In the Court of the Motor Accident Claim (Tribunal), Jalpaiguri.

Present : Sri Biplab Roy,

M.A.C. Tribunal Judge,

Additional District Judge, 3rd Court, Jalpaiguri,

M. A. C. Case No.436 of 2023
(Under Section 166 of the M. V. Act.)

C. I. S. Registration No.436 of 2023

C. N. R. No.WBJP01-003251-2023

J. O. Code.WB00710

1. Smt. Anita Adhikary,
2. Ananta Adhikary.

.... Claimant(s)

-Versus-

1. Mahanbasi Sarkar.
2. Royal Sundaram General Insurance Company Limited.

..................Opposite Party(s)

Learned advocate for the claimant:- Sri Pradip Prasad Yadav.

Learned advocate for the O. P. No.2 :- Sri Hirak Barman.

Date of delivery of Judgment:- 05.06.2026.

J U D G M E N T

The instant application under Section 166 of M. V. Act has been filed by the claimants, namely, 1. Smt. Anita Adhikary and 2. Ananta Adhikary, for compensation of Rs.21,10,000/- along with interest at the rate of 9% per annum from the date of filing of the claim application, for themselves against the O. P. Nos.1 and 2 for motor accidental death of Animesh Adhikary, who are the parents of the deceased.

The fact of the case, in short, is that on 02.05.2023 at about 06:30 p.m., while the victim Animesh Adhikary was proceeding towards Jalpaiguri from his home along with his friend Himil Roy by a motorcycle at that time at Raninagar, Barman Para, one vehicle bearing registration No.WB-69-2255 dashed their motorcycle and as a result of the accident, victim Animesh Adhikary sustained severe injuries on his person and the local people shifted him to Jalpaiguri S. S. Hospital, where the attending doctor declared him brought dead.

That the accident took place due to rash and negligent riding on the part of the rider of the offending vehicle bearing registration No.WB-69-2255.

One FIR was lodged on 03.05.2023 at Kotwali Police Station, which was registered as Kotwali Police Station Case No.318 of 2023, under Section

279/304A of the Indian Penal Code. The said Animesh Adhikary had no fault on his part behind the accident. At the time of death, Animesh Adhikary was aged about 29 years and he was a parcel delibery boy by profession having monthly income of Rs.10,000/- per month. The claimants, being the parents of the deceased were fully depended upon the said Animesh Adhikary and as such, they have filed this claim application praying for compensation to the tune of Rs.21,10,000/- along with interest at the rate of 9% per annum from the date of filing of the claim application on account of accidental death of Animesh Adhikary.

The Opposite Party Nos.1 and 2 have contested the claim application by filing written statements.

The case of the Opposite Party No.1 as revealed from the written statement, in short, is that he denied all the material allegations made against the said offending vehicle.

In the written statement the O. P. No.1 did not admit the accidental death of the victim and also did not admit the age and income of the deceased.

It is further case of the Opposite Party No.1 that the said motorcycle was duly covered by a valid and effective insurance policy under the Royal Sundaram General Insurance Company Limited on the date of the accident, so liability if any, may be fixed upon the said insurance company as the insurer of the said vehicle.

It is further case of the Opposite Party No.1 that the present case is not maintainable in law and in facts and as such, the claim petition is liable to be dismissed.

The case of the Opposite Party No.2 as revealed from the written statements, in short, is that the present case is not maintainable and the insurance company cannot be made liable to pay any compensation.

In the written statement it has also been mentioned that the amount claimed by the claimants is exorbitant and as the claimants have failed to prove the actual income of the victim, thus, they are not entitled to get the claim amount.

It is the case of the Opposite Party No.2 that the alleged offending vehicle bearing registration No.WB-69-2255 was not involved in the alleged accident. It is further case of the Opposite Party No.2 that the deceased was riding the motorcycle violating the traffic rules and he is solely responsible for the accident and as such, the Opposite Party No.2 has no liability in the said accident.

It is further case of the Opposite Party No.2 that the driver of the alleged offending vehicle had no valid and effective driving license at the relevant time of accident and as such, the owner of the vehicle has breached the terms and conditions of the policy.

Thus, the claim application is not maintainable for which the Opposite Party No.2 prayed for dismissal of the case with cost.

Considering the claim application and written statements of the Opposite Party Nos.1 and 2, following issues have been framed by this Tribunal :-

1. Is the case maintainable in its present form and law ?

2. Is there any cause of action to file this case ?

3. Was the vehicle bearing registration No.WB-69-2255 involved in the accident ?

4. Was the accident caused by rash and negligent driving on the part of the driver of the vehicle bearing registration No.WB-69-2255 ?

5. Was the vehicle bearing registration No.WB-69-2255 under the coverage of valid insurance policy at the relevant point of time?

6. Are the claimants entitled to get any compensation in this case as prayed for ? If so, then to what extent?

7. To what other relief or reliefs, the petitioners are entitled to ?

In support of the case, the claimant No.1, namely, Anita Adhikary has examined herself as PW-1. By her evidence, fifteen number of documents have been marked as exhibits. One Sanjay Sharma has been examined as PW-2 in this case. Both the above named witnesses have been cross-examined by the Opposite Party No.2 i.e. the Royal Sundaram General Insurance Company Limited.

No evidence is adduced from the side of the opposite parties.

DECISION WITH REASONS

Issue Nos.1 and 2 :-

Both the issues are taken up together for the sake of convenience and brevity of discussion. At the time of argument, Ld. Lawyer for the Opposite Party No.2 has not challenged the maintainability of the case.

None appears on behalf of the Opposite Party No.1 at the time of hearing, who happens to be the owner of the offending vehicle. I have carefully perused the claim application and other materials on record but I do not find anything to hold that the instant claim application is barred by any law.

The term 'cause of action' means bundle of facts which are placed before a Court of law for a decision and in those bundle of facts, there must be triable issue for adjudication. Viewing the claim application from this angle, I find nothing to hold that the claimants have no cause of action to file the instant claim application. Hence, both the issues are decided in favour of the claimants.

Issue Nos.3 to 7 :-

All the issues are taken up together for the sake of convenience and brevity of discussion and also for the reason that those issues are co-related to each other.

According to the case made out by the claimant, one Animesh Adhikary died due to the road traffic accident which was occurred on 02.05.2023 at about 06:30 p.m. Rani Nagar, Barman Para under P.S. Kotwali, Dist. Jalpaiguri. The registration number of the offending vehicle involved in the said accident is WB-69-2255.

To prove the case, the claimant No.1, namely, Anita Adhikary has been examined as PW-1. She has categorically stated that on 02.05.2023 at about 06:30 p.m., while the victim Animesh Adhikary was proceeding towards Jalpaiguri from his home along with his friend Himil Roy by a motorcycle at that time at Raninagar, Barman Para, one vehicle bearing registration No.WB-69-2255 dashed their motorcycle and as a result of the accident, victim Animesh Adhikary sustained severe injuries on his person and the local people shifted him to Jalpaiguri S. S. Hospital, where the attending doctor declared him brought dead.

She further stated that the accident took place due to rash and negligent driving on the part of the driver of the vehicle bearing registration No.WB-69-2255.

PW-2 is one Sanjay Sharma, who claims to be eye witness of the accident. According to his evidence-in-chief that on 02.05.2023 at about 06:30 p.m. when he was proceeding towards Fatapukur from Jalpaiguri at that time at Raninagar, Barman Para he saw that one vehicle being No.WB-69-2255 dashed a motorcycle carrying two persons causing which the rider and pillion rider sustained grievous injuries on their person. I along with some other local persons shifted them to Jalpaiguri S. S. Hospital, where the attending doctor declared them brought dead. This witness has been cross-examined at length. In his cross-examination, he has specifically stated that he saw the offending vehicle bearing registration No.WB-69-2255 to dash the motorcycle of the victim and as result of the accident, both the riders of the motorcycle died. I find no reason to disbelieve the aforesaid statement of PW-2 came out from his cross-examination.

Apart from the oral evidence of the claimant, some documents have been proved and marked as exhibits by the evidence of PW-1. Exbt.1 is the certified copy of formal FIR of the criminal case. Exbt.2 is the certified copy of complaint lodged by one Dipu Roy to the Inspector-in-charge of Kotwali P.S. The said complaint was treated as FIR and Kotwali P.S., Jalpaiguri started Kotwali P.S. Case No.318/2023, dated 03.05.2023 under Section 279/304A of the Indian Penal Code and SI Shibu Kar was entrusted to investigate the case. Exbts.3, 3/1 and 3/2 are the certified seizure lists of the said case, by which the I.O. seized the involved vehicles and other relevant articles including connected papers. Exbt.4 is the certified copy of charge-sheet. After completion of the investigation, the I.O. submitted charge-sheet against accused Mohanbashi Sarkar and Exbt.10 is the photocopy of driving license of said Mohanbashi Sarkar which was effective and valid on the date of accident. Exbt.5 is the certified copy postmortem report of the victim and it appears from postmortem report that the victim died due to ante-mortem injuries sustained by him.

It was stressed by the contesting Opposite Party that due to own fault of the victim, the accident caused and he lost his life but not a single line is forthcoming from the cross-examination of the PW-1 or PW-2 in support of said claim of the Opposite Party No.2.

In this case, driving license of the driver of the offending vehicle has been proved and marked as Exbt.10. It appears from the said document that the driver of the offending vehicle was authorized to drive only the light motor vehicles and not heavy motor vehicles but I find from the evidence on record that the offending vehicle was heavy motor vehicle. This fact has not been disputed by the Ld. Lawyer for the claimants. In view of that the insurance company is not liable to pay compensation as there was a breach in the license of the driver of the offending vehicle and also breached of the insurance policy. In such circumstance, the principle of pay and recovery is applied for the just decision of the case.

Considering the aforesaid oral and documentary evidence, the Tribunal has no hesitation to hold that the victim died due to a road traffic accident and number of the offending vehicle was WB-69-2255, which was driven rashly and negligently endangering human life. Further, I find from Exbt.9 that the offending vehicle had valid insurance policy at the time of accident. Moreover, the contesting Opposite Party has not disputed the said fact in course of hearing of argument.

In the claim petition, the claimants have stated that victim was aged about 29 years at the time of accident. The Tribunal finds from Exbt.5 (postmortem report) that victim was aged about 29 years. Photocopy of Aadhaar card of the victim has been proved and marked as Exbt.13 where his date of birth is mentioned as 27.03.1994. Accordingly, it appears that the victim was aged about 29 plus at the time of accident.

Admittedly, the victim was a bachelor and petitioners are the parents of the victim.

In the claim petition as well as in the evidence of PW-1 it has been claimed that the victim was a parcel delivery boy by profession and he used to earn Rs.10,000/- per month but no document has been proved in support of their said claim. Therefore, the Tribunal is not in a position to accept the contention of the claimants that the deceased was earning Rs.10,000/- per month being a parcel delivery boy at the time of his death.

It is a fact that at the time of death deceased was aged 29 years and he used to look after his parents, who are claimants in the present case. In such circumstances, the Tribunal is of the view that the principle of notional income should be applied. Since the victim and/or deceased was aged 29 years he might earn Rs.250/- per day even by working as a day labourer. Therefore, monthly income of the deceased is assessed at Rs.7500/- per month and yearly income would be Rs.90,000/-. In addition to that, future prospect of the deceased is considered 40% on the annual income i.e Rs.36,000/-, total income being Rs.1,26,000/-. ½ of the annual income is deducted for personal expenses of the deceased if he would have been alive, as such, annual income comes to (Rs.1,26,000/- - Rs.63,000/-) = Rs.63,000/-.

As the deceased died at the age of 29 years, there will be multiplier of 17. Accordingly, total compensation comes on that score, Rs.63,000/- X 17 = Rs.10,71,000/-.

Apart from that, with regard to other general damages, the claimants are entitled to get Rs.15,000/- as funeral expenses and Rs.15,000/- as loss of estate due to untimely death of the deceased, above named. Accordingly, total amount comes at (Rs.10,71,000/- + Rs.15,000/- + Rs.15,000/-) = Rs.11,01,000/-.

All the issues are answered in favour of the claimants.

Court fees paid is not sufficient.

Hence, it is -

ORDERED

subject to payment of ad-valorem Court fees the instant claim application is allowed on contest but without cost.

A sum of Rs.11,01,000/- is awarded as compensation on account of accidental death of Animesh Adhikary with 6% interest from the date of filing the claim application till the date of passing judgment. The claimants, namely, 1. Smt. Anita Adhikary and 2. Ananta Adhikary, being parents of the victim are entitled to get the award.

The Opposite Party No.2/Royal Sundaram General Insurance Company Limited is directed to pay the entire awarded amount in favour of the petitioners in equal ratio by issuing two separate account payee cheques along with interest at the rate of 6% per annum from the date of filing the claim application i.e. 01.08.2023 till this date within 60 days of passing of order, failing which the insurance company shall be liable to pay interest at the rate of 9% per annum on the awarded money.

The insurance company may recover the compensation amount from the owner by filing execution petition and not by filing separate suit.

BC - I is directed to ensure the collection of Court fees before handing over the cheques to the claimants.

A copy of this judgment be supplied to both the claimant and the Opposite Party No.2.

Dictated & Corrected by me:-

Judge, M.A.C. Tribunal
3rd Court, Jalpaiguri.
05.06.2026.

(Biplab Roy)
Judge, M.A.C. Tribunal
3rd Court Jalpaiguri.
05.06.2026.