DISTRICT: UTTAR DINAJPUR

BEFORE THE MOTOR ACCIDENTS CLAIMS TRIBUNAL
RAIGANJ, UTTAR DINAJPUR

PRESENT : Shri Subhrajit Basu [J.O. Code: WB01238]

District Judge, Uttar Dinajpur -cum- Judge, Motor Accident Claims Tribunal, Raiganj, Uttar Dinajpur.

M.A.C. Case No. 51 of 2021

[CNR WBUD01-000664-2021]

1. Smt. Kalapati Barman
2. Drishti Barman (Minor)
3. Smt. Sandhya Barman
4. Sri Ramchandra Barman ... Claimants

- Versus -

1. Bikash Debsharma ... Opposite Party/Owner
2. The ICICI Lombard General Insurance Co. Ltd. ... Opposite Party/Insurer

Advocates for the Parties:

For the Claimants : Mr Swarup Narayan Basak, Advocate

For the Opposite Parties/Owners : None

For the Opposite Party/Insurer : Mr Gopal Chandra Majumder, Advocate

Date of Delivery of Judgement : 30.06.2026

J U D G E M E N T

The instant case arises out of an application filed by the claimants abovenamed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act") praying for Rs.47,50,000/- as compensation along with other relief.

2. The claimant no. 1 is the widow, the claimant no. 2 is the minor daughter, the claimant no.3 is the mother and the claimant no.4 is the father of one Skylar Barman, since deceased (for short "the victim"), who purportedly died on account of injuries sustained in a road traffic accident.

3. The case of the claimants is that on 05.12.2020 at about 11:00 p.m., when the victim was returning home on his motorcycle after attending a *Sraddh* ceremony, he stopped his motorcycle by the roadside at Najirpur Palpara to attend to nature's call. At that time, suddenly a motorcycle bearing registration no. WB-60V-7104 (hereinafter referred to as "the offending vehicle"), coming from the Maharaja side at a high speed while being driven by its rider in a rash and negligent manner, went off the road as its rider lost control due to excessive speed and struck the victim with great force. As a result of such impact, the victim was thrown into a nearby pond after sustaining severe injuries on his person. Hearing the loud sound of the collision and cries for help, some local people rushed to the spot and rescued the victim and took him to Raiganj Medical College & Hospital, but there he was declared dead by the attending doctor after examination. According to the claimants, the said road traffic accident took place solely due to the rash and negligent driving by the rider of the offending vehicle. Over the said incident, Raiganj P.S. Case No. 986 of 2020 dated 07.12.2020 under Sections 279/304A of IPC was registered. It is the specific case of the claimants in the claim petition that the victim was an appointee to the post of Clerk at Rampur Indira Uccha Vidyapith, Lahanda with a salary of Rs.22,700/- per month and at the time when the accident took place, he was awaiting to join his post due to Covid-19 pandemic situation.

4. The opposite party no.1/owner of the offending vehicle, in spite of due service of summons, never appeared in this case and contest the proceeding and accordingly, the case proceeded *ex parte* against him.

5. The opposite party no.2/Insurer of the offending vehicle contested the case upon filing written statement and additional written statement wherein, apart from certain technical pleas, the material allegations made in the claim petition were denied and disputed with a prayer for dismissal of the case. The opposite party no.2, *inter alia*, denied any involvement of the offending vehicle in the road traffic accident and contended that the victim never met with the road traffic accident as alleged in the claim petition and he died due to the effects of drowning after falling into a pond. It is the further case of the opposite party no.2/insurer that the offending vehicle has been falsely implicated for the purpose of making a false claim in this case in collusion with the owner of the offending vehicle and the police submitted the charge sheet against the rider of the offending vehicle without investigating the case properly.

6. Based on the pleadings of the contesting parties, the issues that arise for determination in the instant case are as under –

1. *Is this case maintainable in law and in its present form?*
2. *Is this case barred by limitation?*
3. *Whether the offending vehicle bearing no. WB-60V-7104 was covered under a valid insurance policy of the opposite party no.2 at the time of the alleged accident?*
4. *Whether the offending vehicle was involved in the alleged accident?*
5. *Whether there was any rash and negligent on the part of the driver of the offending vehicle?*
6. *Whether the claimants are entitled to get the compensation as prayed for and if so, what would be the proper amount?*
7. *Whether the opposite parties are liable to pay any compensation to the claimants in this case?*
8. *To what other relief, if any, are the claimants entitled?*

7. The following witnesses were examined by the contesting parties in this case –

A. WITNESSES FOR THE CLAIMANT(S):

SRL. NO.	NAME	DESCRIPTION/NATURE OF WITNESS
PW-1	Kalapati Barman	The claimant no. 1 and wife of the victim.
PW-2	Manoranjan Pal	Private individual/eyewitness.

B. WITNESSES FOR THE CONTESTING OPPOSITE PARTY/INSURER:

SRL. NO.	NAME	DESCRIPTION/NATURE OF WITNESS
OPW-1	Dr Bhaskarjyoti Debnath	Autopsy doctor who held the postmortem examination of the dead body of the victim.
OPW-2	Debarshi Saha	An associate of OPW-3, investigator of the opposite party no.2/Insurer.
OPW-3	Bappa Manna	Investigator of the opposite party no.2/Insurer.

8. The following documents were exhibited by the contesting parties at the trial –

A. DOCUMENTS EXHIBITED BY THE CLAIMANT(S):

SRL. NO.	DESCRIPTION OF THE EXHIBIT
Exbt. 1	Copies of formal FIR and Written Complaint of the criminal case.
Exbt. 2	Copy of Seizure List of the criminal case.
Exbt. 3	Copy of Charge Sheet submitted in the criminal case.
Exbt. 4	Copy of Post Mortem Examination Report of the victim.
Exbt. 5	Copy of Insurance Policy Certificate of the offending vehicle.
Exbt. 6	Original Aadhaar Card of the deceased/victim.
Exbt. 7	Copy of Aadhaar Card of the claimant no.1.
Exbt. 8	Copy of Aadhaar Card of the claimant no.3.
Exbt.9	Copy of Aadhaar Card of the claimant no.4.
Exbt. 10	Copy of Aadhar Card of the claimant no.2.

B. DOCUMENTS EXHIBITED BY THE CONTESTING OPPOSITE PARTY/ INSURER:

SRL. NO.	DESCRIPTION OF THE EXHIBIT
Exbts. A & A/1	Letters of authorization in favour of OPW-2.
Exbt. B	Letter of authorization in favour of OPW-3.
Exbt. C	Copy of application of OPW-3 under Section 6 of RTI Act, 2005.

9. Having considered the pleadings, depositions, evidence and materials on record along with the submissions made by the learned advocates of the contesting parties, the above issues are now taken up for a decision with the following –

F I N D I N G S   W I T H   R E A S O N S

Issue Nos.1 and 2:

10. These issues were not pressed on behalf of the contesting opposite party no.2 at the stage of final hearing. This Court *per se* finds no apparent legal defect or infirmity in the present claim, as filed, to hold it to be non-maintainable, time-barred or defective. Consequently, Issue Nos. 1 and 2 are answered and decided in favour of the claimants.

Issue Nos. 3, 4 & 5:

11. As these issues are interconnected and arise out of the same set of facts, they are taken up together for consideration for the sake of brevity, convenience and to avoid repetition of discussions.

12. PW-1 Kalapati Barman, widow of the victim and the claimant no.1 of this case, filed examination-in-chief by way of affidavit wherein she fully corroborated the case made out in the claim petition. According to PW-1, her husband, i.e., the victim got appointment letter for the post of Clerk of Rampur Indira Uccha Vidyapith, Lahanda having a monthly salary of Rs.22.700/-, but due to Covid-19 pandemic, the school was closed and for this reason, the victim could not join his post. However, no such appointment letter has been produced from the side of the claimants in this case. PW-1 was fully cross-examined by the opposite party no.2/Insurer, but the evidence of the witness in support of the claim petition could not be materially shaken thereby.

13. PW-2 Manoranjan Pal claimed to be an eye witness of the road traffic accident. The witness is also named by the police as witness no. 3 in the charge sheet (Exbt.2). PW-2 corroborated the case made out in the claim petition regarding the occurrence of the accident. Though PW-2 was fully cross-examined by the opposite party no.2/Insurer, but the evidence of this witness remained substantially unshaken. PW-2 stated that the place of occurrence of the accident was adjacent to his house and he pulled out the victim from the pond. The witness stated that he could not recall the registration number of the victim's motorcycle as it was submerged in water.

14. OPW-1 Dr Bhaskarjyoti Debnath, Assistant Professor, Department of Forensic Medicine and Toxicology, Raiganj Medical College & Hospital, is the autopsy doctor who conducted post mortem examination over the victim's dead body in connection with Raiganj P.S. U.D. Case No. 433 of 2020 dated 06.12.2020. He identified Exbt.4 to be the post mortem examination report prepared by him. He stated that as per his findings on examination, death was due to the effects of drowning. This witness was cross-examined by the claimants wherein he stated that as per police inquest report, the victim was dashed by a motorcycle and fell down in a pond while he was standing beside a road at 11.00 p.m. on 05.12.2020. The witness described the injuries found on the dead body as under –

I. *Graze abrasion measuring 2½ inch X ½ inch obliquely placed over right cheek extending above downwards;*

II. *Graze abrasion measuring 1 inch X 0.25 inch longitudinally placed over mid forehead extending above downwards;*

III. *Graze abrasion measuring 6 inch X 1 inch obliquely placed over left inner thigh extending below upwards;*

IV. *Dislocation of right shoulder joint*.

15. OPW-2 Debarshi Saha is an associate of an investigator of the opposite party no.2/ Insurer, namely, Bappa Manna (OPW-3). OPW-2 stated that as per internal investigation of the opposite party no.2/Insurer, the victim suddenly fell down in a pond while driving an unknown motorcycle and died due to drowning as revealed by the autopsy report and the offending vehicle was no way involved in the road traffic accident in question. However, no such investigation report has been adduced in evidence from the side of the insurer in this case. This witness was cross-examined by the claimants wherein he revealed that Bappa Manna (OPW-3), the investigator of the insurer, submitted the internal investigation report without ever visiting the place of accident and on behalf the said Bappa Manna, this witness (OPW-2) visited the spot.

16. The evidence of OPW-3 Bappa Manna, investigator of the opposite party no.2/ Insurer, is somewhat similar to that of OPW-2. However, during cross-examination by the claimants, OPW-3 contradicted OPW-2 as regards his never visiting the place of accident and admitted that he did not examine any of the charge sheet witnesses during his investigation.

17. The learned advocate of the claimants, upon reference to the relevant pleadings, evidence and materials on record, argued that the claimants have fully proved the case made out in the claim petition and are entitled to the compensation as prayed for along with future prospect and interest as per the settled principles of law in this regard. The learned advocate also referred to certain judgements in support of his arguments.

18. On the other hand, the learned advocate of the opposite party no.2/Insurer, while advancing his arguments, also referred to the relevant pleadings, evidence and materials on record and submitted that no compensation should be awarded against the insurer in this case. In this regard, the learned advocate submitted that the evidence on record would reveal that the offending vehicle was not at all involved in the accident and the victim died due to drowning after falling into a pond. According to him, the offending vehicle has been falsely implicated for making a false claim in collusion with the owner of the offending vehicle and police submitted charge sheet against the rider of the offending vehicle without properly investigating the case and as such, the same should not be relied upon. Alternatively, he argued that the claimants have failed to prove the income of the victim in this case as alleged in the claim petition and as such, only a notional income of the victim should be fixed if any compensation is granted in this case.

19. The written complaint (Exbt.1) in the relevant criminal case was lodged by one Palash Chandra Barman, brother of the victim, on 07.12.2020, i.e., within two days of the victim’s death and the case made out in the claim petition regarding occurrence of the road traffic accident is fully corroborated therefrom. After completion of investigation of the criminal case, police submitted charge sheet (Exbt.3) under Sections 279/304A IPC against the rider of the offending vehicle, namely, Rajani Debsharma. PW-2 is named as charge sheet witness no.3 in Exbt.3. From the seizure list (Exbt.2), it is found that the offending vehicle along with its documents was seized during investigation of the criminal case. The post mortem examination report of the victim (Exbt.4) specifically mentions about the road traffic accident. The insurance policy certificate (Exbt.5) reveals that the offending vehicle was under a valid insurance policy of the opposite party no.2 as on the date of the accident. The victim’s Aadhaar Card (Exbt.6) mentions his date of birth as 07.09.1981, which implies his age to be 39 years as on the date of accident.

IN RE: CHARGE SHEET

20. In ***Mangla Ram v. Oriental Insurance Co. Ltd., (2018) 5 SCC 656***, after considering several judgements on the issue, the Hon'ble Apex Court, *inter alia*, held that filing of charge sheet against the accused driver *prima facie* points towards his complicity in driving the vehicle negligently and rashly. It was further held that even when the accused were to be acquitted in the criminal case, the same may be of no effect on the assessment of the liability required in respect of motor accident cases. The Hon’ble Court observed that that the key of negligence on the part of the driver of the offending vehicle as set up is required to be decided by the Claims Tribunal on the touchstone of preponderance of probability and not by the standard of proof beyond reasonable doubt.

21. In ***New India Assurance Co. Ltd. v. Pazhaniammal, 2011 (3) KLT 648***, the Hon’ble Kerala High Court, *inter alia*, held that as a general rule it can safely be accepted that production of the police charge sheet is *prima facie* sufficient evidence of negligence for the purpose of a claim under Section 166 of the Motor Vehicles Act. It was observed by the Hon'ble Court that if any one of the parties does not accept such charge sheet, the burden is on such party to adduce oral evidence. If oral evidence is adduced by any party in a case where charge sheet is filed, the Claims Tribunal should give further opportunity to others also to adduce oral evidence and in such a case the charge sheet will pale into insignificance and the dispute will have to be decided on the basis of the evidence. The Hon'ble Court also observed that in all other cases such charge sheet can be reckoned as sufficient evidence of negligence in a claim under Section 166 of the Motor Vehicles Act.

22. Be it also noted in this regard that in ***Mathew Alexander v. Mohd. Shafi, (2023) 13 SCC 510***, the Hon'ble Apex Court, *inter alia*, held that a holistic view of the evidence has to be taken into consideration by the Claims Tribunal and strict proof of an accident caused by a particular vehicle in a particular manner need not be established by the claimants. It was further held by the Hon'ble Court that the claimants have to establish their case on the touchstone of preponderance of probabilities and the standard of proof beyond reasonable doubt cannot be applied while considering the petition seeking compensation on account of death or injury in a road traffic accident.

23. On the point under consideration, the judgement of the Hon'ble Calcutta High Court in ***New India Assurance Co. Ltd. v. Mita Samanta, 2009 SCC OnLine Cal 2142 : (2010) 1 TAC 343*** is also relevant and important to consider. In this judgement, it was*, inter alia*, held –

> *"17. Therefore, the Insurance Company in spite of taking leave under section 170 of the Act having failed to summon the owner or the driver of the vehicle to disprove the allegation of the claimants of the involvement of the vehicle concerned or the rash and negligent driving, the Court is left with no other alternative but to accept the allegation of the claimants unless there is either admission of the claimants or their witness about non-involvement of the vehicle or about the contributory negligence of the victim in the accident or there exists other evidence of unimpeachable nature given by uninterested witness showing falsity of the allegation of the claimants. In this case, there is no such admission or evidence of that nature. In this case, the driver has been charge-sheeted and thus, there is no reason why the Insurance Company in spite of taking leave under section 170 of the Act should not summon the said driver to give evidence for disclosing the truth. We are unable to presume collusion between the driver and the claimants when the driver has been indicted in the criminal proceedings. It will be a travesty of justice in the facts of the present case to disbelieve the eye-witness of the claimants when the owner and the driver are neither appearing nor are they even summoned by the Insurance Company even after taking leave under section 170 of the Act to face cross-examination at the instance of the claimants.*
>
> *18. The evidence given by the two witnesses of the Insurance Company are neither relevant nor worthy of credence for the following reasons:*
>
>> *The D.W. 1 is the Branch Manager of the Burdwan Branch of the Insurance Company who stated that D.W. 2 was appointed as investigator regarding the accident and he submitted a report and it revealed from the report that the victim while driving the motorcycle dashed to the electric post as a result he died and the truck was not at all involved in the accident. In his cross-objection, he has admitted that apart from the contents of the report he had no personal knowledge relating to the accident.*
>>
>> *D.W. 2 is the investigator who was appointed by the Insurance Company to investigate and report about the accident. According to the said witness, he after enquiring from various witnesses came to the conclusion that the truck in question was not at all involved in the accident. In his cross-examination, he admitted that he was not a witness to the occurrence and he did not file any document to show that he had interrogated several witnesses.*

> *In our opinion the report submitted by the investigator and his evidence regarding cause of accident are worst piece of hearsay evidence because he investigated long after the accident and according to his claim, he based his report on the information he gathered from various persons whose identity was not disclosed in the report. Unless the persons who informed to the investigator about the details of the accident are examined in Court and the claimant gets opportunity of cross-examining those witnesses, the contents of the report cannot be admissible in evidence.*
>
> *19. Therefore, on behalf of the Insurance Company virtually no evidence was given*."

24. In the present case, charge sheet has been submitted by the police against the rider of the offending vehicle after investigation and it supports the version of the claim petition regarding involvement of the offending vehicle and occurrence of the road traffic accident resulting in the victim getting injured thereby and eventually drowning after falling into a pond by the roadside. The evidence of the eye-witness (PW-2) the autopsy doctor (OPW-1) also corroborates this version. The insurer has not examined the insured/owner as a witness in this case to establish non-involvement of the offending vehicle in the accident in question.

25. The internal investigation report of the insurer has also not been brought into evidence during the trial. The evidence of OPW-3, insurer's investigator and that of OPW-2, the investigator's associate, are at odds as regards the investigator's visiting the place of accident. Moreover, OPW-3, i.e., the investigator who purportedly submitted the internal investigation report to the insurer, admitted that he never examined any of the charge sheet witnesses during his investigation. Needless to mention that unless the persons who allegedly informed to the investigator about the details of the accident are examined in Court and the claimants get opportunity to cross-examine those witnesses, the insurer's internal investigation report cannot be used in evidence against the claimants.

26. Thus, taking a holistic view of the evidence and materials on record, this Court has no hesitation to hold that the charge sheet exhibited in this case is sufficient proof of involvement of the offending vehicle in the road traffic accident resulting in the death of the victim and also that of rash and negligent driving on the part of the driver of the offending vehicle in the instant claim petition.

27. Consequently, in consideration of the evidence and materials on record and the settled position of law discussed above, this Court has no hesitation to hold that the claimants have the requisite cause of action to file the instant claim petition. This Court also finds that the case of the claimants as made out in the claim petition regarding the incidence of the road traffic accident, involvement of the offending vehicle in the accident, occurrence of the accident due to the rash and negligent driving by the driver of the offending vehicle resulting in the death of the victim and due coverage of the offending vehicle under a valid insurance policy of the opposite party no.2/Insurer as on the date of the accident are fully established in this case.

28. Thus, Issue Nos. 2, 3 and 4 are answered and decided in favour of the claimants.

Issue Nos. 6, 7 and 8:

29. These issues are taken up and considered together as they relate to the common question of compensation and/or relief that may be granted in this case.

30. The claimant no. 1 is the widow, the claimant no. 2 is the minor daughter, the claimant no.3 is the mother and the claimant no.4 is the father of the victim. Thus, the claimants are entitled to file the instant claim petition.

31. It may be noted that in ***Sunita v. Rajasthan SRTC, (2020) 13 SCC 486***, the Hon'ble Apex Court, *inter alia*, held that it is well settled that in motor accident claim cases, once the foundational fact, i.e., the actual occurrence of the accident, is established, then the Tribunal's role would be to calculate the quantum of just compensation if the accident had taken place by reason of negligence of the driver of a motor vehicle and, while doing so, the Tribunal would not be strictly bound by the pleadings of the parties. The Hon'ble Court also held that notably, while deciding cases arising out of motor vehicle accidents, the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases.

32. In ***National Insurance Company Limited v. Pranay Sethi, (2017) 16 SCC 680***, a five-Judge Constitution Bench of the Hon'ble Supreme Court of India at length dealt with different issues relating to calculation of compensation in motor accident claim cases both under Section 163A and Section 166 of the Act either where the deceased had a permanent job or where the deceased was self-employed or on fixed salary without provision for annual increment, etc. From this landmark judgement, the following *ratio* can be deducted –

[a] As regards *deduction for personal and living expenses*, the Constitution Bench of the Hon'ble Apex Court in paragraph 41 of ***Pranay Sethi*** (supra) concurred with the observations in paragraphs 30, 31 and 32 of the Full Bench judgement of the Hon'ble Apex Court in ***Sarla Verma v. Delhi Transport Corporation, (2009) 6 SCC 121*** and paragraph 43.6 of another Full Bench judgement of the Hon'ble Apex Court in ***Reshma Kumari v. Madan Mohan, (2013) 9 SCC 65*** in the following words –

> "***41.*** *On a perusal of the analysis made in **Sarla Verma** [supra] which has been reconsidered in **Reshma Kumari** [supra], we think it appropriate to state that as far as the guidance provided for appropriate deduction for personal and living expenses is concerned, the tribunals and courts should be guided by conclusion 43.6 of **Reshma Kumari** [supra]. We concur with the same as we have no hesitation in approving the method provided therein."*

[b] Paragraphs 30, 31 and 32 of ***Sarla Verma*** (supra) read as under –

> *"30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in **Trilok Chandra [U.P State Road Transport Corporation v. Trilok Chandra, (1996) 4 SCC 362**], the general practice is to apply standardised deductions. 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 number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.*
>
> *31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant.*

In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.

32. Thus, even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third."

[c] Paragraph 43.6 of ***Reshma Kumari*** (supra) stipulates as under –

> "*43.6. Insofar as deduction for personal and living expenses is concerned, it is directed that the Tribunals shall ordinarily follow the standards prescribed in paras 30, 31 and 32 of the judgment in Sarla Verma subject to the observations made by us in para 41 above.*"

[d] Paragraphs 41 and 42 of ***Reshma Kumari*** (supra) reads as under –

> "*41. The above does provide guidance for the appropriate deduction for personal and living expenses. One must bear in mind that the proportion of a man's net earnings that he saves or spends exclusively for the maintenance of others does not form part of his living expenses but what he spends exclusively on himself does. The percentage of deduction on account of personal and living expenses may vary with reference to the number of dependent members in the family and the personal living expenses of the deceased need not exactly correspond to the number of dependants.*
>
> *42. In our view, the standards fixed by this Court in* ***Sarla Verma*** *(supra) on the aspect of deduction for personal living expenses in paragraphs 30, 31 and 32 must ordinarily be followed unless a case for departure in the circumstances noted in the preceding paragraph is made out.*"

[e] As regards *conventional heads, namely, loss of estate, loss of consortium and funeral expenses*, the Hon'ble Apex Court in paragraph 52 of ***Pranay Sethi*** (supra) held as under –

> "*… It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. The*

> *principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.*"

[f] As regards *selection of multiplier*, the Hon'ble Apex Court in ***Pranay Sethi*** (supra) upheld the directions given in paragraph 42 of ***Sarla Verma*** (supra). In this regard, it may be noted that in ***Sarla Verma*** (supra) the Hon'ble Apex Court took note of the widespread inconsistency as regards selection of multiplier upon comparing the multipliers indicated in the judgements of the Hon'ble Apex Court in ***General Manager, Kerala State Transport Corporation v. Susamma Thomas, (1994) 2 SCC 176***, ***Trilok Chandra*** (supra) and ***New India Assurance Co. Ltd. v. Charlie, (2005) 10 SCC 720*** for claims made under Section 166 of the Act with the multiplier mentioned in the Second Schedule for claims made under Section 163A of the Act and in paragraph 42 of ***Sarla Verma*** (supra) standardised the choice of multiplier in all cases in the following manner –

a. Multiplier of 18 for the age groups of 15 to 20 and 21 to 25 years,
b. Multiplier of 17 for the age group of 26 to 30 years,
c. Multiplier of 16 for the age group of 31 to 35 years,
d. Multiplier of 15 for the age group of 36 to 40 years,
e. Multiplier of 14 for the age group of 41 to 45 years,
f. Multiplier of 13 for the age group of 46 to 50 years,
g. Multiplier of 11 for the age group of 51 to 55 years,
h. Multiplier of 9 for the age group of 56 to 60 years,
i. Multiplier of 7 for the age group of 61 to 65 years, and
j. Multiplier of 5 for the age group of 66 to 70 years.

[g] As regards the *issue of addition of future prospects to determine the multiplicand*, the Hon'ble Apex Court in paragraphs 55, 56, 57 and 58 of ***Pranay Sethi*** (supra) held as under –

> "*55. Section 168 of the Act deals with the concept of "just compensation" and the same has to be determined on the foundation of fairness, reasonableness and equitability on acceptable legal standard because such determination can never be*

*in arithmetical exactitude. It can never be perfect. The aim is to achieve an acceptable degree of proximity to arithmetical precision on the basis of materials brought on record in an individual case. The conception of "just compensation" has to be viewed through the prism of fairness, reasonableness and non-violation of the principle of equitability. In a case of death, the legal heirs of the claimants cannot expect a windfall. Simultaneously, the compensation granted cannot be an apology for compensation. It cannot be a pittance. Though the discretion vested in the tribunal is quite wide, yet it is obligatory on the part of the tribunal to be guided by the expression, that is, "just compensation". The determination has to be on the foundation of evidence brought on record as regards the age and income of the deceased and thereafter the apposite multiplier to be applied. The formula relating to multiplier has been clearly stated in **Sarla Verma** (supra) and it has been approved in **Reshma Kumari** (supra). The age and income, as stated earlier, have to be established by adducing evidence. The tribunal and the Courts have to bear in mind that the basic principle lies in pragmatic computation which is in proximity to reality. It is a well accepted norm that money cannot substitute a life lost but an effort has to be made for grant of just compensation having uniformity of approach. There has to be a balance between the two extremes, that is, a windfall and the pittance, a bonanza and the modicum. In such an adjudication, the duty of the tribunal and the Courts is difficult and hence, an endeavour has been made by this Court for standardization which in its ambit includes addition of future prospects on the proven income at present. As far as future prospects are concerned, there has been standardization keeping in view the principle of certainty, stability and consistency. We approve the principle of "standardization" so that a specific and certain multiplicand is determined for applying the multiplier on the basis of age.*

*56. The seminal issue is the fixation of future prospects in cases of deceased who is self-employed or on a fixed salary. **Sarla Verma** (supra) has carved out an exception permitting the claimants to bring materials on record to get the benefit of addition of future prospects. It has not, per se, allowed any future prospects in respect of the said category.*

57. Having bestowed our anxious consideration, we are disposed to think when we accept the principle of standardization, there is really no rationale not to apply the said principle to the self-employed or a person who is on a fixed salary. To follow the doctrine of actual income at the time of death and not to add any amount with regard to future prospects to the income for the purpose of determination of multiplicand would be unjust. The *determination of income while computing compensation has to include future prospects so that the method will come within the ambit and sweep of just compensation as postulated under Section 168 of the Act. In case of a deceased who had held a permanent job with inbuilt grant of annual increment, there is an acceptable certainty. But to state that the legal representatives of a deceased who was on a fixed salary would not be entitled to the benefit of future prospects for the purpose of computation of compensation would be inapposite. It is because the criterion of distinction between the two in that event would be certainty on the one hand and staticness on the other. One may perceive that the comparative measure is certainty on the one hand and uncertainty on the other but such a perception is fallacious. It is because the price rise does affect a self-employed person; and that apart there is always an incessant effort to enhance one's income for sustenance. The purchasing capacity of a salaried person on permanent job when increases because of grant of increments and pay revision or for some other change in service conditions, there is always a competing attitude in the private sector to enhance the salary to get better efficiency from the employees. Similarly, a person who is self-employed is bound to garner his resources and raise his charges/fees so that he can live with same facilities. To have the perception that he is likely to remain static and his income to remain stagnant is contrary to the fundamental concept of human attitude which always intends to live with dynamism and move and change with the time. Though it may seem appropriate that there cannot be certainty in addition of future prospects to the existing income unlike in the case of a person having a permanent job, yet the said perception does not really deserve acceptance. We are inclined to think that there can be some degree of difference as regards the percentage that is meant for or applied to in respect of the legal representatives who claim on behalf of the deceased who had a permanent job than a person who is self-employed or on a fixed salary. But not to apply the principle of standardization on the foundation of perceived lack of certainty would tantamount to remaining oblivious to the marrows of ground reality. And, therefore, degree-test is imperative. Unless the degree-test is applied and left to the parties to adduce evidence to establish, it would be unfair and inequitable. The degree-test has to have the inbuilt concept of percentage. 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 and 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.*
>
> *58. The controversy does not end here. The question still remains whether there should be no addition where the age of the deceased is more than 50 years.* ***Sarla Verma*** *[supra] thinks it appropriate not to add any amount and the same has been approved in* ***Reshma Kumari*** *[supra]. Judicial notice can be taken of the fact that salary does not remain the same. When a person is in a permanent job, there is always an enhancement due to one reason or the other. To lay down as a thumb rule that there will be no addition after 50 years will be an unacceptable concept. We are disposed to think, there should be an addition of 15% if the deceased is between the age of 50 to 60 years and there should be no addition thereafter. Similarly, in case of self-employed or person on fixed salary, the addition should be 10% between the age of 50 to 60 years. The aforesaid yardstick has been fixed so that there can be consistency in the approach by the tribunals and the courts.*"

[h] In paragraph 59 of ***Pranay Sethi*** (supra), the Constitution Bench of Hon'ble Supreme Court recorded its conclusions as under –

> *"59. In view of the aforesaid analysis, we proceed to record our conclusions:*
>
> *59.1. The two-Judge Bench in* ***Santosh Devi*** *[****Santosh Devi v. National Insurance Company Limited, (2012) 6 SCC 421****] should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in* ***Sarla Verma*** *[supra], a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.*
>
> *59.2. As* ***Rajesh*** *[****Rajesh v. Rajbir Singh, (2013) 9 SCC 54****] has not taken note of the decision in* ***Reshma Kumari*** *[supra], which was delivered at earlier point of time, the decision in* ***Rajesh*** *[supra] is not a binding precedent.*
>
> *59.3. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.*
>
> *59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of*

> *25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.*
>
> *59.5. For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of **Sarla Verma** [supra**]** which we have reproduced hereinbefore.*
>
> *59.6. The selection of multiplier shall be as indicated in the Table in **Sarla Verma** [supra**]** read with paragraph 42 of that judgment.*
>
> *59.7. The age of the deceased should be the basis for applying the multiplier.*
>
> *59.8. Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."*

33. As regards payment of compensation on account of loss of consortium, in ***Magma General Insurance Co. Ltd. v. Nanu Ram, (2018) 18 SCC 130***, the Hon'ble Apex Court noted that the judgement in ***Pranay Sethi*** (supra) dealt with various heads under which compensation is to be awarded in a death case and one of these heads is loss of consortium. The Hon'ble Court, *inter alia*, held that in legal parlance, "consortium" is a compendious term which encompasses 'spousal consortium', 'parental consortium' and 'filial consortium'. The Hon'ble Court further observed that '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*", '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*" and 'filial consortium' is the right of the parents to compensation in the case of an accidental death of a child. The Hon'ble Apex Court further held that the Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families in cases of genuine claims and the amount of compensation to be awarded as consortium shall be governed by the principles of awarding compensation under "loss of consortium" as laid down in ***Pranay Sethi*** (supra).

34. On consideration of the evidence and materials on record and the well-settled principles of law discussed above, this Court has no hesitation to hold that the instant claim for compensation on account of the death of the victim arising out of injuries received in a road traffic accident deserves to be allowed in law and in this case the opposite party no.2/Insurer is liable to pay the compensation.

35. As such, it is now necessary to calculate the amount of compensation payable by the opposite party no.2/Insurer in the instant claim petition.

AGE OF VICTIM AT THE TIME OF ACCIDENT:

36. In ***Jenali v. National Insurance Co. Ltd.***, ***2006 SCC OnLine Cal 440***, the Hon'ble Calcutta High Court accepted the age of the victim on the basis of the victim's Voter Identity Card issued by the Election Commission of India as the same was held to be a public document which had a presumptive value which remained unrebutted in terms of Section 35 of the Indian Evidence Act.

37. Considering this settled principle of law and Aadhaar Card of the victim (Exbt.6), this Court finds the victim was aged about 39 years as on the date of the accident.

MULTIPLIER:

38. Taking the age of the victim at the time of death to be in the age group of 36 to 40 years, the applicable multiplier in this case will be '**15**' in terms of the judgement in ***Sarla Verma*** (supra) which was upheld in ***Pranay Sethi*** (supra).

INCOME OF VICTIM AT THE TIME OF ACCIDENT:

39. As per the claim petition, the victim an appointee to the post of Clerk at Rampur Indira Uccha Vidyapith, Lahanda with a salary of Rs.22,700/- per month and at the time of accident took place, he was awaiting to join his post due to Covid-19 pandemic situation. However, no evidence has been adduced by the claimants in support of such claim.

40. As regards the question of fixation of notional income of a minor victim of road traffic accident, the Hon'ble Apex Court in ***Baby Sakshi Greola v. Manzoor Ahmad Simon, 2024 SCC OnLine SC 3692*** held as under –

> *"29. This Court in the case of Kajal [**Kajal v. Jagdish Chand, (2020) 4 SCC 413**] has held that taking notional income is not the correct approach. Instead, the minimum wages payable to a skilled workman in the concerned State has to be taken into consideration because, that would be the minimum amount which she would have earned on becoming a major. In this case, the minimum wage payable to a skilled workman in the State of Delhi at the time of the accident, i.e., 2nd June 2009, was Rs. 4,358/- per month."*

41. In ***Sidram v. United India Insurance Co. Ltd., (2023) 3 SCC 439***, while discussing the law relating to proof of the victim's income and following an earlier judgement in ***Kirti v. Oriental Insurance Co. Ltd., (2021) 2 SCC 166***, the Hon'ble Apex Court, *inter alia*, held that it is not necessary to adduce any documentary evidence to prove the notional income of the victim and the Court can award the same even in the absence of any documentary evidence. It was further held that therein that the Court, while choosing the method and fixing notional income, should ensure that it is just in the facts and circumstances of the particular case, neither assessing the compensation too conservatively, nor too liberally.

42. Borrowing wisdom from the judgements referred to above and taking a holistic view of the peculiar facts of this case and the evidence on record, this Court is of the view that taking the minimum wages of 'skilled' employees in the employment of 'establishments' as defined under Shops Establishments Act, 1963 as per Minimum Wages Circular of the Labour Commissioner, Government of West Bengal contained in Memo No. 51/703/Stat/2RW/29/2016/LCS/JLC dated 25.06.2000 for the period from July to December, 2000 (covering the date of accident of this case), the notional income of the victim should be fixed at **Rs.10,350/-** per month, i.e., **Rs.1,24,200/-** per annum.

<u>DEDUCTIONS TOWARDS PERSONAL AND LIVING EXPENSES</u>:

43. As regards deduction towards personal and living expenses, from ***Sarla Verma*** (supra) as upheld in ***Pranay Sethi*** (supra), the following principles emerge –

[a] Where the deceased was married, the deduction towards personal and living expenses of the deceased should be –

i. *one-third* (1/3rd) if the dependent family members are 2 to 3,

ii. *one-fourth* (1/4th) if the dependent family members are 4 to 6, and

iii. *one-fifth* (1/5th) if the dependent family members exceed 6.

[b] Where the deceased was a bachelor and the claimants are the parents, normally, 50% is deducted as personal and living expenses as it is assumed that a bachelor would tend to spend more on himself.

[c] Subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. Similarly, in the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.

44. Keeping in mind the above settled position of law, evidence on record and the fact that the victim left behind 3 (three) dependant family members (excluding the father), this Court finds a deduction of 1/3rd should be made from the established income towards personal and living expenses of the victim.

<u>FUTURE PROSPECT</u>:

45. As regards calculation of compensation towards future prospects of the victim, from ***Sarla Verma*** (supra) and ***Reshma Kumari*** (supra), which were upheld in ***Pranay Sethi*** (supra), the following principles transpire –

[a] In cases where the deceased had a *permanent job* –

- **i.** An addition of 50% of actual salary to the income of the deceased towards future prospects should be made while determining the income when the deceased was below the age of 40 years;
- **ii.** An addition of 30% of actual salary to be made towards future prospects if the age of the deceased was between 40 to 50 years;
- **iii.** An addition of 15% of actual salary to be made towards future prospects if the age of the deceased was between 50 to 60 years;
- **iv.** Actual salary should be read as actual salary less tax.

[b] In cases where the deceased was *self-employed or on a fixed salary* –

- **i.** An addition of 40% of established income is to be made towards future prospects for a deceased aged below 40 years;
- **ii.** An addition of 25% of established income is to be made towards future prospects for a deceased aged between 40 to 50 years;

- **iii.** An addition of 10% of established income is to be made towards future prospects for a deceased aged between 50 to 60 years;
- **iv.** Established income means the income minus the tax component.

46. Keeping in mind such settled position of law, evidence on record and the fact that the victim to be on a fixed salary and aged below 40 years, this Court holds that an addition of 40% of established income is to be made towards future prospects.

LOSS OF ESTATE, LOSS OF CONSORTIUM AND FUNERAL EXPENSES:

47. In ***Pranay Sethi*** (supra), the Hon'ble Supreme Court, *inter alia*, held that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively and that such amounts should be enhanced at the rate of 10% in a span of every three years. The judgement in ***Pranay Sethi*** (supra) was delivered on 31.10.2017 and a period of six years has already passed since then. As such, after enhancement of 10% every three years, the figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses comes to Rs.18,000/-, Rs.48,000/- and Rs.18,000/- respectively at the present.

48. Accordingly, following the *ratio* of the judgements in ***Pranay Sethi*** and ***Nanu Ram*** (supra), the claimants, being the widow, daughter, mother and father of the victim, are separately entitled to get a sum of **Rs.48,000/-** each on account of loss of consortium and in addition thereto, the claimants are also jointly entitled to a sum of **Rs.18,000/-** on account of loss of estate and another sum of **Rs.18,000/-** on account of funeral expenses as per the judgement in ***Pranay Sethi*** (supra).

INTEREST:

49. Section 171 of the Act, which empowers the Claims Tribunal to award interest in addition to the amount of compensation, reads as under –

> *"**171. Award of interest where any claim is allowed. —** 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."*

50. A plain reading of the Section 171 of the Act indicates that the Claims Tribunal has been vested with the power to direct payment of simple interest at such rate and from such date as it may specify in this behalf with the restriction that the interest should not be payable from a date prior to the date of making of claim application. It may be noted that the statute has not fixed any rate of interest and the matter has been left with the discretion of the Claims Tribunal.

51. In ***Kohinur Begum v. New India Assurance Co. Ltd., AIR 2008 Cal 84***, the Hon'ble Calcutta High Court, *inter alia*, held that ordinarily, if a claim application succeeds and the Claims Tribunal comes to the conclusion that any amount of compensation is payable, it should also grant interest on that amount from the date of making of claim application unless it is found that for the delayed disposal of the claim application, the claimant himself was responsible and that the grant of interest would be a hardship upon the insurance company who was not responsible for the grant of the delayed relief to the claimants. It was further held that the Motor Vehicles Act being a beneficial piece of legislation, adequate amount of interest should be paid to the claimants so that they do not suffer for the delay caused due to belated disposal of the application. The Hon'ble Court further held that if the rate of interest is fixed not above the rate of bank interest for the period concerned, the insurance company or the owner of the vehicles would not be prejudiced in any way for grant of such rate of interest because of the fact that the amount which was ultimately payable was retained by them and they utilised the money at least at the prevailing rate of bank interest, if not more, by investing elsewhere, during the pendency of the proceeding.

52. Upon going through the case record, it is found that the instant case was filed on 05.03.2021. This Court further finds that no substantial delay was caused in this case due to conduct of the claimants. As such, this Court is of the view that the claimants are entitled to get interest from the date of filing of the claim petition. Accordingly, this Court holds that the claimants shall be entitled to additional amount on account of interest to be calculated on the compensation amount at the rate of 6% per annum from 03.02.2017 till actual realisation of the same.

FINAL CALCULATIONS OF AMOUNT OF COMPENSATION:

SRL NO.	HEAD OF COMPENSATION	AMOUNT
1.	Annual Income @ ₹10350 per month	₹1,24,200/-
2.	Future Prospect @ 40% × 12 months	₹49,680/-
3.	Deduction for Personal Expenses	1/3rd
4.	Multiplier	15
5.	Loss of Dependency	₹17,38,800/-
6.	Loss of Estate	₹18,000/-
7.	Loss of Consortium [₹48,000 × 4]	₹1,92,000/-
8.	Funeral Expenses	₹18,000/-
9.	Total Compensation Amount	₹19,66,800/-
10.	Rate of Interest and Date of Effect	6% w.e.f. 05.03.2021

53. In view of the settled position of law discussed above, this Court has no hesitation to hold that there is no restriction to grant of just compensation

54. Issue Nos. 5, 6 and 7 are answered and decided accordingly.

O R D E R

Accordingly, the instant claim petition under Section 166 of the Motor Vehicles Act, 1988 is allowed *ex parte* against the opposite party no.1/Owner of the offending vehicle and on contest against the opposite party no.2/Insurer, but without costs.

The claimants do hereby get an Award of compensation amounting to Rs.19,66,800/- (Rupees Nineteen Lakh Sixty Six Thousand Eight Hundred) in total plus an amount of interest to be calculated on this amount at the rate of 6% per annum from 05.03.2021 till the date of actual realisation of the same.

The opposite party no.2/ The ICICI Lombard General Insurance Co. Ltd. is hereby directed to issue 4 (four) account payee cheque amounting to Rs.4,91,700/- (Rupees Four Lakh Ninety One Thousand Seven Hundred) in favour of the claimant nos.1 to 4 plus an amount of interest to be calculated on the aforesaid cheque amounts at the rate of 6% per annum from 05.03.2021 till the date of such payment within sixty days from the date of this Award, failing which, the claimants shall be at liberty to realize the same through the Court.

The claimants are directed to make payment of the balance/additional court fees, if not already paid, within a period of ten days from the date of this Award and it is made clear that only after payment thereof, this Award shall become operative.

After receiving the cheque issued in favour of the minor claimant no.2, the amount thereof shall be invested by the claimant no.1 in fixed deposit scheme(s) in the name of the claimant no.2 either in a nationalized bank or in post office till the claimant no.2 attains the age of majority. After furnishing of documents by the claimant no.1 regarding making of such investment in the name of the claimant no.2, the cheque issued in favour of the claimant no.1 shall be handed over.

Let a copy of this Award be supplied free of cost to the claimants, subject to payment of the deficit/additional court fees, if any, and let another copy of this Award be handed over to the opposite party no.2/Insurer free of cost for carrying out the directions embodied in this Award.

The claimants shall be at liberty to put this Award into execution after sixty days, if it is not satisfied by that time.

The instant motor accident claim case accordingly stands disposed of.

At my dictation

Judge

District Judge, Uttar Dinajpur -cum- Judge, Motor Accident Claims Tribunal, Raiganj, Uttar Dinajpur