

CNR No. : WBMD010186862018

HIGH COURT FORM.(J) 2.
HEADING OF JUDGMENT IN ORIGINAL SUIT/ CASE
District: Murshidabad

**IN THE MOTOR ACCIDENT CLAIMS TRIBUNAL
3rd Fast Track Court, Berhampore.**

Present : Sri, Santosh Kumar Pathak,
Judge M.A.C.Tribunal,
FTC-3, Berhampore, Murshidabad

MOTOR ACCIDENT CLAIM CASE NO : 463 of 2018

1. Sikha De @ Dey (Wife of the deceased).
2. Tiyaasha Dey (Minor daughter of the deceased)
3. Quasha Dey (Minor daughter of the deceased)
4. Pramila Dey (Mother of the deceased)

... Claimants

Versus

1 Janmajay Maity (Owner of the offending vehicle)

2 National Insurance Co. Ltd. Opposite Party

This suit/case coming on for **final hearing on 25.07.2023**

in the presence of ;

Ld. Advocate for Claimants : Md. Ashraf Ali

Ld. Advocate for O.P No. 2 : Shri Subhanjan Sengupta.

Date of Judgment : 31st day of July, 2023

J U D G M E N T

1. The instant application under Section 166 of M.V. Act,1988 (Amended Act 1994) has been filed by the claimants namely (1) Sikha De @ Dey (Wife of the deceased) as Claimant No.-1, (2) Tiyaasha Dey (Minor daughter of the deceased), as Claimant No.-2, (3) Quasha Dey (Minor daughter of the deceased) as Claimant No.-3 & (4) Pramila Dey (Mother of the deceased) as Claimant No.-4 for claiming compensation of

Rs. 29,08000/- with interest against the Insurance Company namely, National Insurance Co. Ltd. for the accidental death of Debsagar De @ Dey which took place on 27.06.2018 at about 9:45 P.M. The accident took place when the Boloro Car reached near the Rice Godown on NH-116B under Marisadai Police Station, District – Purba Mednipur, (in which the deceased was one of the passengers for going to visit Digha Sea Beach) at that time the offending vehicle i.e. a bus bearing No. WB-73D/7490 was being driven rashly and negligently at uncontrollable and breakneck speed by the driver of the said bus without blowing any horn and collided with the said Boloro car while the said offending vehicle was trying to overtake a Lorry. As a result, the deceased along with all the passengers died on the spot. Hence, this case was filed on **20.11.2018** to claim compensation by the surviving legal heirs of the deceased.

2. It is the case of the claimants that at the time of death, the deceased was aged about only 43 years (D.O.B. 02.12.1975) as per PAN Card, marked as Ext.-9) old and he used to earn Rs.24,112/- per mensem as a Govt. Contractor & General Order Supplier as per Certificate of Enlistment issued by Kandi Municipality (marked as Exbt.-10) and Income Tax Returns for the Assessment Year 2015-2016, 2016-2017 and 2017-2018 (marked as Exbt.-24 series). The claimants also submit that the reason of the accident was the rash and negligent driving by the driver of the offending bus. Accordingly, the claimants pray for passing necessary compensation in this case.

3. From the record, it appears that in spite of the notice, the **O.P. No.-1/owner** of the offending vehicle did not contest the case and thus, the instant case, proceeded **ex-parte** against him.

4. The **OP No.2 /National Insurance Co. Ltd.** appeared and also filed the Written Statement wherein the OP No.2 refuted all the material allegations of the claim application and

specifically stated that the vehicle bearing WB-73D/7490 was not in any way responsible for the alleged accident, as alleged by the claimants. It was also submitted by the OP No.2 that the alleged vehicle did not cause any accident and the driver of the vehicle was not responsible for the death of the deceased. The OP No.-2/Insurance Co. further submitted that the insurance company was/ is not responsible for the amount claimed. It was further stated that the vehicle was not driven at any time by the driver of the vehicle rashly and negligently. It was denied by the O.P. No.2 that the deceased Debsagar Dey was 43 years old at the time of the alleged accident. It was denied by O.P. No.2 that the deceased Debsagar Dey used to earn Rs.24,112/- per mensem as a Govt. Contractor & General Order Supplier. By way of written statement, the contesting O.P. has also denied its liability to pay any compensation for the death of Debsagar Dey and prayed for dismissal of the case. Accordingly, OP No.2 prays for dismissal of the instant claim case.

5. On the basis of the aforesaid pleadings of the parties, following issues were framed for determination of the claim of Claimants on recast: -

- A) Is the present claim application maintainable in its present form and laws?
- B) Have the claimants any cause of action to bring the present case against the OP No.-2?
- C) Has the victim died in a road accident involving the offending vehicle bearing No. WB-73D-7490 (Bus)?
- D) Whether the said accident was caused due to rash and negligent driving of the driver of the offending vehicle ?
- E) Was the offending vehicle covered under valid insurance policy at the relevant time of the accident ?
- F) Are the claimants entitled to get any compensation as prayed for, if so, to what extent ?

6. To substantiate the claim, claimants have examined three witnesses including the complainant namely Sikha De @ Dey as **PW-1**, Sujoy Kundu (one of the eye-witnesses) as **PW-2**, Subhas Das (Authorized witness from Income Tax Department) as **PW-3** and Krishna Chandra Ghosh (another eye-witness) as **PW-4** respectively.

7. Following documents were exhibited in this case as follows:-

Ext-1 Certified copy of F.I.R containing complaint.

Ext-2 Certified copy of Charge Sheet.

Ext-3 Certified copy of Post-Mortem Report of the deceased.

Ext-4 Photocopy of the Death Certificate of the deceased.

Ext.-5 Photocopy of the EPIC Card of the Petitioner No.-1.

Ext.-6 Photocopy of the AADHAR Card of the Petitioner No.-2.

Ext.-7 Photocopy of the AADHAR Card of the Petitioner No.-3.

Ext.-8 Photocopy of the EPIC Card of the Petitioner No.-4.

Ext-9 Photocopy of the PAN Card of the deceased.

Ext-10 Photocopy of Certificate of the Enlishment of the deceased.

Ext-11 Photocopy of Certificate of Enrollment (Professional Tax) of the deceased.

Ext-12 Photocopy of Income Tax Return of Assessment Year 2015-2016 of the deceased.

Ext-13 Photocopy of Income Tax Return of Assessment Year 2016-2017 of the deceased.

Ext-14 Photocopy of Income Tax Return of Assessment Year 2017-2018 of the deceased.

Ext-15 Photocopy of Registration Certificate of the offending vehicle.

Ext-16 Photocopy of the Tax Tax certificate of the offending vehicle.

Ext-17 Photocopy of Income Tax Return of Assessment Year 2016-2017 of the deceased.

Ext-18 Photocopy of Insurance Policy of the offending vehicle.

Ext-19 Photocopy of Permit Certificate of the offending vehicle.

Ext-20 Photocopy of the Driving License of the driver of the offending vehicle.

Ext-21 Photocopy of registered details of the vehicle bearing No. WB-02Y-1943 where victim was boarded.

Ext-22 Photocopy of Driving License of the driver of the Bolaro Car where victim was boarded.

Ext-23 Authorization Letter, issued by Income Tax Officer, Berhampore.

Ext-24 series Certified True copy of the Income Tax Return for the Assessment Year of 2015-2016, 2016-2017 and 2017-2018 in the name of the deceased.

8. On the other hand, OP No.2/ Insurance Co. did not adduce any evidence with regard to their specific case which was alleged in the written statement nor produced any document to support the defence taken.

DECISION WITH REASONS

Issue No A & B:

9. These issues are related to the rudimentary matters of this case. Though the case of the claimants has been denied by the OP No.2, no specific point has been put forth by the OP No. 2 challenging the very maintainability of the instant case. No such legal infirmity has been pointed out by the OP No.2. The only point raised is that driver of the offending vehicle is not made party in this case so, the instant case is not at all maintainable. In this connection, it need be mentioned that Hon'ble Supreme Court in *Oriental Insurance Co. Ltd. v. Meena Variyal*, (2007) 5 SCC 428, has expounded the general principles observing, *inter alia*, as under;

“The Motor Vehicles Act, insofar as it relates to claims for

compensation arising out of accidents, is a beneficent piece of legislation. It may also be true that subject to the rules made in that behalf, the Tribunal may follow a summary procedure in dealing with a claim. That does not mean that a Tribunal approached with a claim for compensation under the Act should ignore all basic principles of law in determining the claim for compensation. Ordinarily, a contract of insurance is a contract of indemnity. When a car belonging to an owner is insured with the insurance company and it is being driven by a driver employed by the insured, when it meets with an accident, the primary liability under law for payment of compensation is that of the driver. Once the driver is liable, the owner of the vehicle becomes vicariously liable for payment of compensation. It is this vicarious liability of the owner that is indemnified by the insurance company. A third party for whose benefit the insurance is taken, is therefore entitled to show, when he moves under Section 166 of the Motor Vehicles Act, that the driver was negligent in driving the vehicle resulting in the accident; that the owner was vicariously liable and that the insurance company was bound to indemnify the owner and consequently, satisfy the award made. Therefore, under general principles, one would expect the driver to be impleaded before an adjudication is claimed under Section 166 of the Act as to whether a claimant before the Tribunal is entitled to compensation for an accident that has occurred due to alleged negligence of the driver.”

Unless there is dispute to the identity of the driver, the claim petition cannot be turned down by the tribunal merely on the ground that the driver is not a party to the claim proceeding. Even without the impleadment of the driver of the offending vehicle, the claim application is maintainable. Reference may be had to the law laid down in ***Anuradha Varma v. State of Kerala* (1993 (2) KLT 777)**. Even if in the form for application claiming compensation, provision is made to show the details of the driver, the impleadment as a respondent is not imperative. Further, the owner remained *ex-parte* without contesting the case and thereby admitting the negligence on the part of the

rider of the motor cycle and the liability. In addition to this, the charge-sheet in the criminal case for the alleged accident will prima facie establish negligence as against the driver of the offending vehicle. Reference may be made to the law laid down in *New India Assurance Company Ltd. v. Pazhaniammal* (2011 (3) KLT 648) wherein it was held that " *the production of Police charge sheet is prima facie sufficient evidence of negligence for the purpose of a claim under Section 166 of the Act.*" Thus, the contention of the opposite party that the claim is not maintainable as the driver of the offending vehicle is not made party to this case is not tenable in view of the deliberation made above. Moreover, after going through the pleadings of the parties, evidence on record both oral and documentary, it is clear that the instant claim application is maintainable. Accordingly, these issues are disposed of in favour of the Claimants.

Issue No. C to rest.

10. These issues are imperative so as to decide as to whether the claimants are entitled to the prayer, they have made or not. Ld. Advocate for the Opposite Party No.2 vehemently submitted that the claimants have not been able to prove the instant case and, therefore, the claim application cannot be allowed. Accordingly, Ld. advocate for the OP No.2 prays the dismissal of the claim application.

11. Conversely, the Ld. Lawyer appearing for the claimants emphatically submitted that the alleged accident took place only because of the rash and negligent driving of the offending vehicle on the alleged date and time. It was further argued that by way of corroborative oral and documentary evidence, the claimants have proved to the hilt the factum of death of the deceased in the alleged accident. Accordingly, they are entitled to get compensation. Therefore, according to him, claimants have proved their case and are entitled to get the just and fair

compensation.

12. I have pondered over the claim application and the evidence on record i.e. the evidence of **PW-1, PW-2** (eye witness), **PW-3** and **PW-4** (another eye-witness) as well as documentary evidence i.e. **Ext.-1 to Ext.-24** with rapt attention.

13. From the evidence PW1, it transpires that she is the widow of the deceased. She was not present at the spot when the alleged accident took place. She has filed some documents (such as Exbt.-3, Exbt.-9 and Exbt.12, Exbt.-13 and Exbt.-14) wherefrom it appears that the deceased was aged about 43 years on the date of alleged accident and his details of income as a Govt. Contractor.

14. PW2 is one of the eye-witnesses to the alleged accident. He deposed that on 27.06.2018 while he was going to Digha by boarding the alleged bus at that time the alleged accident took place.

15. PW-3 is a summoned witness. Being authorized by the Income Tax Officer, Berhampore, Murshidabad he proved Authorization Letter and the Income Tax Return of the deceased namely Debsagar Dey for the Assessment Year 2015-2016, 2016-2017 and 2017-2018 (Exbt-23 and Exbt.-24 series).

16. PW-4 is the another eye-witness. He deposed that on 26.06.2018 in the night while he was going to Digha by boarding a car as tourist at that time one bus (bearing No. WB-73D-7490) which was coming from opposite side dashed the Bolaro Car bearing No. WB-02Y-1943 as it was trying to overtake a Lorry. As a result of that accident all the six passengers of the said Bolaro car including the deceased namely Debsagar De @ Dey died in that accident.

17. It may be found that at the time of accident the deceased was aged **42** years plus. In this regard, the petitioner has

produced the Post-mortem Report and PAN Card of the deceased being No. AQCPD2689G (Ext.-3 and Exbt.-9) showing the age of the deceased and the same has not been objected to by the OP No.2. Moreover, the documents marked Exhibits 1 to 2 clearly establish that the alleged accident took place and the deceased died on the spot as a result of the road accident.

18. Now, in order to decide the compensation, calculation thereof is required to be made in terms of the observation made by the Hon'ble Supreme Court in *Sarla Verma v. DTC*, (2009) 6 SCC 121. The Hon'ble Supreme Court analytically discussed the different methods of calculation and ultimately suggested the multiplicand and multiplier to come to a just and fair determination of the compensation to be awarded in motor accident claim cases, be it under section 163A or Section 166 of the Motor Vehicles Act, 1988. It was observed in a tabular form as follows;

“The multipliers indicated in *Susamma Thomas* (1994) 2 SCC 176: 1994 SCC (Cri) 335, *Trilok Chandra* (1996) 4 SCC 362 and *Charlie* (2005) 10 SCC 720: 2005 SCC (Cri) 1657 (for claims under Section 166 of the MV Act) is given below in juxtaposition with the multiplier mentioned in the Second Schedule for claims under Section 163-A of the MV Act (with appropriate deceleration after 50 years):

Age of the deceased	Multiplier scale as envisaged in <i>Susamma Thomas</i> (1994) 2 SCC 176 : 1994 SCC (Cri) 335	Multiplier scale as adopted by <i>Trilok Chandra</i> [(1996) 4 SCC 362]	Multiplier scale in <i>Trilok Chandra</i> 4as clarified in <i>Charlie</i> (2005) 10 SCC 720 : 2005 SCC (Cri) 1657	Multiplier specified in <i>Second Column in the Table Second Schedule to the MV Act</i>	Multiplier actually used in <i>Second Schedule to the MV Act</i> (as seen from the quantum of compensation)

	(1)	(2)	(3)	(4)	(5)	(6)
Up to 15 yrs		-	-	-	15	20
15 to 20 yrs		16	18	18	16	19
21 to 25 yrs		15	17	18	17	18
26 to 30 yrs		14	16	17	18	17
31 to 35 yrs		13	15	16	17	16
36 to 40 yrs		12	14	15	16	15
41 to 45 yrs		11	13	14	15	14
46 to 50 yrs		10	12	13	13	12
51 to 55 yrs		9	11	11	11	10
56 to 60 yrs		8	10	09	8	8
61 to 65 yrs		6	08	07	5	6
Above 65 yrs		5	05	05	5	5

It was further observed by the Hon'ble Supreme Court in **Sarla Verma** (supra) as under;

“We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying *Susamma Thomas* [(1994) 2 SCC 176 : 1994 SCC (Cri) 335] , *Trilok Chandra* [(1996) 4 SCC 362] and *Charlie* [(2005) 10 SCC 720 : 2005 SCC (Cri) 1657]), 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-18 for 26 to 30 years, M-17 for 31 to 35 years, M-16 for 36 to 40 years, M-15 for 41 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-8 for 56 to

60 years, M-5 for 61 to 65 years and M-5 for 66 to 70 years.”

19. Thus, in view of the above, calculation of compensation has to be made by considering various factors. In this connection, it needs a little mention that in order to decide the compensation for the death of the deceased, determination of the income of the deceased is necessary. With respect to the grant of compensation for future prospect, reference has to be made to the law laid down in *National Insurance Co. Ltd. v. Pranay Sethi*, (2017) 16 SCC 680. The Hon'ble Supreme Court observed;

“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.”

20. Thus, having regard to the deliberation made above, following calculation may be made to fix the amount of just and fair compensation in this case: -

i) Income of the deceased = Rs 24,869/- per mensem {Average income per month according to the last three Assessment Years Income Tax Return i.e. 2017-2018, 2016-2017 and 2015-2016 Rs. 3,19,245/- + Rs. 2,90,421/- + Rs 2,85,635/- = Rs. 8,95,301/- (Rs. 8,95,301/- Divided by 3 = Rs. 2,98,433/- divide by 12 = Rs. 24,869/-, as per Exbt.-14, Exbt.-13 and Exbt.12) and to this 25% will be added as future prospect as age of the deceased falls within the age group of 40 to 50 years) i.e. **Rs. 6,217/-**. Now monthly income of the deceased would be= **Rs. 24,869/- + Rs. 6,217/- (as future prospect) = Rs. 31,086/- per month.**

ii) Thus, total annual income of the deceased would be = Rs 31,086/- per mensem X 12 = Rs 3,73,032/-per annum.

iii) Total dependency of the deceased = Rs. 3,73,032/- X 15 {According to Second Schedule of M.V. Act, 1988 Act 1994 (as amended)} = Rs 55,95,480/-.

Now, from this, one-third of the total amount i.e. **Rs. 55,95,480/-** calculated has to be deducted as personal expenses of the deceased {According to *Sarla Verma v. DTC, (2009) 6 SCC 121 Para No. 14*}. Now, the **1/3rd** of the total amount is calculated to be **Rs. 18,65,160/-**. It will be deducted as personal expenses which might have been incurred by the deceased had he been alive. Now, after deduction of personal expenses of the deceased, the total income that would be fixed is (Rs 55,95,480/- – Rs. 18,65,160/- = Rs. 37,30,320/-). To this amount Rs. 30,000/- will be added on account of Loss of Estate and Rs. 20,000/- as Funeral Expenses i.e. Rs. 30,000 + Rs. 20,000 = Rs. 50,000/-. Thus, the total compensation amount will be **Rs. 37,80,320/- (Rs. 37,30,320/- + 50,000/-)**. Thus, the Claimant No. 1 as she is the wife of the deceased will get **Rs. 16,80,320/-** and the rest of the claimants i.e. Claimant No.2 being the minor daughter of the deceased, Claimant No.3 being the another minor daughter of the deceased and the Claimant No.-4 being the mother of the deceased will get **Rs. 7,00,000/-** each. However, Rs. 20,000/- will be further added as loss of consortium to the claim of the Claimant No.1. Thus, the **Claimant No.1** will get Rs. 16,80,320/- + Rs. + Rs. 20,000/- = **Rs. 17,00,320/-** and the Claimant No. 2, Claimant No.-3 and Claimant No.-4 will get **Rs. 7,00,000/-** each. Thus the total compensation amount will be **Rs. 38,00,320/- (Rs. 37,80,320/- + Rs. 20,000/-)** which is just and fair in this case and this amount will be borne by the OP No.-2/Insurance Co in the manner as specified herein above. Apart from this OP No.-2/Insurance Co., will also bear interest on the above awarded

compensation @ 6% per annum from the date of filing of this case i.e. **20.11.2018** till realization and on failure OP No.-2/Insurance Co., will also be liable to pay penal charge interest @ 9 % per annum from the date of order till realization.

Hence issue Nos. C,D, E and F are decided in favour of the petitioners/claimants.

In the result, the claim petition succeeds.

Court fees paid in the claim petition are not sufficient.

The petitioners/claimants are directed to pay deficit court fees within 30 days from the date of delivery of award.

Hence it is,

ORDERED

that the **M.V. Case No. 463 of 2018** be and the same is **allowed** on contest against the **O.P. No.2/National Insurance Co. Ltd.** and exparte against the O.P. No.1 (owners of vehicle) but without costs.

The claimants/petitioners do get award of **Rs. 38,00,320/- (Rupees Thirty-eight Lacs Three Hundred and Twenty only)** as compensation along with interest @ 6% per annum from the date of filing this case i.e on **20.11.2018** till realization of the award.

The **OP No.2** i.e. **National Insurance Co. Ltd.** being the insurer is directed to pay the awarded amount by issuing four Account Payee Cheques, out of which, Claimant No.-1, namely **Sikha De @ Dey** will be awarded **Rs. 17,00,320/- (Rupees Seventeen Lacs Three Hundred and Twenty only)** and the Claimant No.-2, namely **Tiyasha Dey**, Claimant No.-3 namely **Quasha Dey** and Claimant No.-4 namely **Pramila Dey** will be awarded **Rs. 7,00,000/- (Rupees Seven Lacs only)** each along with interest as stated within **90 days** hereof failing which claimant will be at liberty to put this order into execution with further interest @ **9% per annum** from the date of order till the date of realization.

Claimant No.-1 being the mother of Claimant No.-2 and Claimant No. 3 may receive the award amount of compensation granted in favour of her two minor daughters namely **Tiyasha Dey** and **Quasha Dey** and shall also deposit the same in favour of her said minor daughters in any nationalized bank or post office in fixed deposit scheme till they attain the age of majority.

DCF still not paid, thus Claimants are directed to pay DCF on awarded money at the earliest and then copy of judgment may be supplied to give effect to the order passed herein.

Let a copy of this judgment be given to the parties through their respective Learned Advocates for compliance after clearing DCF, but OP/Insurance Co. may get copy as and when asked for.

Dictated and Corrected by me:

Judge,
Motor Accident Claim Tribunal
Murshidabad.

-cum-

Additional District Judge,
3rd Fast Track Court,
Berhampore, Murshidabad.

Judge,
Motor Accident Claim Tribunal,
Murshidabad

-cum-

Additional District Judge,
3rd Fast Track Court,
Berhampore, Murshidabad.

J.O. Code WB00830