

IN THE MOTOR ACCIDENT CLAIM TRIBUNAL

Presided over by : SHIB SHANKAR GHOSH (WB-00872),
Additional District Judge,
Fast Track 1st Court, Tamruk
Purba Medinipur
(acting as Judge of the Tribunal)

M.A.C.C. No.231 of 2022
(CNR No.WBEM010001275-2022)

1. Sabita Das
2. Susmita Das
3. Abhijeet Das
4. Paresh Das
5. Shrimati Das

.....Petitioners/Claimants

-Versus-

1. Chandan Kumar Bag
 - 2.Chola Mandalam MS General Insurance Co. Ltd.
- ...Opposite parties

Learned Advocate for the Claimants : Mr. Partha Sarathi Maity
Learned Advocate for the OP No.2 : Mr,Gopal Chandra Ram

Date of delivery of Judgment : 11th day of March, 2026

J U D G E M E N T

This is an application under section 166 of Motor Vehicles Act, 1988 (In short, M.V. Act) filed by petitioners/claimants praying for compensation to the tune of Rs. 9,00,000/- along with interest because of loss of life of their near and dear one Ashok Das in an accident arising out of use of a motor vehicle bearing registration No. WB-31/3118 (Lorry).

2. The anecdote of claimants is that on 05/01/2022 at about 4.30 pm, Ashok Das was coming through Heria-Itaberia pitch

road by Toto. When he came in front of Jararnagar Subhas Palli B. Ed. College, he had to stop Toto due to mechanical fault. At that time, vehicle bearing registration number WB-31/3118, which was coming from Itaberia towards Heria side at an excessively high speed, knocked his Toto as a result of which Ashok Das sustained grievous injuries. He was taken to Heria Primary Health centre where he was declared brought dead. As deceased died due to rash and negligent driving of the offending vehicle by it's driver and due to his death, his family members are facing acute financial crisis, they have staked claim for compensation by filing the petition under section 166 of the Act which has given birth to this case.

3. Notice was issued to the opposite parties but only opposite party No. 2 Chola Mandalam MS General Insurance Co. Ltd. (Herein after to be referred to, as 'Insurance company') has contested the claim of the petitioners by filing written statement. The precise and substantial version of insurance company, as emblazoned in their written statement, is that claimants have no cause of action to file petition for compensation. The case is bad for non-joinder of necessary parties. The vocation of the deceased, as well as his income, is not correct. The age of deceased as projected is not correct. The amount of claim is imaginary and excessive. There was delay of 13 days in filing the complaint with police as regards accident. Besides, insurance company has denied all allegations of the claimants as set out in their petition and prayed for rejection of claim petition.

4. Issues framed from allegations and recriminations contained in rival pleadings are as follows : -

1. Is the claim case maintainable in its present form and law ?
2. Did Ashok Das die in road traffic accident as narrated in the claim petition ?
3. Was the vehicle bearing registration No. WB-31/3118 involved in said accident ?
4. Did the accident occur due to rash and negligent driving of the offending vehicle by it's driver ?
5. Was the offending vehicle bearing registration No. WB-31/3118 covered during the relevant period by an insurance policy issued by the O.P Insurance company ?
6. Are the O.Ps liable to pay compensation for the death of Ashok Das ?
7. To what other relief or reliefs, if any, petitioners are entitled ?

5. Three witnesses have been examined from the side of claimants of whom one is claimant no.1 Sabita Das (PW-1), other one is Shib Shankar Manna, (PW-2), another one is Subhendu Kumar Bera (PW-3). No witness has been examined from the side of insurance company.

6. LIST OF DOCUMENTS EXHIBITED FROM THE SIDE OF PETITIONERS :-

Exhibit - 1 - Certified copy of formal FIR.

Exhibit - 2 - Certified copy of written complaint.

Exhibit -3 - Certified copy of charge sheet.

Exhibit - 4 (Series) - Certified copies of three seizure lists.

Exhibit - 5 - Certified copy of PM report.

Exhibit - 6 - Aadhaar Card of claimant No.1.

Exhibit - 7 - Aadhaar card of deceased.

Exhibit - 8 - Certificate.

Decision with reasons

-: Issue No. 1 :-

7. This issue forms the cocoon of the case and any adverse finding on the issue would have a devastating impact on the merit of other issues and case as a whole, and as such, this issue is taken up separately for discourse.

8. Claimants have filed this case for compensation on the ground of death of their near and dear one because of involvement of a motor vehicle. As per their contention, on 05/01/2022 at about 4.30 pm, Ashok Das was coming through Heria-Itaberia pitch road by Toto. When he came in front of Jararnagar Subhas Palli B. Ed. College, he stopped Toto due to mechanical fault. At that time, vehicle bearing registration number WB-31/3118, which was coming from Itaberia towards Heria side at an excessively high speed, knocked the Toto as a result of which Ashok Das sustained grievous injuries and died. Section 166 of Motor Vehicles Act, 1988 speaks of payment of compensation to the next of kin of a person who has died of accident due to rash and negligent use of a motor vehicle on public pathway. As claim has been preferred for compensation for death and that too, when said death allegedly has been caused by a motor vehicle on public thoroughfare, it can not be said that claimants do not have cause of action to file this case.

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Again, party who is necessary to be added to the case to sustain a claim for compensation has been arrayed in this case which of why it also can not be said that any of the necessary party is left out from being added to the case. Needless to state, owner of the vehicle in the case has happened to be the driver and as such, no one is left to have been added. But then again, even if driver was not added it would not have caused any dent in the case in as much as in a case like the one in hand, driver is not considered to be a necessary party. Accident allegedly took place on 05/01/2022 and claim petition has been filed on 14/03/2022. It may be stated in this connection that the Motor Vehicles Act of 1939 was amended by the 1988 Act, whereby a claim petition was to be filed within six months. However, by way of the amendment in 1994, the time limit was removed for filing a claim petition regarding an accident that occurred at any time. The legislature, with the introduction of Act 32 of 2019, which came into effect on 01/04/2022, brought back the old provisions of section 166(3) and thereby restricted the entertainment of the compensation application unless it is made within six months from the occurrence of the accident. Therefore, there was no time limit to file an application to claim compensation at the time of accident. Therefore, it can be said that said application has been filed in sync with the statute. The issue being discussed, therefore, is seen to be in favour of the claimants and accordingly, above issue is decided affirmatively.

∴ Issue nos. 2, 3, 4, 5, 6 & 7 :-

9. These issues which are foundation of the case and most pivotal ones are now taken up together for discussion for brevity,

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precision, convenience and to skirt unnecessary repetition. It is the version of petitioners that on 05/01/2022 at about 4.30 pm, Ashok Das was coming through Heria-Itaberia pitch road by Toto. When he came in front of Jararnagar Subhas Palli B. Ed. College, he stopped Toto due to mechanical fault. At that time, vehicle bearing registration number WB-31/3118, which was coming from Itaberia towards Heria side at an excessively high speed, knocked the Toto as a result of which Ashok Das sustained grievous injuries and he succumbed to his injuries. It may be stated in this connection that ld. lawyer for claimants has submitted at the time of argument that his clients have proved the accident in which Ashok Das died, being caused by offending vehicle because of it's being driven negligently and recklessly by it's owner cum driver and as such, his clients may be awarded compensation as claimed by them. In reply, ld. lawyer for the insurance company has submitted that the accident in which the deceased allegedly died has not been proved and there is considerable delay in lodging the FIR in relation to the accident which causes sufficient doubt as regards verity of the accident; therefore, his client is not liable to pay compensation. In order to appreciate the submissions of the ld. lawyers, the evidence adduced in the case requires careful analysis. To warrant the contention of accident being caused by offending vehicle due to rash and negligent driving, apart from oral evidence including the evidence of an eye witness, petitioners have placed on record, among others, certified copy of formal FIR (Ext. 1), certified copy of written complaint (Ext. 2), certified copy of charge sheet (Ext. 3), certified copies of three seizure lists (Ext. 4

series) and attested copy of Post Mortem report (Ext. 5). Upon careful scrutiny of the above documents against the back drop of oral evidence being so led, it appears that deceased was hit a vehicle bearing registration No. WB-31/3118 in the manner as asserted by claimants and he died because of injuries caused by said accident. As to why delay was caused in lodging FIR as regards the accident is given a mention by claimant No.3 in the complaint itself. In this regard, a decision of Hon'ble Court reported in the case of National Insurance Co. Ltd. vs. Smt. Sandhya Devi and ors., 2019 (3) T. A. C 371 (Cal) may be referred to. In the judgement, Hon'ble Court has stated that "It is no longer res Integra that the delay in lodging F.I.R. cannot be a ground to doubt the claimant's case. In the Indian Society we cannot expect a common man to rush to the Police Station immediately after an accident takes place. It is quite natural that more importance is given to get the victim treated immediately after the accident takes place rather than to rush to the police Station to lodge a complaint". Therefore, delay in lodging the complaint cannot be a ground to doubt the claim case, inasmuch as the reason for such delay has been duly mentioned in the complaint itself, namely, the mental distress of the claimants due to the death of their near and dear one. Indeed, PW-2 who is eye witness is not named in the list of witnesses in charge sheet and he has stated in his cross examination that he was not examined by police as regards the accident, but nothing is found in his cross examination to cast doubt on his version as regards the accident. The non-examination of the said witness by the police appears to be a lapse in the investigation, which cannot be a

ground to discredit or weaken the case of the claimants. Be that as it may, police during investigation found complaint as regards cause of death of Ashok Das to be true and driver of offending vehicle consequently was charge-sheeted. I, therefore, find no material to disbelieve the version of claimants as regards the accident caused by offending vehicle in which deceased died. Therefore, what was required to be proved on the part of the claimants have been proved to bring home the point that their most closed one died in an accident involving the use of motor vehicle by another person in a rash and negligent manner and the burden in proving such fact is not as strict as in criminal case. Therefore, this Tribunal cannot disbelieve the fact of the accident and the resultant unfortunate death of Ashok Das due to the rash and negligent driving of the offending vehicle by its owner, who was at the wheel at the time of the accident.

10. It is not in dispute that the offending vehicle was covered by a valid insurance policy issued by the insurance company at the time of the accident. Even otherwise, from certified copy of charge sheet (Ext. 3) as well as certified copy of seizure list (Ext. 4) it transpires that at the time of accident, offending vehicle was covered by an insurance policy issued by insurance company. It is the notion of law that when a motor vehicle meets with an accident, the primary liability for payment of compensation is that of the driver and when driver is liable, the owner of the vehicle becomes vicariously liable and when owner of vehicle is liable, insurance company becomes automatically liable being in the status of indemnifier. It is this

vicarious liability of the owner that is indemnified by the insurance company. A third party is, therefore, enjoined to show, in a proceeding arising out of section 166 of the Motor Vehicles Act, 1988 that the driver was negligent in driving the vehicle resulting in the accident and owner is vicariously liable and insurance company is bound to indemnify the owner and consequently, satisfy the award made. The claimants have satisfied the above indicias to assert their claim, as seen. Insurance company, indeed, has tried to abnegate the claim of the petitioners but become unable to countenance the same by any convincing iota of evidence. As onus which is shunted to the side of insurance company is not shifted by them and identity of the deceased and his relationship with the claimants is not disputed, liability of insurance company to pay compensation is fastened on them and is not discharged.

11. Question, now, arises as regards the amount of compensation to be payable to the claimants. As per section 168 of Motor Vehicles Act, 1988 the amount of compensation to be determined has to be just. As to the mode and method of computing the amount of compensation, guidelines have been evolved by the highest Court of land in Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr. [2009) 6 SCC 121], National Insurance Company Ltd. Vs. Pranay Sethi & ors. [(2017) 16 SCC 680] and United India Insurance Co. Ltd. v. Satinder Kaur [2020 SCC OnLine SC 410]. As per the ratio of the decisions, the monthly amount of the deceased has to be taken after deduction of tax and from said amount, a certain

percentage has to be deducted towards personal and living expenses of the deceased concerned and after deduction of said amount, rest amount would be the contribution of said person to his family and thereafter, said amount has to be multiplied by 12, as a year comprises 12 months, to assess the annual income, and said annual income or multiplicand has to be multiplied by a multiplier depending upon the age of the deceased, and the amount so determined has to be added to the amount of few other losses i.e. loss of assets, loss of consortium, funeral expenses, medical expenses etc., which again would be increased @ 10%. Future prospects of the deceased have also to be assessed so as to come up with a reasonable and just amount of compensation provided age of the deceased is such so as to make his or her legal representative/s to have the benefit of future prospects. What would be the percentage of deduction towards personal and living expenses and which multiplier would be used are elaborately enumerated in the decisions of the Hon'ble Court (Supra). Taking cue from the solemn guidelines of the Hon'ble Court, attempt may be made to assess the amount of compensation to be payable to the claimants.

12. As per version of the claimants, deceased was a supervisor in S. S.Aqua Feed Centre and he used to earn Rs. 12000/- per month as salary. In support of said fact, Proprietor of said concern has been examined from the side of claimants and a certificate (Ext. 8) purportedly issued by him after the death of the deceased has also been placed before the Tribunal. However, in the course of his cross-examination, he has admitted that he

does not possess any document to show that employees were working under him. Apart from the said certificate, he has no document to establish that deceased was employed under him or he used to pay him a salary of Rs. 12,000/- per month. It appears quite unusual that proprietor of a business concern does not maintain any account book, register, or ledger to show the number of employees working under him or the salary paid to them. In fact, not a single document has been produced before the Tribunal to demonstrate that the deceased ever received any amount from him as salary or otherwise. Furthermore, no document has been placed on record to show that such an enterprise is actually in existence. Therefore, in the absence of any reliable documentary evidence, it cannot be said that deceased was employed under PW-3 or that he used to receive salary from him. Accordingly, the income of the deceased is required to be assessed notionally, which is taken at Rs. 8,000/- per month. Going by the above monthly income, annual income of the deceased comes to Rs. 96,000/-. In line with the decisions of the Hon'ble Apex Court, as the deceased was self employed, future prospect has to be taken into consideration. As per copy of Aadhaar card of deceased (Ext. 7), date, month and year of birth of deceased is 01/01/1971. Therefore, at the time of his death, he was 51 years and 4 days old. As the deceased was above 51 years at the time of his death, 10% of the established income has to be added to the said income. 10% of the established income is Rs. 9600/- which on being added to Rs. 96,000/- gives a figure of Rs. 1,05,600/-. As deceased left behind his parents, wife, son and daughter as his dependents, 1/4th of this amount would be

deduced towards personal and living expenses of deceased and rest amount would be the amount of contribution to the family. 1/4th of Rs. 1,05,600/- is Rs. 26,400/- which is the personal and living expenses of the deceased and said amount on being deducted from Rs. 1,05,600/- gives a figure of Rs. 79,200/- which is his contribution to the family and loss of dependency. As deceased was at the time of his death was 51 years and 4 days old, multiplier of 11 has to be selected and the multiplicand of Rs. 79,200/- has to be multiplied by multiplier of 11 and the figure upon multiplication comes out at Rs.8,71,200/- (Rs. 79,200/- x 11) which is the loss of dependency due to untimely departure of deceased. Anew under conventional heads, few amount has to be added to the loss of dependency. As the deceased is survived by his parents, wife and two children, filial consortium to the tune of Rs. 80,000/- (Rs. 40,000X2), parental consortium to the tune of Rs. 80,000/- (Rs. 40,000X2) and spousal consortium to the tune of Rs. 40,000/- are required to be added to the above amount i.e. Rs. 8,71,200/-. Again, for loss of estate an amount of Rs. 15000/- and for funeral expenses an amount of Rs.15,000/- have to be added to Rs.8,71,200/-. Addition of Rs. 80000/-, Rs. 80000/-, Rs. 40000/-, Rs. 15000/- and Rs. 15000/- gives a figure of Rs. 2,30,000/-. 10% of the above amount is Rs. 23,000/-. Addition of Rs. 2,30,000/- and Rs. 23,000/- to Rs.8,71,200/- gives a figure of Rs.11,24,200/- which is the total amount of compensation which can be awarded to the claimants and same can be given in a tabular form below :-

Total amount of compensation

Loss of dependency	Rs.8,71,200/-
Filial consortium	Rs. 80,000/-

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Parental consortium	Rs. 80,000/-
Spousal consortium	Rs. 40,000/-
Loss of estate	Rs. 15,000/-
Funeral expenses	Rs. 15,000/-
10% of General damages (Filial consortium, parental consortium, spousal consortium, loss of estate and funeral expenses)	Rs. 23,000/-
Total	Rs.11,24,200/-

13. As the above amount is ferreted out in view of guidelines engrafted in the decisions of the Hon'ble Court as above, same is required to be awarded to the claimants against the insurance company without further ado.

14. Court fees paid are insufficient.

15. In the result, application succeeds on contest against opposite party No. 2 and exparte against opposite party No. 1.

16. Hence, it is, ORDERED that claimants are jointly entitled to get an award of **Rs.11,24,200/-** as compensation from opposite party No. 2 namely **Chola Mandalam MS General Insurance Co. Ltd.** The opposite party No. 2 is liable to pay the above amount to the claimants namely claimant **Sabita Das, Susmita Das who has become major in course of proceeding, Abhijeet Das, Paresh Das and Shrimati Das.** The above amount would carry an interest at the rate of **6% p.a.** which would be calculated on the above amount **from the date of filing of the application till the date of actual realization thereof**, in default of which, claimants would be at liberty to take recourse to law for realization of above amount. **The**

opposite party No. 2 is directed to divide equally the total amount of compensation along with interest as above, and credit said equal amount directly to the bank accounts of each of the claimants as soon as said bank account details are furnished to them. Payment would be made strictly upon verification of above accounts by opposite party No.2. Needless to mention that said bank accounts would be verified by opposite party either on the same date on which said bank accounts details are furnished to them or on the next day and not beyond said date, and payment would be credited within an hour of completion of process of verification of bank accounts of claimants. However, above amount would not be disbursed or credited unless and until deficit court fees on the amount i.e. Rs.11,24,200/-, to be paid to claimants by Insurance company, are paid by claimants. If DCF is not paid and amount of compensation is disbursed or credited by Opposite Party No.2, then said DCF would have to be paid by Opposite Party No.2.

17. Claimants have to pay the deficit Court fees within a period of fifteen days from this date. They are further directed to furnish up to date bank account details of their to the opposite party No.2 within the above time limit. In the event they have no bank accounts, bank accounts have to be opened at once, and details of such bank accounts have to be furnished to opposite party No 2 within the above time limit.

18. **Only upon payment of deficit Court fees and furnishing of bank account details, compensation amount along with interest would be credited to the accounts of claimants by opposite party No.2. Needless to state, while calculating interest, number of days of delay in furnishing bank account details as well as payment of excess court fees or deficit court fees by claimants would not be taken into account by opposite party No.2. After making payment by crediting the amount of compensation along with interest directly to the bank accounts of claimants, a compliance report would be filed by opposite party No.2 in the Tribunal.**

19. Let a copy of this award be given to the parties concerned free of cost for the information and necessary action.

Typed by me

Judge, M.A.C. Tribunal-Cum-
Additional District Judge
Fast Track 1st Court,
Tamluk, Purba Medinipur

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