S. D. Hospital, Durgapur for his treatment, but the attending doctor there declared the victim as brought dead.

3. On 17.02.2017 postmortem over the dead body was performed at S. D. Hospital, Durgapur in connection with New Township P. S. U. D. Case No. 77 of 2017 dated 17.02.2017.
4. On the basis of a written complaint lodged by one Raju Shaw, the brother of the victim, Kanksa P. S. Case No. 49 of 2017 dated 20.02.2017 under Sections 279/304A of the Indian Penal Code was registered against the driver of the said Truck and it ended in Charge Sheet being No. 51 of 2017 dated 28.02.2017 under Sections 279/304A of the Indian Penal Code.
5. In the claim petition, it is mentioned that the deceased Sanjoy Kumar Shaw was aged about 33 years, and he used to earn ₹6,000/- per month as a labourer under a contractor of NH-2, Sagarbhangra from his employer, and he had to maintain his family consisting of his wife and minor children. The claimants, being the dependents of the deceased, filed this application claiming compensation to the tune of ₹ 10,50,000/- from the opposite parties.
6. The offending vehicle was owned by Opposite Party No. 1. Notice of the claim petition was duly served upon the owner of the said vehicle, and though he filed his written statement on 04.07.2019, he did not contest the case thereafter, and the case was heard ex parte against him.
7. Only opposite party No. 2, insurer of the offending vehicle, taking leave under Section 170 of the M. V. Act to contest the case, taking the defence available to the registered owner, contested the case tooth and nail and filed a written statement on 03.12.2024 denying all the material allegations.



According to this O. P., the person driving the vehicle had “no relation in force” to drive the vehicle on the date of the accident. The O. P. No. 2/ Insurance Co. also submits that the driver of the offending truck bearing Registration No. WB-41D/1811 was not holding a valid and effective driving licence and the driver of the truck was driving the vehicle holding an expired driving licence. So, the petitioners are not entitled to get any compensation, and the case is liable to be dismissed.

ISSUES

8. Due to the contradiction of the claim, as made out by the claimants, by the O.P. No. 2, the matter came up for hearing and to determine the claim, the following issues have been framed considering the pleadings of the parties for determination of this Claim Petition: -
- 1. **Whether the instant claim case is maintainable in its present form, prayer and in law?**
 - 2. **Did the victim, Sanjoy Kumar Shaw, die in a motor vehicle accident due to rash and negligent driving on the part of the driver of the Truck bearing No. WB-41D/1811 ?**
 - 3. **Whether the claimants are entitled to get compensation as prayed for?**
 - 4. **Whether the claimants are entitled to get any other relief/reliefs as prayed for?**

Evidences adduced by the Claimants

9. To prove the case, the Petitioners/Claimants have adduced both oral as well as documentary evidence, which are enumerated hereinafter: -

Sl. No.	Petitioners’ witness	Name of witnesses	Date of recording evidence
1.	PW-1	Bhagwati Shaw	15.09.2025
2.	PW-2	Biltu Paswan	28.04.2025

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Documents relied on by the Claimants:-

Sl. No.	Exhibits for Petitioner	Nature of Document	Date of admission
1.	Exhibit-P1	Certified copy of Written complaint	15.09.2025
2.	Exhibit-P2	Certified copy of F.I.R.	15.09.2025
3.	Exhibit-P3	Certified copy of Seizure List dated 20.02.2017	15.09.2025
4.	Exhibit-P4	Certified copy of Seizure List dated 20.02.2017	15.09.2025
4.	Exhibit-P5 (collectively)	Certified copy of Charge sheet	15.09.2025
5.	Exhibit-P6	Certified to be true copy of postmortem report	15.09.2025
6.	Exhibit-P7	Copy of Insurance Policy	15.09.2025
7.	Exhibit-P8	Attested copy of Voter Identity Card of the deceased	15.09.2025
8.	Exhibit-P8 (i)	Attested copy of Voter Identity Card of the claimant Bhagawati Shaw	15.09.2025
9.	Exhibit-P9 (i)	Attested copy of Aadhaar Card of the claimant Deb Shaw	15.09.2025
10.	Exhibit-P9 (ii)	Attested copy of Aadhaar Card of the claimant Asha Shaw	15.09.2025

10. O. P. No. 2 to contradict the claim application filed by the petitioners neither adduced any oral evidence nor adduced any documentary evidence.

DECISION WITH REASONS:

ISSUE No. 1 :-



11. Though this issue had been framed during trial, at the time of final hearing this point was not agitated. No provision of law has been brought to the notice of this Tribunal which would render the application either barred by limitation or not maintainable in its present form and in law.
12. It appears from the claim application that the owner of the vehicle, as well as the insurer of the vehicle, has been added as parties in this case in terms of the mandate of law. Therefore, no other person is a necessary party in this case. None has also been added as a party in this case unnecessarily. So, this Tribunal holds that the claim application is maintainable in its present form, prayer and in law.

ISSUE No. 2:-

13. Learned advocate appearing on behalf of the petitioners submits that the driver of the Truck was driving his vehicle in a rash and negligent manner. There is no evidence that the victim had any contribution to the accident, and hence the petitioners are liable to get the compensation as prayed for.
14. Learned Advocate appearing for the Opposite Party No. 2/Insurance Company submitted that the offending vehicle was not involved in the accident and that the vehicle had been falsely implicated by the claimants with a view to obtaining compensation. It was accordingly argued that the Insurance Company was not liable to satisfy the claim.
15. It appears from the F.I.R., Written Complaint, Seizure lists and Charge sheet (Exhibits – P1 to P5) that the Truck bearing No. WB-41D/1811 was involved in a road accident which took place on 17.02.2017 at about 05:30 P. M. It appears from the written complaint that the aforesaid Truck coming in a rash and negligent manner dashed behind the victim while the victim was walking on foot and as a result the victim sustained severe bleeding injury. With the help of local people, the victim was taken to S. D. Hospital, Durgapur for his treatment but the attending doctor there declared the victim as brought dead. It also appears from the written complaint (Exhibit No.P1) that a specific case being Kanksa P. S. Case No. 49 of 2017 dated 20.02.2017 under Sections 279/304A of the Indian Penal Code had been registered and Charge Sheet being No. 51 of 2017 dated

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28.02.2017 under sections 279/304A of the IPC, was submitted against the driver of the offending vehicle namely Sachchinanda Singh, for rash and negligent driving and causing death of the victim by negligent act. Moreover, the Investigating Officer, after due investigation, submitted Charge Sheet against the driver of the Truck and seized the vehicle along with its relevant papers. Therefore, there is no reason to disbelieve this documentary evidence. Considering the documentary evidence, this Tribunal is of the opinion that there was rash and negligent driving on the part of the driver of the Truck.

16. It appears from the P.M. Report (Exhibit No. P6) that Sanjoy Kumar Shaw sustained injuries in the accident and died and his dead body was brought to S. D. Hospital, Durgapur on 17.02.2017, vide New Township P.S. U.D. Case No. 77 of 2017 dated 17.02.2017 for postmortem examination. All these facts have been corroborated by oral evidence of Bhagwati Shaw (P.W.1) and Biltu Paswan (P.W. 2), an eyewitness to the accident. There is no reason to disbelieve this evidence. Moreover, there is no contrary evidence. The evidence on record is sufficient to prove that the driver of the Truck was driving it in a rash and negligent manner and thereby causing the death of Sanjoy Kumar Shaw.

The plea of the insurer that the driver was not holding a valid and effective driving licence has not been substantiated by any oral or documentary evidence. The insurer, despite having contested the claim, has not examined any witness nor produced any document from the competent licensing authority to establish the alleged breach of the policy condition. Accordingly, the statutory defence under Section 149(2)(a)(ii) of the Motor Vehicles Act has not been proved and the insurer cannot avoid its liability on that ground

17. Thus, this Tribunal holds that the offending vehicle was a Truck bearing No. WB-41D/1811 which is involved in a road traffic accident on 17.02.2017 at about 05:30 P. M. and the driver of the said truck caused the death of the victim Sanjoy Kumar Shaw due to rash and negligent driving on the part of the driver of the said vehicle.

Issue Nos. 3 and 4:

18. Both these issues are taken up conjointly for the sake of convenience and brevity of discussion and examined in the light of the evidence adduced. The learned advocate, who appeared on behalf of the petitioners at the time of



argument, submitted that the victim was 33 years old and used to earn Rs. 6,000/- per month. The learned advocate for the petitioners candidly submits that as the dependents on the deceased were more than two persons, so, in the interest of justice, it will be met if 1/3rd be deducted from the actual income of the deceased towards living and personal expenses. The claimants are entitled to get just and fair compensation along with interest as prayed for.

19. On the point of income, the learned Advocate for the petitioners submitted that though there is no income proof coming forth before this Tribunal but notional income of the victim @ Rs. 6,000/- at the relevant point of time should be taken into consideration. The learned Advocate for the petitioners, in the presence of the learned Advocate for the O. P. No. 2/ Insurance Co., argued that at the time of filing of the instant claim petition, the income of the victim had been mentioned as Rs. 6,000/-; so, this income should be considered. Subsequently, the learned Advocate for the petitioners, in the absence of the learned Advocate for the O. P. No. 2 / Insurance Co., supplied the Circular vide Notification No. Labr/650/(Law)/MW/2W-32/13 Dated 29.12.2016.

20. To counter the above argument, learned advocate appeared on behalf of the O. P. No. 2, submitted that the alleged offending vehicle was not at all involved in the accident, and the vehicle had falsely been implicated. The learned Advocate appearing on behalf of the O. P. No. 2, at the time of argument denied the employment and income of the deceased. The learned advocate for the O. P. No. 2 / Insurance Co. further argued that if the claim application is at all allowed, then the Notional income @ Rs. 3,000/- per month of the deceased should be taken into consideration. The claim of the applicants is excessive and exorbitant. The case has not been proved. The claimants are not entitled to get compensation as prayed for from the insurance company.

20. Traversing the materials on record, it appears that there is no cogent evidence that what was actual income of the victim at the time of happening of the accident. In this situation, this Tribunal assesses the monthly income of the deceased is at ₹6,000/-

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has no other alternative but to accept the Notional income of Rs. 6,000/- as mentioned by the petitioners in their claim petition. There are catena of Judgments wherein it have been mentioned when the claimant (s) cannot able to prove the income by adducing cogent documentary evidence, notional income of Rs. 6,000/- should be taken into consideration. Thus, this Tribunal is of the opinion that at the time of accident, the victim used to earn Rs. 6,000/- per month which is taken into consideration.

21. Now we have to ascertain what was the actual age of the victim at the time of accident. It appears from the attested copy of Voter Identity Card (Exhibit No. P8) that as on 01.01.2006, the age of the victim was 22 years and the accident occurred in the year 2017. Accordingly, the deceased would have been approximately 33 years of age on the date of the accident. The age of 28 years mentioned in the postmortem report appears to be an approximate medical assessment and is contradicted by the documentary evidence. Hence, this Tribunal accepts the age of the deceased as 33 years. There is no contrary evidence that the victim was more than 33 years old at the time of the accident. Thus, this Tribunal concludes that the victim was about 33 years old at the time of the accident. As the victim was about 33 years old at the time of the accident, the multiplier '16' should be taken into consideration as per Sarala Verma's Case (Supra).

22. Considering the discussion made in the foregoing paragraphs, the monthly income has been determined as Rs. 6,000/-. Moreover, there was no contrary evidence that the victim had no such income mentioned by the petitioners in their claim application.

23. In regard to the future prospect, the learned Advocate for the petitioners candidly submits that as the victim was a labour under a contractor on fixed wages basis and aged about 33 years, so, 40% towards future prospects should be added to the total income of the deceased, relying on *Pranay Sethy's* Judgment.

24. It appears from Insurance Certificate (Exhibit No.P7) and other documents that the vehicle, Truck bearing No. WB-41D/1811, involved in the accident, was covered by a valid insurance policy with the opposite party no. 2, Chola



Mandalam MS General General Insurance Co. Ltd. Therefore, the insurer cannot escape its liability under the ‘Contract of Insurance’.

25. Considering the pleadings of parties, evidence on record and hearing arguments of both sides, this Tribunal is of the view that the applicants have been able to establish their claims by sufficient evidence and as such they are entitled to get just and reasonable compensation in this case.

26. Thus, these are decided in favour of the petitioners and no other further relief is granted to the petitioners, as just and equitable compensation has been granted to them.

27. The compensation is required to be determined on the principle of 'just compensation' under Section 168 of the Motor Vehicles Act, 1988, having regard to the principles laid down by the Hon'ble Supreme Court in Sarla Verma v. Delhi Transport Corporation, (2009) 6 SCC 121 and National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680, as applicable to the facts of the present case. In the present case, as the income of the deceased has been considered as ₹ 6,000/- per month so, the annual income of the victim, Sanjoy Kumar Shaw, since deceased comes to ₹72,000/- (₹6,000/- x 12). The victim died at the age of about 33 years approx. There is evidence that the victim died leaving behind his wife and, minor children. Therefore, one-third of his income should be deducted towards the personal expenses and maintenance of the deceased.

28. Hence, the total compensation has to be assessed under the various heads as follows:-

Sl. No.	Heads	Calculations
(i)	Total Annual Income (Adding Future Prospects @ 40% and after deducting 1/3rd)	(₹72,000/- + ₹ 28,800/- - ₹33,600/-) = ₹ 67,200/-
ii)	Compensation after applying multiplier ‘16’	[₹ 67,200/- X 16] = ₹ 10,75,200/-

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((iii))	Loss of consortium	= ₹ 40,000/-
(iv)	Loss of Estate	= ₹ 15,000/-
(v)	Funeral expenses	= ₹ 15,000/-
(vi)	Loss of Parental consortium	Rs. 40,000/- each for two children = Rs. 80,000/-
Total compensation awarded		= ₹ 12,25,200/-

29. It is pertinent to mention here that the Petitioner No. 1 is only entitled to get the amount awarded under the head No. (iii) towards Loss of Consortium.

30. As the case has been pending for more than five years, this Tribunal deems it just and proper to impose simple interest @ 6% per annum on the total amount of ₹ 11,10,000/- from the date of filing of this application till the date of actual deposit of the amount. Court fees paid are sufficient.

Hence, it is, **ORDERED**

31. that the application under section 166 of the M.V. Act, 1988 is allowed on contest against the opposite party No. 2 / Chola Mandalam MS General Insurance Co. Ltd. and ex parte against the rest. There shall be no order as to costs.

32. The petitioners namely- (1) Bhagwati Shaw (wife of the deceased), (2) Asha Shaw (minor daughter of the deceased) and (3) Dep Shaw (minor son of the deceased) shall get award from the Opposite Party No. 2, Chola Mandalam MS General General Insurance Co. Ltd. a sum of ₹ 12,25,200/- (Twelve lac twenty-five thousand two hundred) only as compensation along with 6% simple interest per annum on the said amount to be calculated from the date of filing of this case, i.e. from 10.04.2017 till the actual deposit of the amount.

33. The Opposite Party no. 2 is hereby directed to pay the aforesaid amount of compensation along with the interest to the claimants by issuing separate A/c payee cheques in the manner here-in-below within one month from the date of delivery of Judgment as follows:-



i. In the name of Bhagwati Shaw (wife of the deceased) amounting to ₹ 4,08,400/- (Rupees four lac eight thousand four hundred) along with interest as ordered;

ii. In the name of Bhagwati Shaw (share of minor daughter, Asha Shaw) amounting to ₹ 4,08,400/- (Rupees four lac eight thousand four hundred) along with interest as ordered;

iii. In the name of Bhagwati Shaw (share of minor son, Dep Shaw) amounting to ₹ 4,08,400/- (Rupees four lac eight thousand four hundred) along with interest as ordered and

34. The Opposite Party no. 2 is hereby directed to pay the aforesaid amount of compensation along with the interest to the claimants by issuing three separate A/c payee cheques in the names of the claimants as mentioned here-in-above within one month hereof, failing which the Petitioners would be at liberty to take steps in accordance with law to have the same realized.

35 The petitioner No. 1, Bhagwati Shaw is directed to deposit the amount awarded to her minor children in a fixed deposit scheme with any Nationalized Bank or Post Office benevolent scheme for the children and the amount shall not be withdrawn before attaining of their majority but with an Order passed by the Competent Court of Law.

36. The petitioner Bhagwati Shaw shall, however, be at liberty to utilize the interest accruing from such deposits, standing in the names of the minor children of the deceased, for their maintenance and upbringing, and only after filing of the fixed deposit certificates in this Tribunal, would the Petitioner No. 1, Bhagwati Shaw be entitled to withdraw her cheque. Petitioner, namely Bhagwati Shaw, is directed to deposit excess Court fees as awarded by this Tribunal within 15 days hereof; in default, judgment shall not take effect.

It is made clear that no TDS shall be deducted from the award of compensation or interest thereof, allowed to the petitioners.

An attested copy of the award be given to the parties free of cost.

The case record be consigned to the Record Room.

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The petitioners are directed to furnish their photographs before receiving the cheques.

Let a copy of this Judgment be supplied to the learned advocate appearing on behalf of the Chola Mandalam MS General General Insurance Co. Ltd., to meet the direction of this Tribunal.

Given under my hand and seal of this Tribunal on this the 10th day of August, 2026.

Let a copy of this Judgment be supplied to the contesting parties free of costs.

Dictated & Corrected by me

. Judge, M.A.C.Tribunal,

Judge, M.A.C.Tribunal,
FTC, Durgapur
10.08.2026.