IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE-CUM-JUDGE, MOTOR ACCIDENT CLAIMS TRIBUNAL, 1ST COURT, ALIPORE, SOUTH 24-PARGANAS

MACC No. 97 of 2013 [R-767/13]

Present : Rajesh Chakraborty, Additional District Judge, 1st Court at Alipore, South 24-Parganas (J.O. Code : WB00764)

In the matter of an application under Section 166 of the Motor Vehicles Act, 1988

1) Sumitra Anthony (wife),

2) Alisha Anthony (Major daughter),

Both are residing at 8, Marquis
Lane, P.S. Park Street,
Kolkata-700016,

3) Stephen Mark Anthony (Major son),

4) Rocky Anthony (Major son),

Both are residing at 17, Marquis
Lane, P.S. Park Street,
Kolkata-700016.

....................Claimants

-Versus-

1. Sohanlal Agarwala, Owner of Vehicle No. OR-05Q-9085 (Lorry)

2. United India Insurance Company Limited

...........................Opposite Parties

Date of Delivery of Judgment : 31.07.2026

J U D G M E N T

The present application under Section 166 of the Motor Vehicles Act, 1988 has been filed by the legal representatives of late Francis Anthony claiming compensation for his death in a motor vehicle accident which occurred on 17.10.2010 at Sarat Bose Road, Kolkata. The claimants seek compensation on the ground that the accident occurred solely due to the rash and negligent driving of the offending lorry bearing registration No. OR-05Q-9085.

The claim petition was instituted on 10.07.2013. During pendency of the proceeding claimant No.2, Alisha Anthony, attained majority and, by Order No.40 dated 25.09.2023, amendment of the claim petition was allowed. The amended claim petition was filed on 07.10.2023. The claimants are Sumitra Anthony, widow of the deceased, Alisha Anthony, daughter of the deceased, and Stephen Mark Anthony and Rocky Anthony, sons of the deceased.

The case of the claimants is that on 17.10.2010 at about 11.40 p.m. Francis Anthony was riding scooter No. WB-01J-5442 along Sarat Bose Road with his wife Sumitra Anthony and daughter Alisha Anthony travelling as pillion riders. When the scooter reached near Allahabad Bank at 41/2B, Sarat Bose Road, the offending lorry bearing registration No. OR-05Q-9085, proceeding in the same direction, came from behind and hit the scooter. As a result all three occupants fell on the road and sustained injuries. Francis Anthony suffered fatal injuries and was declared brought dead at S.S.K.M./P.G. Hospital. Bhowanipore Police Station Case No.408 dated 18.10.2010 under Sections 279/337/427/304A of the Indian Penal Code was registered and after investigation charge-sheet was submitted against the driver of the offending vehicle. The deceased was stated to have been employed with Magnolia Soda Fountain Pvt. Ltd., Park Street, Kolkata earning approximately Rs.5,005/- per month. Compensation of Rs.6,50,000/- together with interest was claimed.

The owner of the offending vehicle did not contest the proceeding. Opposite Party No.2, United India Insurance Company Limited, contested the claim by filing written statement denying the material allegations. The insurer disputed the manner of accident, negligence, age, income and occupation of the deceased and the status of the claimants as legal representatives. It was further pleaded that the deceased himself was negligent since three persons were travelling on the scooter and the occupants were allegedly not wearing helmets and the deceased did not possess a valid driving licence. The insurer also raised objections regarding non-joinder of the owner and insurer of the scooter and contended that Sumitra Anthony was the second wife of the deceased while his first wife, Karina Anthony, had not been impleaded.

ISSUES

1. Whether the claim application is maintainable?
2. Whether the death of Francis Anthony was caused in the accident alleged by the claimants?
3. Whether the accident occurred due to rash and negligent driving of the offending lorry bearing registration No. OR-05Q-9085?
4. Whether the offending vehicle was duly insured with Opposite Party No.2 on the date of the accident?

5. Whether the claimants are entitled to compensation and, if so, to what amount and from whom?

6. To what other relief or reliefs are the claimants entitled?

To establish their case, the claimants examined three witnesses.

PW-1, Sumitra Anthony, supported the claim petition and proved the certified copy of the FIR, Motor Accident Report, charge-sheet and seizure list (Exhibits 1 to 4), registration certificate of the offending vehicle (Exhibit 5), insurance policy (Exhibit 6), injury report, death certificate and post-mortem report (Exhibits 7 to 9), marriage certificate (Exhibit 10), identity documents of the claimants (Exhibits 11 and 12 series) and the passport of the deceased (Exhibit 13). The identity card, appointment letter and income certificate of the deceased remained marked for identification as the employer was not examined.

PW-2, Bubai Adhikary, an independent eyewitness, deposed that while watching the Bijoya Dashami immersion procession near Sarat Bose Road he saw the offending lorry hit the scooter from behind. According to him, the scooter was proceeding on the left side of the road while the lorry was being driven at about 40 to 50 kilometres per hour. He further stated that the injured were removed to P.G. Hospital where he learnt that the rider had died. His testimony remained unshaken in cross-examination.

PW-3, Rocky Anthony, was examined mainly with regard to the family status of the deceased. He stated that Karina Anthony, his biological mother, had left the family long ago. Though a photocopy relating to her alleged subsequent marriage was produced, the same remained marked for identification and was not formally proved.

The insurer did not adduce any oral or documentary evidence. Neither the driver of the offending vehicle nor any official of the insurer entered the witness box to substantiate the pleas taken in the written statement. Consequently, the evidence led by the claimants remained substantially unrebutted.

Having heard the learned advocates for the parties and upon consideration of the pleadings, oral evidence and documentary materials on record, the issues are taken up for determination.

DETERMINATION WITH REASONS

Issue No.1

Whether the claim application is maintainable?

The insurer has questioned the maintainability of the claim on the grounds that Sumitra Anthony is allegedly the second wife of the deceased, that Karina Anthony, the alleged first wife, has not been impleaded, and that the owner and insurer of the scooter have also not been made parties. It has further been contended that Stephen Mark Anthony and Rocky Anthony were major sons and were not financially dependent upon the deceased.

The objections are devoid of merit. Section 166 of the Motor Vehicles Act permits an application to be filed by all or any of the legal representatives of a deceased victim. The expression "legal representative" has consistently been interpreted liberally by the Hon'ble Supreme Court keeping in view the beneficial object of the legislation. In Gujarat State Road Transport Corporation v. Ramanbhai Prabhatbhai, (1987) 3 SCC 234, and subsequently in N. Jayasree v. Cholamandalam MS General Insurance Co. Ltd., (2022) 14 SCC 712, it has been held that technical objections should not defeat a genuine claim for compensation.

In the present case, PW-1 has proved her marriage with the deceased by producing the marriage certificate (Exhibit 10). PW-3 has admitted that Karina Anthony had left the family long before the accident. Although a photocopy relating to her alleged subsequent marriage was produced, the same was never formally proved. Thus, no conclusive finding can be recorded regarding her present marital status. Nevertheless, the evidence clearly establishes that Sumitra Anthony was residing with the deceased as his wife at the time of the accident and that Alisha Anthony, Stephen Mark Anthony and Rocky Anthony are the children of the deceased. Their status as legal representatives therefore stands established.

The contention regarding non-joinder of the owner and insurer of the scooter is equally untenable. The consistent case of the claimants is that the scooter was hit from behind by the offending lorry while it was proceeding on its proper side. In the absence of any evidence suggesting composite or contributory negligence on the part of the scooter rider, the claim cannot fail merely because the scooter owner or insurer has not been impleaded.

Whether the major sons were financially dependent upon the deceased is relevant only while assessing loss of dependency and apportionment and does not affect their status as legal representatives.

Accordingly, the claim petition is held to be maintainable.

Issue No.1 is answered in the affirmative in favour of the claimants.

<u>Issue Nos.2 & 3</u>

Whether the death of Francis Anthony was caused in the accident alleged by the claimants?

Whether the accident occurred due to rash and negligent driving of the offending lorry bearing registration No. OR-05Q-9085?

Since both the issues are interconnected, they are taken up together.

PW-1 has fully supported the claim petition and proved the FIR, Motor Accident Report, charge-sheet, seizure list, death certificate and post-mortem report (Exhibits 1 to 9). These contemporaneous public documents establish the occurrence of the accident and the death of Francis Anthony arising therefrom.

The evidence of PW-2 assumes considerable significance. He is an independent eyewitness having no relationship with the claimants. He categorically stated that the offending lorry struck the scooter from behind while the scooter was proceeding on the left side of the road. He further stated that the lorry was being driven at a speed of about 40 to 50 kilometres per hour. His testimony remained consistent throughout cross-examination and nothing material could be elicited to discredit his evidence.

The police investigation culminated in submission of charge-sheet against the driver of the offending lorry. Although a charge-sheet is not conclusive proof of negligence, it constitutes a relevant corroborative circumstance when read with the reliable testimony of PW-2 and the medical records.

The insurer has pleaded contributory negligence on the ground that three persons were travelling on the scooter, the deceased allegedly had no driving licence and the occupants were not wearing helmets. However, these allegations remain mere pleadings. No witness has been examined and no documentary evidence has been produced by the insurer in support of such allegations. Even assuming there was any infraction of traffic rules, the insurer has failed to establish any causal connection between such alleged violation and the occurrence of the accident.

The accident was admittedly a rear-end collision. A vehicle following another is expected to maintain adequate distance and proper control. The driver of the offending lorry, who alone could have explained the manner of accident, was not examined. An adverse inference is therefore liable to be drawn against the insurer.

Proceedings under Section 166 of the Motor Vehicles Act are decided on the touchstone of preponderance of probabilities and not proof beyond reasonable doubt. On the basis of the unrebutted testimony of PW-2, duly corroborated by the documentary evidence, this Tribunal is satisfied that Francis Anthony sustained fatal injuries in the accident dated 17.10.2010 involving lorry No. OR-05Q-9085 and that the accident occurred solely due to the rash and negligent driving of the said vehicle. The plea of contributory negligence is therefore rejected.

Issue Nos.2 and 3 are answered in the affirmative in favour of the claimants.

<u>Issue No.4</u>

Whether the offending vehicle was insured with Opposite Party No.2 on the date of the accident?

PW-1 has proved the certified copy of the insurance policy which has been marked as Exhibit 6. Though the insurer initially disputed the insurance coverage, no evidence has been adduced to establish that the policy was not in force on the date of the accident or that any breach of policy conditions had occurred. No statutory defence under Section 149 of the Motor Vehicles Act has been established.

Accordingly, it is held that the offending lorry was duly insured with Opposite Party No.2 on the date of the accident and the insurer is liable to indemnify the insured and satisfy the award.

Issue No.4 is answered in the affirmative in favour of the claimants.

Issue No.5

Whether the claimants are entitled to compensation and, if so, to what amount and from whom?

Having held that the accident occurred due to the rash and negligent driving of the offending lorry and that the insurer is liable to indemnify the insured, the next question is the determination of just compensation. Under Section 168 of the Motor Vehicles Act, the Tribunal is required to award compensation which is fair, reasonable and just. The principles governing such assessment have been authoritatively laid down by the Hon'ble Supreme Court in Sarla Verma v. Delhi Transport Corporation, (2009) 6 SCC 121, National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680, Magma General Insurance Co. Ltd. v. Nanu Ram, (2018) 18 SCC 130, United India Insurance Co. Ltd. v. Satinder Kaur, (2021) 11 SCC 780, and Nagappa v. Gurudayal Singh, (2003) 2 SCC 274.

The claimants have pleaded that the deceased was employed with Magnolia Soda Fountain Pvt. Ltd. and was earning about Rs.5,005/- per month. Though the appointment letter and income certificate were marked only for identification and the employer was not examined, PW-1 consistently deposed that the deceased was employed and earned about Rs.5,000/- per month. Considering the oral evidence, the nature of employment, the year of accident, and the absence of any rebuttal evidence, the monthly income of the deceased is reasonably assessed at Rs.5,000/-, making the annual income Rs.60,000/-.

The next question is the age of the deceased. Though the claim petition mentions that the deceased was about 50 years old, the best evidence regarding age is the passport (Exhibit 13) produced by the claimants. Exhibit 13 records the date of birth of the deceased as 27.10.1959. The evidence further shows that the deceased died on 27.10.2010. Consequently, on the date of his death he had completed 51 years of age. Documentary evidence must prevail over the approximate age mentioned in the pleadings. Accordingly, this Tribunal accepts the age of the deceased as 51 years.

In terms of the multiplier table laid down in Sarla Verma (supra), the appropriate multiplier for a deceased aged 51 to 55 years is 11. Therefore, multiplier 11 is applicable in the present case.

Since the deceased was gainfully employed, an addition of 10% towards future prospects is warranted in view of the principles laid down in Pranay Sethi (supra).

Thus, the computation is as follows:

Particulars	**Amount**
Monthly income	Rs.5,000/-
Annual income	Rs.60,000/-
Add : Future prospects @10%	Rs.6,000/-
Annual income	Rs.66,000/-
Less 1/3rd towards personal expenses	Rs.22,000/-
Annual contribution to family	Rs.44,000/-
Multiplier	11
Loss of dependency	Rs.4,84,000/-

With regard to the conventional heads, Sumitra Anthony is entitled to spousal consortium, while the three children are entitled to parental consortium. Following Pranay Sethi, Magma General Insurance, and Satinder Kaur, consortium is payable separately to each eligible claimant. Considering the enhancement applicable on the date of award, Rs.48,400/- is awarded to each claimant.

Accordingly,

- Consortium (Rs.48,400 × 4) = Rs.1,93,600/-
- Loss of Estate = Rs.18,150/-
- Funeral Expenses = Rs.18,150/-

The total compensation is therefore computed as follows:

Head	**Amount**
Loss of dependency	Rs.4,84,000/-
Consortium	Rs.1,93,600/-
Loss of estate	Rs.18,150/-
Funeral expenses	Rs.18,150/-
Total	Rs.7,13,900/-

Accordingly, this Tribunal determines Rs.7,13,900/- (Rupees Seven Lakh Thirteen Thousand Nine Hundred only) as just compensation. Although the claim petition quantified compensation at Rs.6,50,000/-, the Tribunal is empowered to award higher compensation if found just and reasonable, as held in Nagappa v. Gurudayal Singh (supra).

The claimants are also entitled to interest. Having regard to Section 171 of the Motor Vehicles Act and the prolonged pendency of the proceeding, interest at the rate of 6% per annum from the date of institution of the claim petition, i.e., 10.07.2013, till realization would meet the ends of justice. The amendment concerning claimant No.2 attaining majority did not introduce any new cause of action and therefore does not affect the commencement of interest.

The widow constituted the immediate family of the deceased and suffered the principal financial dependency. The daughter was a minor when the claim petition was instituted. The two sons, though their dependency has not been established, are legal representatives and entitled to consortium. Accordingly, the compensation shall be apportioned as follows:

- Sumitra Anthony – Rs.3,60,000/-
- Alisha Anthony – Rs.1,57,100/-
- Stephen Mark Anthony – Rs.98,400/-
- Rocky Anthony – Rs.98,400/-

The accrued interest shall be distributed in the same proportion.

Accordingly, Issue No.5 is decided in favour of the claimants.

Issue No.6

To what other relief or reliefs are the claimants entitled?

In view of the findings recorded on the foregoing issues, the claimants are entitled to an award against Opposite Party No.1, owner of the offending vehicle, and Opposite Party No.2, United India Insurance Company Limited. Since the insurer has failed to establish any statutory defence under Section 149 of the Motor Vehicles Act, Opposite Party No.2 is liable to satisfy the award.

Issue No.6 is answered accordingly.

Hence, it is

ORDERED

The claim application under Section 166 of the Motor Vehicles Act, 1988 succeeds on contest against Opposite Party No.2 and ex parte against Opposite Party No.1.

The claimants are awarded a sum of Rs.7,13,900/- (Rupees Seven Lakh Thirteen Thousand Nine Hundred only) as just compensation on account of the death of Francis Anthony in the motor accident dated 17.10.2010.

The awarded amount shall carry simple interest @ 6% per annum from 10.07.2013, the date of institution of the claim petition, until full realization.

Opposite Party No.2, United India Insurance Company Limited, shall deposit the awarded amount together with accrued interest before this Tribunal within 30 (thirty) days from the date of this judgment.

Upon deposit, the compensation together with proportionate interest shall be disbursed as follows:

- Sumitra Anthony – Rs.3,60,000/-
- Alisha Anthony – Rs.1,57,100/-
- Stephen Mark Anthony – Rs.98,400/-
- Rocky Anthony – Rs.98,400/-

Since all the claimants have attained majority, their respective shares shall be released through their individual Bank accounts after due identification and compliance with the Rules of this Tribunal.

Let the award be drawn up accordingly.

Supply a copy of this judgment and award to the parties free of cost in accordance with law.

The case is disposed of on contest against Opposite Party No.2 and ex parte against Opposite Party No.1.

There is no order as to costs.

BC-II to note in relevant registers and CIS.

Dictated & Corrected by me

(Judge)
Motor Accident Claims Tribunal
Alipore, South 24 Parganas

(Judge)
Motor Accident Claims Tribunal
Alipore, South 24 Parganas