

IN THE COURT OF <b>M.A.C. TRIBUNAL</b> cum ADDL. DIST. JUDGE, <b>FTC-II</b> COURT : ISLAMPUR DIST : UTTAR DINAJPUR.	
Present : Sri Nilanjan De, ( <b>J.O Code-WB00716</b> ) Additional Sessions Judge, F.T.C-II, Islampur, U/Dinajpur.	
<b>MACC Case No. 122 of 2023</b> <b>Ref : 166 of M.V. Act, Date of filing 15.05.2023</b>	
Petitioner: Josnera Khatun and others wife of : Late Mahammad Saheb Village : Parol, PO : Shukuntola PS : Chakulia District : Uttar Dinajpur	<b>Claimants</b> <b>1. Josnea Khatun</b> <b>2. Samim Hussain</b> <b>3. Nazimul Haque</b> <b>4. Najim Akhtar</b> <b>5. Rijaful Bibi</b> <b>6. Abdul Haque</b>
Opposite Party No. 1 :	Maksud Alam
Opposite Party No. 2 :	The Legal Manager, I.C.I.C.I. Lombored General Insurance Company Limited
REPRESENTED BY :	<u>NAME OF THE ADVOCATE</u>
Petitioner/Claimant Advocate	<b>Asit Kumar Das</b>
Name of the OP/Insurance Company	<b>Tohidur Rahaman/ Amitava Moitra</b>
Name of the OP/Owner of offending vehicle	<b>Subhashis Das</b>

***Details of the RTA & Claim.***

Date of Accident.	<b>02.02.2023</b>
Date of FIR	<b>04.02.2023</b>
Date of Charge sheet	<b>30.04.2023</b>
Date of Filing the Claim Case	<b>15.05.2023</b>
Date of Framing of Issue	<b>02.06.2025</b>
Date of commencement of Evidence	<b>04.08.2025</b>
Date of Depositing Court fees	<b>01.11.2025</b>
Date of award	<b>31.03.2026</b>

**List of Petitioner's/Claimant's witness:**

**A. Petitioner :**

RANK	NAME	NATURE OF EVIDENCE (Eye WITNESS, Income WITNESS, EXPERT WITNESS, MEDICAL WITNESS, Other WITNESS)
PW1	<b>Josnara Khatun</b>	Claimant
PW2	<b>Majibur Rahaman</b>	Eye-witness

**B : List of OP-1 Owner's witness :**

RANK	NAME	NATURE OF EVIDENCE
1		
2		

**C : Insurance Co OP-2 Witnesses, if any :**

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS)
OPW1	Indrajit Das	Legal Manager of Insurance Company
OW2	Mahamud Ali	Staff, Chakulia BPHC

**LIST OF EXHIBITS**

A Claimant's SIDE.

SR NUMBER	EXHIBIT NO	DESCRIPTION
1	<b>Exhibit-1</b>	Certified Copy of Formal FIR in connection with Chakulia PS case no. 18 of 2023 dated 04.02.2023
2	<b>Exhibit-2</b>	Certified copy of written Complaint filed by Josnara Khatun dated 04.02.2023
3	<b>Exhibit-3</b>	Certified Copy of Charge-sheet being no. 08 of 2023 dated 30.04.2023.
4	<b>Exhibit-4</b>	Certified copy of Insurance policy in the name of Driver Maksud Alam being no. 3008/279048901/00/B00 valid from 02.02.2023 to 01.02.2024.
5	<b>Exhibit-5</b>	Certified copy of PM report vide Chakulia PS UD case no 03 of 2023 dated 07.02.2023.

B-OP -1 SIDE

SR NUMBER	EXHIBIT NO	DESCRIPTION
1		
2		
3		

**C- Insurance EXHIBITS**

SR NUMBER	EXHIBIT NO	DESCRIPTION
1	Exhibit-A	Xerox copy of power of attorney by the company which was duly registered before the Notary Siuri, Sadar Court (Birbhum). The Xerox certificate duly verified with original.
2	'X'/ Exhibit-D identification	Admission Register duly authorized by the hospital.
3	Exbt-B (Series)	Complainant addressed to I.C. Chakulia PS and SP of Islampur.
4	Exhibit-C	Authorization latter from BMOH, Chakulia.
5	Y'/ for identification	Inquest Report of the victim in ref with Chakulia P.S U/D Case no 03/23 dt 02.02.23.

**J U D G M E N T**

This is an application under the provisions of Sec.166 of the Motor Vehicles Act preferred by the hires of the deceased/victim Late Mahammad Saheb who are claiming compensation in the tune of Rs. 18,00,000/- (Eighteen Lakhs only) with interest for the premature death of the deceased/victim out of R.T.A. on 02.02.2023.

The petitioners' case in a nut shell, is that the deceased/victim namely Mahammad Saheb was standing on the left side of the unpaved portion of the Shukuntola to Chakulia Road near Nayatola Godown where the tractor being no. BR37GA54220 allegedly traveling at an abnormal speed and negligent manner, lost it's control and swerved into the wrong side of the road. The victim was struck and thrown a considerable distance and due to sustaining multiple grievous injuries resulted his death.

The defense case is that the victim with two other traveling in a motor cycle and on its journey at around 4pm its dashed the tractor and the driver of the motor cycle/victim died in the spot. The daily Utterbanga Sanbad on 03/02/23 published the news in 4page. The insurance claim the victim without proper licence drove the motor cycle violating the norms and for that the victim will not entitled for compensation. He further summit's it is a case of joint liability and **most specifically that at the time of accident the offending Tractor with no. BR37/G4220 was not covered by Insurance Policy (Exbt-4) as the same was valid from 18.19hrs 01-02-2023 till the midnight of 01-02-2024, the accident occurred at 4pm much before the policy in force.**

The PM of the deceased/victim Mahammad Saheb was took place at Islampur SD hospital in reference with Chakulia P.S U/D Case no 03 of 2023 dated 02.02.2023. The age of the deceased/victim mentioned as **28** years and he was a mason/labour and according to the petitioners his monthly earning stands Gross Rs. **500/-** per day. No document regarding income submitted but the report suggested that the victim with two other traveling in a motor cycle and on its journey at around 4pm its dashed with a tractor and the driver of the motor cycle/victim died in the spot.

There is no document to prove the age of the victim and it is even not mentioned in the Postmortem report. Considering the evidence of the PW-1/ widow of the victim the age of deceased consider as 27 years and the OP/Insurance Company also did not challenged the same.

The petitioners never made any claim under Section 140 of MV Act. The petitioner number 1 is the wife of the deceased/victim. Petitioner no. 2 to Petitioner no. 4 are the three children (all of them petitioner no. 2 to Petitioner no. 4, children of the deceased/victim are minor) of the deceased/victim. Petitioner no. 5 and Petitioner 6 are the parents of the deceased/victim. The fact in the petition is apparently distorted but the factum of the accidental death is true.

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The offending tractor being no. **BR37GA54220** was duly insured by the ICICI Lombard General Insurance Company Limited and the coverage is **valid from 18.19hrs 01-02-2023 till the midnight of 01-02-2024** and at the time of accident, the offending vehicle had no valid Insurance coverage.

**The owner OP-1 appeared through Subhashis Das and submit their written objection on 14-09-2023 and finally did not contest the claim case.**

**The Court fees of Rs. 18,000/- paid on 01.11.2025.**

The deceased/victim's wife Josnara Khatun was examined as PW-1. She corroborated the claim application. The wife of the victim/deceased submitted the formal FIR in connection with Chakulia PS case no. 18 of 2023 dated 04.02.2023 (**Exhibit-1**). The FIR was lodged by herself at Chakulia P.S (**Exhibit 2**).

The fact describe in the FIR is also named the two injured Abdul Kasem and Firoz Alam which tallies with Exbt-D the **Admission and Refer Register** of Chakulia BPHC with time 3.30pm and 4pm. It is apparent that the RTA occurred before 4pm of the day. The certified copy of the charge-sheet in the above P.S case with sections **279/337/338/304(A)** of I.P.C. marked as **Exhibit-3**.

**In-spite of the counter story the OP-2 not challenged the Charge Sheet.** Certified copy of the admitted Insurance policy in the name of **OP-1** Maksud Alam(owner) being no. **3008/279048901/00/B00 valid from 02.02.2023 time at 18.19hrs 01-02-2023 till the midnight of 01.02.2024** marked as **Exhibit-4**. Certified copy of **PM report** of the victim vide Chakulia PS UD case no 03 of 2023 dated 07.02.2023 marked **Exhibit-5**. All the evidence and documents established the death of the victim out of road traffic accident with the question that whether the claimants able to obtain the claim amount from the owner of the tractor or from OP-2.

Majibur Rahaman who witnessed the accident adduced as eye-witness PW-2. He mechanically corroborated the fact, he did not mention the time of the accident. He denied that the accident occurred due to the fault of the deceased/victim.

The Legal Manager, Mr. Indrajit Das of ICICI Lombard General Insurance Company Limited adduced from the side of the Insurance company for nullify the claim on the only point that the vehicle was not insured by their time at the time of the accident. He argued that the Advocate with ill intention prepared the claim petition incorporating them OP-2.

There is another witnesses from Chakulia BPHC who proved that two other injured was admitted in their Health Center at 3.30pm and 4pm and both referred to NBMCH. It established that the RTA occurred before 3.30pm when there was no Insurance coverage. **The Insurance Company established their no liability.**

On the basis of the rival contention of both the sides, the issues have been framed on **02.06.2025** for the purpose of consideration in this case:

**ISSUES :**

1. Is the instant claim application is maintainable in the present form of law ?
2. Has the claimant any cause of action to bring the claim against the opposite parties ?
3. Has the deceased/victim died following any road accident as alleged having involvement the vehicle no. BR37GA4220 (Tractor).
4. Has the vehicle bearing no. BR37GA4220 (Tractor) duly covered under the Insurance with ICICI Lombard General Insurance Co. Ltd. on the day of accident?
5. Is the petitioners/claimant is entitle to get the award of compensation from OP as claimed by the petitioners, if yes, to what extent?

**DECISION WITH REASONS**

**Issue nos. 1 and 2;**

These issues nos. 1 and 2 are taken up together for the sake of brevity and convenience. These issues are not agitated at the time of argument. No provision of law has been brought to notice of this Tribunal which would not maintainable in its present form and prayer.

Now we have to consider whether the petitioners have any cause of action to file this claim petition.

On careful perusal, it appears that the petitioners brought the instant case u/s 166 of the Motor Vehicle Act, 1988 for claiming compensation from the **Maksud Alam**, owner of the offending tractor BR37GA4220 and OP-2, ICICI Lombard General Insurance Company Limited insurer of the offending tractor. The death of the victim Mahammad Saheb is established.

**It appears that the offending vehicle was not duly insured by OP no. 2 and during trial the OP no. 2 established the fact that they have absolute no liability as at the time of accident the offending tractor BR37GA4220 was not insured.**

From the evidence of P.W. 1 it appears that deceased Mahammad Saheb met with an road accident by the offending vehicle BR37GA4220 (Tractor) and the petitioners are the dependents of the deceased. The nature of accident is altered. The Offending vehicle was not duly insured with the ICICI Lombard General Insurance Company Limited at the time of the accident. The certified copy of the charge-sheet against **Maksud Alam** Exhibit-3 in connection with Chakulia PS case no. 18 of 2023 clearly prove the liability of the offending

vehicle and as per the law the OP-1 is liable to pay the compensation. So the petitioners have sufficient cause of action to file this case.

The Insurance did not raise anything about vicarious liability and as such there is no scope to add other in this claim case. The ICICI Lombard General Insurance Company Limited is unnecessary tagged in this case because at the time of accident the offending tractor was not insured the coverage started from **18.19hrs of 01-02-2023 till the midnight of 01.02.2024.**

In view of the above, the issue Nos.1 and 2 are disposed of accordingly in favour of the petitioners and the petitioner has true cause of action against the owner of the offending vehicle **Maksud Alam.**

**Issue No. 3 and 4:**

Both the issues are taken up for the sake of brevity and convenience.

Ld. Advocate for the petitioners have submitted that on 02.02.2023 deceased/victim namely Mahammad Saheb was standing on the left side of the unpaved portion of the Shukuntola to Chakulia Road near Nayatola Godown when the tractor being no. BR37GA54220 allegedly traveling at an abnormal and negligent speed, lost control and swerved into the wrong side of the road. The victim was struck and thrown a considerable distance, sustaining multiple grievous injuries that resulted in his death at the spot. The real story is otherwise that three of them traveling in a motor cycle dashed with the tractor in a high speed.

It is admitted that the PM of the victim/deceased Mahammad Saheb was took place at Islampur Sub-Divisional Hospital in reference with Chakulia P.S U/D Case no 03 of 2023 dt 02.02.2023 the Photocopy of postmortem report marked as Exhibit-5.

The deceased/victim's wife was examined as PW-1. She corroborate the claim application. She deposited the formal FIR with Chakulia PS case no. 18 of 2023 dated 04.02.2023(Exhibit-1). The FIR was lodged by Josnara Khatun, the wife of the deceased/victim (Exhibit 2). The certified copy of the charge-sheet against Muksu Alam marked as Exhibit-3. Certified copy of the Insurance policy in the name of Driver Maksud Alam being no. 3008/279048901/00/B00 valid from **18.19hrs of 01-02-2023 till the midnight of 01.02.2024** marked as Exhibit-4. Certified copy of PM report vide Chakulia PS UD case no 03 of 2023 dated 07.02.2023 marked Exhibit-5.

The OP2 has not been able to shake the veracity of this witness during cross-examination and this court has no hesitation in accepting the evidence of the witness to hold that the alleged accident was taken place due to rash and negligent driving of **Maksud**

**Alam** the driver of the offending vehicle. It may be mentioned here that the fact the charge sheet was submitted against the accused driver fortify the conclusion regarding the fault of accident lies on the shoulder of the driver of the offending vehicle.

So, the material evidence on record suggests an inference that the death of Mahammad Saheb was caused as a result of an accident occurred by rash and negligent driving of the offending vehicle. Therefore, all the issues supported the claimants.

According to the claim petition succeed and the Issue No 3 disposed in favour of the claimants but Issue no 4 "Has the vehicle bearing no. BR37GA4220 (Tractor) duly covered under the Insurance with ICICI Lombard General Insurance Co. Ltd. on the day of accident?" **answer is a big NO.** The vehicle was not insured by OP-2 during the time of accident and OP-1 is personally liable for the claim.

**In respect of issue No. 5** the main criteria to fix the award of compensation, it is the duty of the Tribunal to hold the income of the victim during his life time. It is stated that the victim was not an employee of any concern which issued his salary against pay-slip so naturally, there is no fixed income of the victim and is held that the victim earn from his own business and his earning as per Apex Court's decision is considered accordingly with the amount of Notional income @ Rs. 6000/- per month.

The PW-1 being the wife of the deceased/victim did not produce any income certificate or the age proof of the deceased/victim.

Now, in respect of the last Issue regarding computation of claim we first consider the **Income** of the deceased/victim which is simply Rs. 6000 X 12 = **Rs.72,000/- P.A**

The Personal expenses of victim will be deducted @1/4 = **Rs.18,000/-**

The amount stand after deduction will be(72000-18000) = **Rs. 54,000/-**

**Multiplier :**

According to the the judgment of Hon'ble Supreme Court in case of *New India Assurance Company Limited v. Pranay Sethi, (SC)(Constitutional Bench)* reported in 2017 AIR (SCW) 5157 the Hon'ble Supreme Court made a specific reference to the case of Sarala Verma relating to assessment of compensation.

"42. We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying Sushma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of **17** (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is **M-17 for 26 to 30 years**, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M 14 for 27 to 45 years, and M-13 for 46 to

50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."

The Hon'ble Court prepared a structural multiplier referring to Susamma Thomas, Trilok Chandra and Charlie cases and directed to follow the said new standardized multiplier scale for computation of compensation by the tribunals. The said structural multiplier is reproduced as under:

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 II Schedule to M.V. Act	Multiplier actually used in Second Schedule to M. V Act (as seen from the quantum of compensation)
1	2	3	4	5	6
Upto 15 years	-	-	-	15	20
15 to 20 years	16	18	<b>18</b>	16	19
21 to 25 years	15	17	<b>18</b>	17	18
26 to 30 years	14	16	<b>17</b>	18	17
31 to 35 years	13	15	<b>16</b>	17	16
36 to 40 years	12	14	<b>15</b>	16	15
40 to 45 years	11	13	<b>14</b>	15	14
46 to 50 years	10	12	<b>13</b>	13	12
51 to 55 years	9	11	<b>11</b>	11	10
56 to 60 years	8	10	<b>9</b>	8	8
61 to 65 years	6	8	<b>7</b>	5	6
Above 65 years	5	5	<b>5</b>	5	5

In the instant case in hand the deceased Mahammad Saheb was 28 years old at the time of death. So, in view of the steps as followed in Sarla Verma Case, the multiplier will be **17** that is **Rs. 54000/- multiple 17 = Rs. 9,18,000/- (Nine Lakhs Eighteen thousand Only) is the gross Compensation amount.**

**Future Prospect:**

According to the view of Hon'ble Apex Court in Oriental Insurance Company Limited Vs. Pranay Sethi and others, 2017 in case the deceased was self-employed or a fixed salary, an addition of 25% of the established income should be the warrant where the deceased was below the age of 40 years.

The Tribunal has to consider what would be the compensation in regard to the future prospect of the basis of observation of Hon'ble Apex Court and the age group in which the deceased/victim belonged.

In the present case the **deceased/victim was aged about 28 years** and he has no such fixed income and so it is observed that he is an unskilled labour and an addition of **25%** to the total income is assessed by the Tribunal as his future prospect.

The future prospect @ 25% stand as **Rs. 2,29,500/-**

**The amount stand after addition of Future Prospect = Rs. 9,18,000/- + Rs. 2,29,500/- = Rs. 11,47,500/-.**

Ld. Advocate for the petitioner has submitted that the petitioner is also entitled to be compensated by award towards the head of funeral expense, loss of estate and consortium.

In the instant case considering the age of the deceased/victim I am inclined to allow compensation on the ground of Consortium.

**Compensation on conventional head**

i) loss of estate **Rs.15,000/-**

ii) Funeral expenses **Rs.15,000/-**

iii) Widow, children and parental Consortium @ Rs. 10,000/-each = **Rs. 60,000/-.**

Total award-able compensation thus stands **Rs. 11,47,500/- + Rs. 30,000/- + Rs. 60,000/- = Rs. 12,37,500/-**

**GRAND TOTAL = Rs. 12,37,500/- (Twelve Lakh and Thirty Seven Thousand and Five Hundred only)**

**In the petition we had already noticed that petitioners have claimed a sum of Rs 18,00,000/- as compensation and the Court fees of Rs. 18,000/- is deposited.**

It is argued on behalf of the claimant that since the petitioners claimed for compensation and same may be allowed considering the economic background of the deceased/victim. It is argued counter that Tribunals hands are not tied under law to ascertain the compensation amount and it should be the just compensation as per the income of the deceased and other relevant factors which came during hearing of the claim petition. It is really unfortunate that the claimants took some tricks for getting the assured claim money from OP-2 instead of OP-1. The clever steps were caught during the conduct by the OP-2's Advocate.

As the case is pending for more than 02 years. Considering it this Tribunal finds it just and proper to impose simple interest @ **6 %** per annum from the date of filing of this application i.e **15.05.2023** till the date of actual deposit of the amount. The delay in depositing the compensation by more than 60 days fetch 9% of interest.

Hence it is

**ORDERED**

That the instant **M.A.C. No. 122 of 2023** be and same is allowed on contest against OP-1, **Maksud Alam**. The owner of the offending tractor being no.BR37GA4220.

The Claimants/Petitioners do get an award of **Rs. 12,37,500/- (Twelve Lakh and Thirty Seven Thousand and Five Hundred only)** in total as compensation along with Simple Interest @ 6 % per annum from the date of filing of this claim application i.e. on and from **15.05.2023** till realization of the award.

The rate of interest will be increased to 9% if the amount be deposited beyond 60 days.

The Opposite Party no. 1 **Maksud Alam** is hereby directed to pay the entire amount of compensation along with the interest equally in six cheques of **Rs. 12,37,500/- (Twelve Lakh and Thirty Seven Thousand and Five Hundred only)** to the petitioner nos. **1. Josnera Khatun w/o Late Mahammad Saheb 2. Minor Samim Hussain s/o Late Mahammad Saheb 3. Minor Nazimul Haque, s/o- Late Mahammad Saheb 4. Minor Najim Aktar, s/o Late Mahammad Saheb, 5. Rijaful Bibi w/o Abdul Haque and 6. Abdul Haque, s/o Ainudin @ Rs. 2,06,250/- each (Two lakhs Six thousand and Two hundred Fifty only)** within two months here of this order i.d the petitioners is at liberty to put this order into execution.

The claimant no. 1, being the mother is entitled to receive the Cheques on behalf of the minor claimant nos. **1. Minor Samim Hussain s/o Late Mahammad Saheb 2. Minor Nazimul Haque, s/o- Late Mahammad Saheb 3. Minor Najim Aktar, s/o Late Mahammad Saheb**, on an undertaking that she should invest the said two Cheque amount in fixed deposit, in any Nationalized Bank till his attaining majority and in this regard she should filed an indemnity bond to this Tribunal.

**Let a copy of this judgment be supplied to the contesting parties and O.P-1 Maksud Alam and The Legal Manager, ICICI Lombred General Insurance Company Limited, 7<sup>th</sup> Floor Apeejay House15, Park Street Taltala Kolkata 700016.**

**Date: 31.03.2026**

Nilanjan De. (J.O Code WB 00716)  
Judge MAC Tribunal,  
FTC -2<sup>nd</sup> Court Islampur, U/Dinajpur