MACC 35 OF 2021

HEADING OF JUDGMENT IN ORIGINAL SUIT/CASE
In the Motor Accident Claims Tribunal-Cum-Additional District and Sessions Judge, Fast Track 1st Court, Alipurduar

PRESENT :Sri Protyai Chowdhury
Motor Accident Claims Tribunal-Cum- Additional District & Sessions Judge,
Fast Track, 1st Court, Alipurduar

JO CODE : WB 01009

MACC 35 OF 2021
CNR No. WBJP050003822021

1. Sri Gokul Chandra Roy
2. Smt Sukla Roy
3. Smt Gouri Roy

(Petitioners)

Vs

1. Mr. Rajeev Ranjan
2. The Oriental Insurance Co. Ltd (Opposite party)

Under section 166 of Motor Vehicles Act

Given Date(s). This suit coming on for final hearing on 29.06.2026 in the presence of :

Sri Arghya Mitra
Advocate for the Petitioner/Claimant

Sri Debabrata Adhikary
Advocate for the OP No. 1

Sri Amitabh Ganguli
Advocate for the OP No. 2/Insurance Company

And having stood for consideration to this day, the court deliver the following judgment.

DATE OF DELIVERY OF JUDGMENT : 23.07.2026

Addl. Dist. & Sessions Judge, F.T.C. -1,
Alipurduar. Judge, MAC Tribunal, Alipurduar
J.O. Code W.B. 01009

Judgment

The Petitioner/Claimant' case

- On 05.01.2021 at about 3:30 PM, the victim Sebika Roy @ Sebika Dey Sarkar (Ray) was proceeding towards her house from Buxa Forest by the left side of NH 31/C (Alipurduar-Assam Road). At that time a Trailer Truck bearing No. NL-01-AA-4186 came from Assam side at a high speed in rash and negligent manner and dashed the victim Sebika Roy @ Sebika Dey Sarkar (Ray) near Nonai Bridge in Kalkut Forest Busty. As a result of this accident, victim Sebika Roy @ Sebika Dey Sarkar (Ray) sustained injuries and she was shifted to Alipurduar District Hospital where she was declared dead.
- A complaint was filed at Kalchini police station bearing Kalchini PS case number 4 of 2021 dated 05.01.2021 under section 279/338/304(A) IPC against the driver of the Trailer Truck bearing No. NL-01-AA-4186.
- The husband and daughters being the legal heirs of the deceased Sebika Roy @ Sebika Dey Sarkar (Ray) have instituted this case praying for compensation of Rs.10,63,000/- against the opposite party number 1 & 2 under section 166 of Motor Vehicle Act.
- It is asserted by the Petitioners/Claimants that the deceased Sebika Roy @ Sebika Dey Sarkar (Ray) earned Rs. 250/- per day at the time of her death. It is submitted that the deceased worked in unorganized sector. The deceased Sebika Roy @ Sebika Dey Sarkar (Ray) met with this accident due to rash and negligent act of the driver of the Trailer Truck bearing number No. NL-01-AA-4186. Thus, the petitioners/claimants have prayed for compensation from the registered owner and authorised insurer of the Trailer Truck bearing No. NL-01-AA-4186.
- Therefore, the Petitioners/Claimants filed this case against the owner of the Trailer Truck , Rajeev Ranjan and its insurer, The Oriental Insurance Co. Ltd.

Written objection filed by Opposite Party number 1.

- The OP No. 1 contended that the OP No. 1 transferred the liability of the vehicle No. NL-01-AA-4186 to one Manoj Kumar Nirala through a power of attorney vide deed No. 8 book No. 4224. So the OP No. 1 is no longer liable to compensate the claim amount and the liability is transferred to the attorney holder. OP No. 1 admits the date, time and place of accident and initiation of police case against vehicle No. NL-01-AA-4186. It is also admitted by OP No. 1 that the deceased was working as a helper to mason.

Written objection filed by Opposite Party number 2.

The OP No 2 denied the involvement of the trailer truck bearing No. NL-01-AA-4186 in the accident or that it was driven in rash and negligent manner. The OP No. 2 also denied the age, occupation and income of the deceased. The OP No. 2 contends that the interest of OP No. 1 in the trailer truck bearing No. NL-01-AA-4186 was not covered under any policy of insurance. It is further contended that the driver of vehicle No. NL-01-AA-4186 was not holding a valid and effective driving license at the time of the accident and he was not qualified for obtaining driving license. The OP No. 1 had contravened the provisions of MV Act and Rules by handing over the possession of the vehicle to the driver who did not have a valid and effective driving license on the date of accident. It is also contended that the vehicle bearing No. NL-01-AA-4186 was plying on road without valid permit and fitness. The OP No. 2 insist that the accident occurred due to negligence on the part of the victim.

Petitioner's Witness

P.W. 1	Smt Sukla Roy	Daughter of the deceased victim Sebika Roy @ Sebika Dey Sarkar (Ray)
P.W. 2	Sri Shyam Kumar Das	Witness of the accident which occurred on 05.01.2021.

Documents exhibited

Serial number	Exhibit number	Description of the exhibit
1.	Exhibit 1	Certified copy of formal FIR
2.	Exhibit 2	Certified copy of written FIR
3.	Exhibit 3	Certified copy of seizure list dated 05.01.2021.
4.	Exhibit 4	Certified copy of seizure list dated 12.01.2021.
5.	Exhibit 5	Certified copy of Mechanical report
6	Exhibit 6	Certified copy of owner's bond.
7.	Exhibit 7	Certified copy of charge sheet.

8.	Exhibit 8	Certified copy of PM report
9.	Exhibit 9	Certified to be true copy of insurance policy certificate
10.	Exhibit 10	Certified to be true copy of fitness certificate of the vehicle
11.	Exhibit 11	Certified to be true copy of permit of the vehicle
12.	Exhibit 12	Certified to be true copy of national permit of the vehicle
13.	Exhibit 13	Certified to be true copy of driving license issued by the Jamshedpur RTO of the driver of the offending vehicle
14.	Exhibit 14	Certified to be true copy of driving license issued by Darang Assam RTO of the driver of the offending vehicle
15.	Exhibit 15	Certified to be true copy of registration certificate
16.	Exhibit 16	Original Aadhar card of the deceased.
17.	Exhibit 17	Xerox copy of aadhar card of the petitioner NO. 1, 2 and 3.

ISSUES FRAMED

1. Is the case maintainable in its present form?

2. Is there valid cause of action to file the instant case ?

3. Does the victim Mr. Sebika Roy @ Sebika Dey Sarkar (Ray) died due to road traffic accident on 05.01.2021 at about 3:30 PM by offending vehicle No. NL-01-AA-4186 (Trailer Truck) ?

4. Was the offending vehicle covered under valid insurance at the time of the accident?

5. Is the income and age of the deceased as shown in the application is correct?

6. What is the quantum of the compensation, if any, the petitioners are entitled to ?

7. To what other relief, if any, are the petitioners entitled ?

DECISION WITH REASONS

Issue No 1.

- The Petitioners/claimants had filed this case claiming compensation against OP no 1, the registered owner of the Trailer Truck bearing No. NL-01-AA-4186 and OP no 2, the insurer of the offending vehicle.
- The Ld counsel for the petitioners/claimants pointed out the necessity arising for filing this case. In the affidavit in chief, the Petitioner No. 1 stated that on 05.01.2021 at about 3:30 PM the accident took place on NH 31/C (Alipurduar Assam Road), near Nonai Bridge, within the area of Kalkut forest busty and the

accident took place due to rash and negligent driving of the Trailer Truck bearing No. NL-01-AA-4186. Due to this accident, the victim Sebika Roy @ Sebika Dey Sarkar (Ray) succumbed to the injuries sustained by her. Thus, the petitioners/claimants have filed an application for compensation against the registered owner of the Trailer Truck bearing No. NL-01-AA-4186 and the insurer of the vehicle.

- It is contended by OP No. 1, the owner of Trailer Truck bearing No. NL-01-AA-4186 that the liability of vehicle bearing No. NL-01-AA-4186 has been transferred to one Manoj Kumar Nirala by a power of attorney deed No. 8, Book No. 4224. Thus, OP No 1 is not liable to compensate the claim amount as prayed by the petitioners. On the other hand OP No. 2 the insurance company contended that the interest of OP No. 1 in the vehicle bearing No. NL-01-AA-4186 is not covered by any valid insurance policy and OP No. 1 had contravened the provisions of MV Act and Rule by handing over the possession of the vehicle to the driver who did not have a valid and effective driving license on the date of accident. It is also submitted that the trailer truck bearing No. NL-01-AA-4186 was not involved in the accident.
- From the above, it is found that contention arose between the petitioners and the OP. The petitioners are claiming compensation from OP No. 1, the owner and OP No 2, the insurer of Trailer Truck which caused death of Sebika Roy @ Sebika Dey Sarkar (Ray). Herein the petitioners are the legal heirs of the deceased. But the insurer, OP No 2 is reluctant to pay compensation citing fact that the Trailer Truck is not covered under insurance policy and the owner of the vehicle has contravened the provisions of Motor Vehicle Act and Rules. Hence, the cause of action arises for the claimants/petitioners to file this case. It also appears that the right of the legal representative of the deceased to recover compensation under section 166 of Motor vehicle Act has been infringed. Thus the case is maintainable.

Issue No 2 to 7

- All these issues are interconnected in substance. Thus all these issues are taken up together for consideration and discussion.

RASH AND NEGLIGENT DRIVING OF THE OFFENDING VEHICLE

- The Petition has been filed under section 166 of the Motor Vehicle Act so it is incumbent upon the petitioner to prove that the accident and death of the victim was caused due to rash and negligent driving of the Trailer Truck bearing No. NL-01-AA-4186.
- It is the Petitioner/claimant's case that on 05.01.2021 at about 3:30 PM, the deceased Sebika Roy @ Sebika Dey Sarkar (Ray) was returning home from Buxa forest by the left side of NH 31/C (Alipurduar-Assam road). When she reached near Nonai bridge, Kalkut forest busty, a Trailer Truck bearing No. NL-01-AA-4186 came from Assam side at a high speed in rash and negligent manner and dashed the victim Sebika Roy @ Sebika Dey Sarkar (Ray). As a result of this accident, Sebika Roy @ Sebika Dey Sarkar (Ray) sustained injuries causing her death. A Police case was initiated at Kalchini police station bearing Kalchini PS case number 4 of 2021 dated 05.01.2021 under section 279/338/304(A) IPC against the driver of the Trailer Truck bearing No. NL-01-AA-4186. At the conclusion of investigation, charge sheet was filed under section 279/304 A IPC under charge sheet No. 24 of 2021 dated 28.02.2021 against the driver of the Trailer Truck bearing No. NL-01-AA-4186.
- The petitioner No. 2 Sukla Roy, daughter of the deceased stated as PW-1 that the accident took place on 05.01.2021 at about 3:30 PM over NH 31/C (Alipurduar-Assam Road) near Nonai Bridge, Kalkut forest busty. The offending vehicle bearing No. NL-01-AA-4186 came with high speed in a rash and negligent manner and dashed Sebika Roy @ Sebika Dey Sarkar (Roy). Thus, the victim Sebika Roy @ Sebika Dey Sarkar (Ray) sustained injuries and succumbed. In cross examination PW 1 stated that she did not see the accident and heard about the accident from Shyam Kumar Das.

- Again PW 2, Shyam Kumar Das corroborated the facts of the accident stated by PW 1 in its entirety. In cross examination PW 2 pointed out that he was going to Haldibari to supply goods as a salesman on 05.01.2021 at about 3:30 PM and the accident occurred at that time.
- During cross examination the opposite party failed to impeach the credibility of the witnesses PW 1 and PW 2. The version of events given by the witness is believable. In addition to oral evidence, the Petitioner/Claimant have filed certified copy of the formal FIR marked as exhibit 1, the certified copy of written FIR marked as exhibit 2, the certified copy of charge sheet marked as exhibit 7. These aforementioned documents establish the fact of rash and negligent driving by the Trailer Truck resulting in accident as asserted by the petitioners.
- The Hon'ble High Court at Calcutta in **The New India Assurance Company Ltd vs Mita Samanta And Others (2010) 1 WBLR (Cal) 137** held that the owner of the vehicle against whom compensation has been claimed was the best person to prove non-involvement of the vehicle by producing the garage register or movement register of the vehicle indicating the movement of the vehicle at the relevant point of time or by producing other convincing evidence specially within his knowledge, from which it could be well established whether the vehicle was plying in a different place. In case, the owner decides not to defend and controvert the allegation in spite of being made party, adverse presumption can be drawn against such party. The aforesaid principle applies with greater force when a party even does not dispute the statement made in the pleading of the other side and decides to remain ex parte. It is often found that in the proceedings for compensation under the Motor Vehicles Act, when the offending vehicle is insured, the owner of the vehicle may not be interested to appear at the witness box in spite of the fact that he is a party to the proceedings. For that reason, the legislature has incorporated the provision contained in Section 170 of the Act permitting the Insurance Company to contest the proceedings on all points. Once such leave is granted, it is the duty of the Insurance Company to summon the owner of the vehicle to appear as a witness for disputing the allegation of the claimants. If the Insurance Company after taking leave of the Tribunal under Section 170 of the Act,

decides not to lead any evidence by summoning the relevant witnesses including the party whose liability it has undertaken, its position in law will be just like the party who is afraid of appearing in the witness box to face the cross-examination of the claimants. It is preposterous to suggest that the Court will hold against the claimants notwithstanding the fact that in spite of the allegation of rashness or negligence against the driver, the driver or the owner of the vehicle is deliberately avoiding the Court and the claimants are unable to cross-examine the owner against whom the compensation is claimed.

- In the present case, the OP No. 2, the Insurance Company has been contesting the claim by filing written objection. However, the Insurance Company did not summon the owner of the Trailer Truck bearing No. NL-01-AA-4186 to appear as witness to dispute the claim of the petitioner. Thus the claimant is unable to cross examine the owner or the driver of the offending vehicle against whom compensation has been claimed. On a conjoint reading of the evidence recorded by PW1 & PW2 along with documentary evidence adduced by the petitioner/claimant it can be held, prima facie, that accident was caused by rash and negligent driving of the vehicle bearing No. NL-01-AA-4186.

DEATH OF THE VICTIM

- Section 166 (1) of the Motor Vehicle Act, 1988 lays down that :

  " An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made-

  (a) by the person who has sustained the injury; or

  (b) by the owner of the property; or

  (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

  (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:"

- Thus, it is necessary for this court to assess if the death of the victim resulted from the accident as alleged by the legal representatives of the deceased.

- It has been discussed above that the victim Sebika Roy @ Sebika Dey Sarkar (Ray) sustained injuries during the accident when the Trailer Truck bearing No. NL-01-AA-4186 dashed her in rash and negligent manner. Herein, the petitioners /claimants have produced the postmortem report of the deceased victim Sebika Roy @ Sebika Dey Sarkar (Ray) which has been marked as exhibit 8. The said postmortem report reveals that the immediate cause of death was due to the effect of ante mortem injuries and the charge sheet revealed that deceased was hit by trailer truck bearing No. NL-01-AA-4186.
- The Hon'ble Apex Court in **Bimla Devi and others Versus Himachal Road Transport Corporation & Others (AIR 2009 SC 2819)**, observed that in a road accident the strict principles of proof as in a criminal case are not attracted. The Court held:
- *"In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied."*
- The Hon'ble Apex Court in **Mathew Alexander vs Mohammed Shafi and Another (Criminal Appeal No 1931 of 2023) (Arising out of SLP (Crl) No 8211 of 2022)** held that:

  " A holistic view of the evidence has to be taken into consideration by the Tribunal and strict proof of an accident caused by a particular vehicle in a particular manner need not be established by the claimants. The claimants have to establish their case on the touchstone of preponderance of probabilities. The standard of proof beyond reasonable doubt can not applied while considering the petition seeking compensation on account of death or injury in a road traffic accident."

- In this case, relying upon the Post-mortem Report (Exhibit 8) and charge sheet (Exhibit 7), it can be concluded that the death of the victim Sebika Roy @ Sebika Dey Sarkar (Ray) resulted from Road Traffic Accident.

AGE OF THE DECEASED VICTIM

- While filing claim petition, the Petitioners/claimants stated that the age of the deceased victim Sebika Roy @ Sebika Dey Sarkar (Ray) was 42 years at the time of the accident. The documents produced by the petitioners/claimants which bears the age of the deceased Sebika Roy @ Sebika Dey Sarkar (Ray) are the aadhar Card of the deceased which has been marked as exhibit 16 and certified copy of postmortem report which has been marked as exhibit 8 . It appears from the aadhhar card that the date of birth of deceased Sebika Roy @ Sebika Dey Sarkar (Ray) is 01.05.1983. Again, it is found from the post mortem report that the age of the deceased was approximately 42 years on the date of accident. No questions were put to the petitioner (PW-1) by OP No. 2 in order to contradict or dispute the age of the deceased. No documents have been produced by the OP No. 2 with respect to the age of the deceased. The aadhar card and the post mortem report are public documents. Thus, this court can place reliance on the entries made in the aforesaid documents regarding the age of the deceased. Thus, the age of the deceased Sebika Roy @ Sebika Dey Sarkar (Ray) appears to be 38 years on the date of the accident on 05.01.2021.

INCOME OF THE DECEASED/VICTIM

- The claimants/petitioners stated in the claim petition that the deceased Sebika Roy @ Sebika Dey Sarkar (Ray) worked in unorganized sector and earned Rs. 250/- per day. During cross examination PW 1 stated in examination in chief that her mother, the deceased Sebika Roy @ Sebika Dey Sarkar (Ray) worked as a labour with a mason and used to earn Rs 250/- per day at the time of accident.
- The OP No 2 in the Written Statement denied the occupation and income of the deceased victim. It is submitted that there is no documentary proof of the occupation and income of the deceased victim.

- The Hon'ble Apex Court in **Chandra @Chanda @Chandraram and Anothers vs Mukesh Kumar Yadav and Others (2022) 1 SCC** lays down that:
    - *"In absence of salary certificate the minimum wage notification can be a yardstick but at the same time can not be an absolute one to fix the income of the deceased. In absence of documentary evidence on record some amount of guess work is required to be done. But at the same time the guess work for assessing the income of the deceased should not be totally detached from reality."*
- Also in **Santosh Devi vs National Insurance Company Ltd and Others (2012 ACJ 1428)** The Hon'ble Apex Court held that:

    "*Although the wages/income of those employed in unorganised sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the government employees and those employed in private sector but it can not be denied that there has been incremental enhancement in the income of those who are self employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed of high cost of living, the persons falling in the later category periodically increased the cost of their labour."*

- Here it appears that the petitioner/claimant did not produce any document to prove the income of the deceased.
- The Hon'ble Apex Court in **Syed Sadiq Etc vs Divisional Manager, United India 2014 (2) SCC 735** stated that "*although, the wages/income of those employed in unorganised sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government Employees and those employed in private sectors but it cannot be denied that there has been incremental enhancement in the income of those, who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the later category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor*

who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barbar, blacksmith, cobbler, mason etc".

- This tribunal finds that the Government of West Bengal, Panchayat and Rural Development Department issued memo No. 365/Comm/NREGA dated 17.02.2014 with respect to minimum rate of wages for unskilled and semi-skilled and skilled daily rated workers. The rate of wages of unskilled worker is fixed at Rs. 169/- for a day's work.
- In this context, keeping in view the import of section 57 of the Indian Evidence Act 1872 this court can take judicial notice of the notification of the Panchayat and Rural Development Department, Government of West Bengal. Thus, it appears that the income of the deceased victim claimed by the petitioners isn't inordinate or humongous.

- Now, it can be found that a person working as a labour can earn at least Rs. 250/- per day and working for at least 26 days in a month she can earn Rs. 6,500/-. Thus, keeping in mind the notifications laid down by both the Central and State Government for those working in the unorganized sector, this tribunal is of the opinion that the monthly income of the deceased Sebika Roy @ Sebika Dey Sarkar (Ray) can be fixed as Rs. 6,500/- per month **keeping in view that a labour working 26 days in a month has 4 days holidays when no wages are paid. Thus, the income of the deceased may be fixed at Rs. 6,500/ x 12 = Rs. 78,000/- per year. Hence, the annual income of the deceased victim namely Sebika Roy @ Sebika Dey Sarkar (Ray) be fixed at Rs. 6,500/- x 12 = Rs. 78,000/- per year.**

METHOD OF DETERMINING COMPENSATION

- The provisions of the Motor Vehicles Act, 1988 (for short, "MV Act") gives paramount importance to the concept of 'just and fair' compensation. It is a beneficial legislation which has been framed with the object of providing relief to the victims or their families. Section 168 of the MV Act deals with the concept of 'just compensation' which ought to be determined on the foundation of fairness, reasonableness and equitability. Although such determination can never be arithmetically exact or perfect, and endeavor should be made by the Court to award just and fair compensation irrespective of the amount claimed by the applicants.

- The Hon'ble Apex Court in **Sarla Verma (Smt) and others vs Delhi Transport Corporation and Another (2009) 6 SCC** held that:

  " *Basically only three facts 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 deductions to be made towards the personal living expenses of the deceased; and

  (iii) the multiplier to be applied with reference to the age of the deceased."
- In **National Insurance Company Limited vs Pranay Sethi and Others (2017) 16 SCC 680** the Hon'ble Apex Court further held that in death cases, compensation would be awarded only under three conventional heads viz, loss of estate, loss of consortium and funeral expenses. The Court held that the conventional and traditional heads, cannot be determined on percentage basis, because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified, which has to be based on a reasonable foundation.

- **Thus compensation has to be determined considering the following aspects:**

  (i) Age of the deceased

  (ii) Income of the deceased

  (iii) Addition of future prospects of the deceased

(iv) Deduction of personal and living expenses of the deceased.

(v) Multiplier applicable with reference to age of the deceased

(vi) Loss of dependency

ADDITION OF FUTURE PROSPECT

- In **General Manager, Kerala State Road Transport Corporation, Trivandrum vs Susamma Thomas and Others (1994) 2 SCC 176** the Hon'ble Apex Court developed the concept of future prospect of advancement in life and career in terms of money:

"For assessment of damages to compensate the dependents, it has to take into account many imponderables, e.g. the life expectancy of the deceased and the dependents, the amount that the deceased would have earned during the re- mainder of his life, the amount that he would have contributed to the dependents during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income altogether.

And, in **National Insurance Company Limited vs Pranay Sethi (2017) 16 SCC 680** the Hon'ble Apex Court developed a method for quantifying the compensation to be paid under the head of future prospect of advancement in life and career:

"*Taking into consideration the cumulative factors, namely, passage of time, the changing society, escalation of price, the change in price index, the human attitude to follow a particular pattern of life, etc., an addition of 40% of the established income of the deceased towards future prospects where the deceased was below 40 years, an addition of 25 % where the deceased was between the age of 40 to 50 years would be reasonable."*

So, by applying the principle enunciated by the Hon'ble Apex Court the future prospect of the deceased can be arrived by adding 40% to the established income of the deceased. In the present case the age of the deceased victim was about 38 years at the time of the accident. And her notional in-

come has been fixed at Rs. 78,000/- per year. Thus, future prospect is 40% of Rs. 78,000/- = Rs. 31,200/- per year. So, the future prospect quantifies to Rs. 31,200/- per year.

DEDUCTION OF PERSONAL AND LIVING EXPENSES

- In **General Manager, Kerala State Road Transport Corporation, Trivandrum vs Susamma Thomas and Others (1994) 2 SCC 176** the Hon'ble Apex Court developed the concept of deduction of personal and living expenses:

  "*The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependents, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependents. Then that should be capitalised by multiplying it by a figure representing the proper number of years purchase.*"

  And in **Sarla Verma (Smt) and others vs Delhi Transport Corporation and Another (2009) 6 SCC 121** the Hon'ble Apex Court developed a method for quantifying the compensation to be paid under the head of deduction of personal and living expenses:

  "Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the member of dependent family members is 2 to 3, one-forth(1/4th) where the member of dependent family members is 4 to 6,and one-fifth (1/5th) where the number of dependent family members exceeds six."

  In the present case the deceased victim has been survived by her husband, and two daughters. The notional income of the deceased has been fixed at Rs. 78,000/- per year and future prospect has been fixed at Rs. 31,200/-. So by applying the principle enunciated by the Hon'ble Apex Court, the deduction for personal and living expenses should be 1/3rd of the sum of the amount obtained by adding annual income with future prospect. So there should be deduction of 1/3rd of (Rs. 78,000/- + Rs. 31,200/- = Rs. 1,09,200/-)

= Rs. 36,400/- as personal and living expenses of the deceased. Thus, the contribution of the deceased towards his family after deduction of personal and living expenses would have been (Rs. 1,09,200/- - Rs.36,400/-)= Rs. 72,800/- per year.

MULTIPLIER AND MULTIPLICAND

- **The Hon'ble Apex Court in Sarla Verma (Smt) and others vs Delhi Transport Corporation and Another (2009) 6 Supreme Court Cases 121** have directed the Tribunal to determine compensation by following the well settled steps:

Step 1 (Ascertaining the multiplicand)

- The income of the deceased per annum should be determined. Out of the said income a deduction should be made in regard to the amount which the deceased would have spent on himself by way of personal and living expenses. The balance, which is considered to be the contribution to the dependent family, constitutes the multiplicand.
- In the present case as already mentioned herein before the annual income of the deceased has been fixed at Rs.78,000/- per year. The addition of future prospect is Rs.31,200/- per year. The deduction towards personal and living expenses is Rs.36,400/- per year. Thus, the contribution of the deceased towards to his family is Rs.72,800/- per year. **So the multiplicand is Rs. 72,800/-.**

S**tep 2 (Ascertaining the multiplier)**

- Having regard to the age of the deceased and period of active career, the appropriate multiplier should be selected. This does not mean ascertaining the number of years he would have lived or worked but for the accident. Having regard to several imponderables in life and economic factors, a table of multipliers with reference to the age has been identified by the Supreme Court. The multiplier should be chosen from the said table with reference to the age of the deceased.

- The table of multiplier with reference to age developed by the Hon'ble Apex Court and laid down in **Sarla Verma (Supra)** case is as follows**:**

Age of the deceased	Multiplier scale as envisaged in Susamma Thomas	Multiplier scale as adopted by Trilok Chandra	Multiplier scale in Trilok Chandra as clarified in Charlie	Multiplier specified in Second Column in the Table in Second Schedule to the MV Act	Multiplier actually used in Second schedule to the MV Act (as seen from the quantum of compensation)
(1)	(2)	(3)	(4)	(5)	(6)
Up to 15 yrs	-	-	-	15	20
15 to 20 yrs	16	18	18	16	19
21 to 25 yrs	15	17	18	17	18
26 to 30 yrs	14	16	17	18	17
31 to 35 yrs	13	15	16	17	16
36 to 40 yrs	12	14	15	16	15
41 to 45 yrs	11	13	14	15	14
46 to 50 yrs	10	12	13	13	12
51 to 55 yrs	9	11	11	11	10
56 to 60 yrs	8	10	09	8	8
61 to 65 yrs	6	08	07	5	6
Above 65 yrs	5	05	05	5	5

In **Sarla Verma (Supra)** case it has been held by the Hon'ble Apex Court that the multiplier to be used should be as mentioned in column (4) of the table above (prepared by applying Susamma Thomas, Tilok Chandra and Charlie) which start with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years).

- Coming to the present case, it is found that the age of the deceased victim was about 38 years on the date of the accident (05.01.2021). The age has been substantiated through the post mortem report marked as exhibit 8 and aadhar card marked as exhibit 16. Thus the deceased victim is held as 38 years on the date of accident and the appropriate multiplier applicable according to the age of the injured is **15.** Thus, the compensation to be paid for loss of dependency shall be calculated as; Loss of dependency = (multiplicand x multiplier = Rs. 72,800/- x 15) = Rs. 10,92,000/-.

FUNERAL EXPENSES

- In **National Insurance Company Limited vs Pranay Sethi and Others (2017) 16 SCC 680** the Hon'ble Apex Court held that funeral expenses is one of the conventional and traditional head. It can not be determined on percentage basis because that would not be an acceptable criterion. The said head have to be quantified on reasonable foundation. Funeral expenses not only include the fee paid in the crematorium but also include expenses in connection with funeral ceremony of a particular religion which is quite expensive. Thus this court hold that a just and fair amount should be given as compensation under the head of funeral expenses.

Schedule II of the Motor Vehicles Act lays down the amount which can be awarded under the head of Funeral expenses in case of death.

Thus it is imminent that **petitioners will get compensation of Rs. 5,000/- under the head of Funeral Expenses.**

LOSS OF ESTATE

- The Hon'ble Apex Court in **National Insurance Company Limited vs Pranay Sethi and Others (2017) 16 SCC 680** held that loss of estate is a conventional and traditional head and it is required to be quantified on a reasonable foundation. Furthering the idea of just and reasonable compensation; it has been observed by the Hon'ble Apex

Court in **K. Ramya & Others vs National Insurance Company Limited & Another Civil Appeal No. 7046 of 2022 (Arising out of Special Leave Petition (c) No. 31931 of 2017)** that:

"Furthermore, Motor Vehicles Act of 1988 is a beneficial and welfare legislation that seeks to provide compensation as per the contemporaneous

position of an individual which is essentially forward-looking. Unlike tortious liability, which is chiefly concerned with making up for the past and reinstating a claimant to his original position, the compensation under the Act is concerned with providing stability and continuity in peoples lives in the future."

Thus injury to proprietary rights including loss of savings and other assets of the deceased is included under the head of loss of estate. In the present case the deceased victim was working as a helper to mason. It is needless to be mentioned that she should have some proprietary interest which would be diminished on account of her death. **Hence this court consider an amount of Rs. 2,500/- to be a just fair compensation under the head of loss of estate.**

- **LOSS OF CONSORTIUM**

The concept of "consortium" was described by the Hon'ble Apex Court in **Rajesh and Others vs Rajbir Singh and Others (2013) 9 SCC 54** as :

"*In legal parlance, " consortium" is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our courts. The loss of companionship, love, care and protection, etc, the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English courts have also recognised the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence,* *we are of the view that it would only be just and reasonably that the courts award at least rupees one lakh for loss of consortium."*

- Furthermore in **Magma General Insurance Company Limited vs Nanu Ram and Others AIR Online 2018 SC 1249** the Hon'ble Apex Court has extended the scope of consortium and included within it "Spousal consortium", "parental consortium " and "Filial consortium" "

"*Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of 'company, society, cooperation, affection, and aid of the other in every conjugal relation' (Black's Law Dictionary; 5th Edn. 1979)."*

"Parental consortium is granted to the child upon the premature death of a parent, for loss of 'parental aid, protection, affection, society, discipline, guidance and training'."

"Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children ar valued for their love, affection, companionship and their role in the family unit."

"Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions the world over have recognised that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. The amount awarded to the parents is a compensation towards loss of love, affection, care and companionship of the deceased child."

In the present case the petitioners/claimants include the husband and the daughters of the deceased. The petitioners/claimants have prayed for loss of consortium towards petitioner No. 1, the husband of the deceased who has lost the company of his wife. We find in Second Schedule of the Motor Vehicles Act 1988 that general damages in case of death shall be payable for loss of consortium, if beneficiary is the spouse to a amount of Rs. 5000/-.

- Thus in view of the observations made by the Hon'ble Apex Court and the provisions in Schedule II for payment of compensation under the Motor Vehicles Act it is imminent that **petitioner No. 1, the husband will get compensation under the head of loss spousal consortium @ Rs. 5000/-**

COMPENSATION TO BE AWARDED

- In light of the above mentioned discussion, the Injured/Claimant is entitled to the following amounts:

SL. No	Head	Amount
1.	Loss of dependency = (multiplicand x multiplier = Rs. 72,800/- x 15)	Rs. 10,92,000/-
2.	Loss of estate	Rs. 2,500/-
3.	Loss of consortium towards the husband, petitioner No. 1.	Rs. 5,000/-
4.	Funeral expense	Rs. 5,000/-
	Total compensation to be paid	Rs. 11,04,500/-

RELIEF:

Thus, the petitioners/claimants 1. Sri Gokul Chandra Roy, 2. Smt Sukla Roy, 3. Smt Gouri Roy are entitled to Rs. 11,04,500/- as compensation under section 166 of Motor Vehicle Act.

INTEREST:

Section 171 of the Motor Vehicle Act lays down that:

"*Where any Claims Tribunal allows a claim for compensation made under this Act,such Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf.*"

Addl. Dist. & Sessions Judge, F.T.C. -1,
Alipurduar. Judge, MAC Tribunal, Alipurduar
J.O. Code W.B. 01009

Therefore this Tribunal holds that the Petitioners/Claimants are entitled to get interest at the rate of 6% per annum from the date of filing of this claim petition till realization of total compensation.

APPORTIONMENT OF LIABILITY

- It is argued on behalf of the OP no 2, Insurance Company that there is no valid insurance policy of the offending vehicle NL-01-AA-4186 and the OP No. 1 the owner of the vehicle had contravened the provisions of Motor Vehicle Act and Rules by allowing the vehicle to be driven by a person who did not have valid and effective driving license. Thus the insurance company asserts that it is not liable to indemnify the insured and liability, if any, should be saddled on the part of the owner of the vehicle and the OP no 2 may be expunged from liability.
- The Insurance Company can be fastened with liability on the basis of a valid Insurance Policy. But before that the owner of the offending vehicle is to plead and establish that the vehicle was not only duly insured but also that it was driven by an authorised person having a valid driving license. The Insurance Company is entitled to take a defence under section 149 (2) (a) (ii) of the Motor Vehicles Act (prior to substitution) and section 150 of the Motor Vehicles Act (after amendment) that the offending vehicle was driven by an unauthorised person or the person driving the vehicle did not have a valid driving license. The onus would shift on the Insurance Company only after the owner of offending vehicle pleads and proof the basic facts within his knowledge that the driver of the offending vehicle, who was authorised by him to drive the vehicle was having a valid driving license at the relevant time.
- Thus, a defence is available to the Insurance Company, that the offending vehicle was not driven by an authorised person and /or by a person not having a valid driving license. But it is obligatory on part of the insurance company to substantiate that defence and more so, to rebut the plea taken by the owner of the offending vehicle that the offending vehicle was being driven by an authorised person having a valid driving license.
- The petitioner mentioned in the claim petition that OP No 1 is the owner of the trailer truck bearing No. NL-01-AA-4186. OP No. 1 did not appear before this court to

adduce evidence. Again, OP No 2 did not seek to examine the owner of the offending vehicle. Now a valid insurance certificate in respect of offending vehicle (exhibit 9) has been filed by the petitioner. The petitioner has also produced before the tribunal, the seizure list (exhibit 3) under which the driving license (Exhibit 13) of the driver of the trailer truck was seized by the investigating agency. It appears that the driving license No. AS13 2017 0060377 was issued on 20.06.2017 and valid (T) 02.02.2023 and belongs to the driver Raj Karan who was driving the trailer truck bearing No. NL-01-AA-4186 at the time of the accident. The Hon'ble Apex Court in **IFFCO Tokio General Insurance Company Limited vs Geeta Devi and Others SLP(C) No. 19992 of 2023** pointed out that the burden is upon the insurance company to prove that there was failure on the part of the vehicle owner in carrying out due diligence apropos driving license before employing a person to drive the vehicle. It was for the insurance company to prove willful breach on part of the vehicle owner. Presently, no evidence has been placed on record to prove that the insurance company under took such an exercise. The OP No. 2 did not examine the owner of the offending vehicle to prove the fact that the driver of the offending vehicle was not authorised to drive the vehicle or did not have a valid driving license. The OP No. 2 did not adduce evidence of the owner of the offending vehicle to suggest the fact that the driver of the offending vehicle was not authorised to ride the vehicle or did not have a valid driving license. Now, without producing any evidence to substantiate the fact that a person without valid license was driving the offending vehicle at the relevant time, the insurance company cannot be discharged from its liability to pay compensation.

- In the present case, it is also found that the Insurance Company, OP No. 2 has specifically pleaded in the written statement that at the material time of the alleged accident the trailer truck bearing No. NL-01-AA-4186 was plying on the road without route permit or fitness certificate. However, it is to be noted that no evidence has been led by the Insurance Company in support of such plea.
- On the other hand the petitioners/claimants have produced charge sheet/ final report which has been filed against driver of the offending vehicle and marked as exhibit 7. Now, it is to be found from the Final Form/Report/Charge Sheet No. 24/2021 dated 28.02.2021 marked exhibit 7, that the police did not proceed against the

accused driver of the trailer truck bearing No. NL-01-AA-4186 under section 3/ 181 of Motor Vehicle Act. Thus, the evidence adduced by OP No. 2 does not establish the fact or even suggest that the driver of the trailer truck bearing No. NL-01-AA-4186 was not authorised to drive the vehicle or did not have a valid driving license. Therefore in absence of cogent evidence the argument advanced by the insurance company in this regard is not tenable. Further more the petitioners/claimants have produced certified to be true copy of insurance policy of trailer truck bearing No. NL-01-AA-4186 valid from 17.11.2020 to 16.11.2021 issued by The Oriental Insurance Co. Ltd (exhibit 9). Thus, the insurance company cannot be absolved from its statutory liability.

.

- In a Motor Accident Claim Case, the strict principles of proof as in a criminal case are not attracted. Strict proof of an accident caused by a particular vehicle in a particular manner may not be possible to be done by the claimants. The claimants are merely to establish their case on the touchstone of preponderance of probability. It has been established here that the trailer truck bearing No. NL-01-AA-4186 was driven by the driver who had valid and effective driving license. The investigation authority has filed charge sheet against the driver of the trailer truck bearing No. NL-01-AA-4186 for the offence of death caused by rash and negligent driving. Thus, it has been established that the trailer truck bearing No. NL-01-AA-4186 was driven by the authorised driver. Such facts are established on the principle of preponderance of probability. Thus, the insurance company cannot be absolved from its statutory liability.

CONCLUSION

- In view of the observations of the Hon'ble Supreme for meeting the benevolent concept assessing just compensation on the basis of evidence in record, this Tribunal awards Rs. 11,04,500/- only to the petitioners/claimants under section 166 of Motor Vehicles Act.
- As such the case of the Petitioners/Claimants succeed.
- The Petitioners/Claimants are directed to deposit Court fees before obtaining copy of judgment.

Addl. Dist. & Sessions Judge, F.T.C. -1,
Alipurduar. Judge, MAC Tribunal, Alipurduar
J.O. Code W.B. 01009

- Hence, it is

ORDERED

- That the instant claim petition be and the same is allowed on contest against The Oriental Insurance Company Ltd/OP No. 2 and against the registered owner of the vehicle/OP No. 1 Mr. Rajeev Ranjan.

- the Petitioners/claimants 1. Sri Gokul Chandra Roy, 2. Smt Sukla Roy, 3. Smt Gouri Roy are entitled to Rs. 11,04,500/- as compensation under section 166 of Motor Vehicle Act with interest @ 6% from the date of filing of claim petition till realization of the total compensation as awarded above. But in case of delay for more than 2 months the interest shall be calculated @ 9% after expiry of 2 months from the date of judgment for the delay period.

- The OP No. 2/ The Oriental Insurance Company Ltd is directed to issue **Account Payee Cheque to the tune of Rs.3,71,500/- (Rupees Three lakh Seventy One Thousand Five Hundred only) in the name of Petitioner No. 1 Sri Gokul Chandra Roy and Account Payee Cheque to the tune of Rs. 3,66,500/- (Three Lakh Sixty Six Thousand Five Hundred only) each in the name of Petitioner No. 2 Smt Sukla Roy and Petitioner No. 3. Smt Gouri Roy** with interest at the rate as per the direction given herein above from the date of filing of claim petition till its realization.

- The OP No. 2/ The Oriental General Insurance Company Ltd is directed to issue the cheques as per the above order within two months from the date of this order, in default, OP No. 2 shall be liable to pay interest @ 9% per annum from the date of default till final realization of compensation amount. The entire compensation shall be paid to the petitioners/claimants by the Insurance Company/OP No. 2.
- The Petitioners/Claimants are directed to deposit the deficit court fees, if any, as per law within 30 days from the date of this judgment. Bench clerk is directed to

assess the deficit court fees immediately. He is also directed not to issue the cheque to the claimants unless they deposit deficit court fees.

- Bench clerk to report in case the cheque is not deposited within 60 days from the passing of this award/judgment.
- An attested copy of the award be given to the Petitioners/Claimants after payment of requisite court fee.
- The Petitioners/Claimants are directed to furnish the recent individual photograph along with identity proof before receiving their cheques.
- The case is thus disposed off on contest.

(Protyai Chowdhury)

Judge MAC Tribunal
Addl. Dist. Judge, FTC. I
Alipurduar
JO. Code – W.B. 01009

Dictated and corrected by me

(Protyai Chowdhury)
Judge MAC Tribunal
Addl. Dist. Judge, FTC. I
Alipurduar
JO. Code – W.B. 01009