

(1)
MOTOR ACCIDENT CLAIM CASE NO : 446 of 2022
CNR No. WBMD01-008474-2018

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 : Karim-Ur-Reza
Judge M.A.C.Tribunal,
FTC-3, Berhampore, Murshidabad
J.O. Code WB00812.

1. **Sulekha Bibi** (Wife of the deceased).
2. **Sabnam Khatun** (Daughter of the deceased).
3. **Saukat Khan** (Son of the deceased).
4. **Ambia Bibi** (Daughter of the deceased). ... Claimants

Versus

1. Ajjul Sekh (Owner of the offending vehicle)
2. **The New India Assurance Co. Ltd.** ... Opposite Parties

This suit/case coming on for final hearing on 20.05.2025 in the
presence of :-

Ld. Advocate for Claimants : Md. Ashraf Ali
Ld. Advocate for O.P No.2 : Shri Prashanta Kumar Dutta

Date of delivery of Judgment : 20th day of June, 2025

A W A R D

This case has been initiated under Section 166 of the Motor Vehicles Act, 1988 (Amendment Act 1994) to claim compensation for the accidental death of the deceased, namely, Badal Khan. The claimants of this case are the legal heirs of the deceased. The claimants have claimed compensation of Rs.15,60,000/- with applicable interest against the Insurance Company namely, The New India Assurance Co. Ltd.

(2)
MOTOR ACCIDENT CLAIM CASE NO : 446 of 2022
CNR No. WBMD01-008474-2018

The facts leading to the initiation of this case is encapsulated before deciding the claim of the applicants, is that on 05.01.2021 at about 20:00 hours the victim Badal Khan was returning from Raghunathganj bus stand with his motorcycle bearing Regd. No.WB94K-4130 which was being driven by his friend Piyaarul Sk and when he reached at nearby place of the burning ghat under Raghunathganj PS, the offending vehicle being a TATA Sumo bearing Regd. No.WB74V-9036 dashed their motorcycle from its behind, resulting said Badal Khan serious injured. Immediately, after the accident, said Badal Khan was taken to Jangipur SD Hospital and from there to Murshidabad MMC Hospital and considering his worsen condition, he was transferred to Kolkata for better management where he succumbed to his injuries. Hence, the instant application was filed on 25.08.2022 to claim compensation.

The claimants contend that the deceased was aged around 50 years at the time when the cruel hands of fate snatched him away from them. At the time of alleged accident the deceased was express bus driver and used to earn Rs. 15,000/- per month.

The opposite party/owner of the vehicle did not appear and contest the case. Therefore, the case against him would proceed *ex-parte*.

The only contest put forth was by the insurance company i.e. the Opposite Party No.2. The Opposite Party No.2 has filed written statement in this case to refute the claim of the claimants.

The Opposite Party No.2 denied all the date, time, facts and manner of the accident. It also denied the age, profession and earning of the deceased victim at the time of his death. The Opposite Party No.2 has specifically denied the involvement of the offending vehicle in the accident. In its written statement, the contesting O.P. has also denied its liability to pay any compensation for the death of Badal Khan and prayed for dismissal of the case.

On the basis of the aforesaid pleadings of the parties, following issues were framed for determination of the claim of claimants on recast.

(3)
MOTOR ACCIDENT CLAIM CASE NO : 446 of 2022
CNR No. WBMD01-008474-2018

I S S U E S

1. Is the case maintainable in its present form and Law ?
2. Whether this Court has jurisdiction to try the same ?
3. Are the petitioners legal representatives of the deceased victim ?
4. Was there any vehicular accident on 0501.2021 at around 20.00 hours near burning ghat under P.S. Raghunathganj, District Murshidabad involving vehicle No.WB-74V/9036 (TATA Sumo) resulting to death of the victim Badal Khan by the rash and negligent driving on the part of the driver of the offending vehicle ?
5. Was the vehicle covered by the legitimate insurance on the date of accident ?
6. Whether the driver of the vehicle had valid license on the date of incident ?
7. Are the petitioners entitled to get the compensation as prayed for ?
8. To what other relief/reliefs, if any, are the petitioners entitled ?

To substantiate the claim, claimants have examined three witnesses including the complainant namely Sulekha Bibi as PW-1, eye-witness Samaun Shaikh as PW-2 and Rajesh Khan as PW-3.

In course of enquiry claimant has filed fifteen documents which were marked as Ext-1 to Ext-15, respectively.

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

- Ext-1** Certified copy of F.I.R.
- Ext-2** Certified copy of charge sheet.
- Ext-3** Copy of seizure list.
- Ext-4** Copy of PM report.
- Ext-5** Copy of driving license
- Ext-6** Copy of Aadhar Card of the deceased.
- Ext-7** Copy of Aadhar Card of the Petitioner No.1.
- Ext-8** Copy of Aadhar Card of the Petitioner No.2.
- Ext-9** Copy of Aadhar Card of the Petitioner No.3.
- Ext-10** Copy of Aadhar Card of the Petitioner No.4.
- Ext-11** Driving license of the driver.
- Ext-12** Registration certificate of the offending vehicle.

(4)
MOTOR ACCIDENT CLAIM CASE NO : 446 of 2022
CNR No. WBMD01-008474-2018

Ext-13 Tax certificate of the offending vehicle.

Ext-14 Insurance policy certificate of the offending vehicle.

Ext-15 Driving license of driver of offending vehicle.

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

DECISION WITH REASONS

all the issues are the crux of the entire case. Therefore, they are required to be deliberated conjointly to decide the claim of the claimants. Accordingly, all these issues are taken up together for the sake of convenience. It has been contended by the opposite party No.2 that the instant case is not at all maintainable. However, this contention does not hold water without any reasonable ground.

The contention of the opposite party is that the claimants have not been able to prove the case as projected in their application by way of sufficient evidence. So, the instant claim application should be dismissed.

Conversely, the claimants have 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 relief which is just & fair.

I have pondered over the claim application and the evidences on record with rapt attention. The evidences unmistakably evince that on the alleged date and time the victim died in a road accident because of the rash and negligent driving of the offending vehicle.

From the evidence on record, it is quite clear that the accident took place because of the rash and negligent driving of the offending matador since in an enquiry before tribunal, the claimants are not

(5)
MOTOR ACCIDENT CLAIM CASE NO : 446 of 2022
CNR No. WBMD01-008474-2018

required to prove the case beyond reasonable doubt as in the case of a criminal trial. Only the charge-sheet filed in the criminal case relating to the alleged accident would be sufficient for the tribunal to hold that there was rash and negligent driving and for that the deceased died. The deposition of PW-2 being the eye witness also supports the claim of the claimants. There is nothing to disbelieve the version of PW-2.

The Opposite Party, however, has not brought any witness to support its defence. The case of the Opposite Party is that of denial only. Thus, without bringing anything concrete on behalf of the Opposite Party and mere denial of the claim put forth by the applicant cannot be the ground for refusal of the claim as prayed for by the claimants. On the contrary, the case of the claimants gets fortified by the evidence on record, both oral and documentary.

It may be found that at the time of accident the deceased was aged **50** years. In this regard, the petitioner has produced the Post-Mortem Report (Ext.-4) showing the age of the deceased and though the same been opposed formally by the OP No.2 not not by adducing any cogent evidence. Moreover, the documents marked as Exhibits 1 to 3 clearly establish that the alleged accident took place on the alleged date and time and the deceased died due to the injuries sustained in the said accident.

The nature of the case does not require the petitioner to prove their claim beyond reasonable doubt. Rather, the yardstick of proof adopted in such a case before the tribunal is preponderance of probability. In this regard, reference to the following observation of the Hon'ble Supreme Court in ***Bimla Devi v. Himachal RTC, (2009) 13 SCC 530*** assumes importance;

“While dealing with a claim petition in terms of Section 166 of the Motor Vehicles Act, 1988, a tribunal *stricto sensu* is not bound by the pleadings of the parties; its function being to determine the amount of fair compensation in the event an accident has taken place by reason of negligence of that driver of a motor vehicle. It is true that occurrence of an accident having regard to the provisions contained in Section 166 of the Act is a sine qua non for entertaining a claim petition but that

(6)
MOTOR ACCIDENT CLAIM CASE NO : 446 of 2022
CNR No. WBMD01-008474-2018

would not mean that despite evidence to the effect that death of the claimant's predecessor had taken place by reason of an accident caused by a motor vehicle, the same would be ignored only on the basis of a post-mortem report vis-à-vis the averments made in a claim petition."

Thus, in the light of the observation made by the Hon'ble Supreme Court in *Bimla Devi* (supra), it may be noted that the tribunal would determine the claim application on the basis of *preponderance of probabilities* and not otherwise. In the instant case, the petitioners/claimants have brought on record documents which are marked as Exhibits 1 to 15 and from the perusal of the documents, it is very clear that the alleged accident had taken place on the date and time mentioned by the claimants/ petitioners and the offending vehicle was involved therein. Thus, it is obvious that the petitioners/claimants are entitled to get the compensation for the loss sustained by them due to the death of the deceased who was 50 years old.

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):

(7)
MOTOR ACCIDENT CLAIM CASE NO : 446 of 2022
CNR No. WBMD01-008474-2018

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

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 18 (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 41 to 45 years, and M-13 for

(8)
MOTOR ACCIDENT CLAIM CASE NO : 446 of 2022
CNR No. WBMD01-008474-2018

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.”

Therefore, when the documents on record clearly indicate the involvement of the offending vehicle in the alleged accident and consequent death of the deceased, it is for this tribunal to determine the amount of compensation that the claimants would be entitled to.

In order to decide the quantum of the compensation in this case the following calculation has to be made.

The deceased was 50 years old when he died in the accident. No proof of income of the deceased has been brought on record.

Therefore, the notional income of the deceased may be taken to be Rs.72,000 per annum which stands which stands at Rs.54,000/- after deduction of personal expenses. To that, future prospects should be added considering the age and profession of the deceased victim at the time of the accident and after adding future prospects, the amount stands at Rs.67,500/-. At the time of his death, the deceased victim was 50 years of his age. The multiplier applicable would be 13. Thus, the compensation stands Rs.8,77,500/-. Burial Expenses, Loss of Estate, Loss of Spousal Consortium and Loss of Parental Consortium be added i.e. Rs.15,000/-+Rs.15,000/-+Rs.40,000/- and Rs.1,20,000/- be added. Therefore, the total compensation payable would be Rs.10,67,500/-.

Rs.10,67,500/- (Rupees Ten Lakh Sixty Seven Thousand and Five Hundred) has to be paid by the O.P No.-2/The New India Assurance Co. Ltd. to the claimants. Thus, these issues are accordingly decided in favour of the 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.

In view of the above all these issues are disposed of accordingly.

(9)
MOTOR ACCIDENT CLAIM CASE NO : 446 of 2022
CNR No. WBMD01-008474-2018

Hence it is,

ORDERED

that the MOTOR ACCIDENT CLAIM CASE No.446 of 2022 be and the same is allowed on contest against the O.P No.-2/The New India Assurance Co. Ltd. but without cost.

The claimants/petitioners do get award of **Rs.10,67,500/- (Rupees Ten Lakh Sixty Seven Thousand and Five Hundred)** as compensation along with interest @ **6%** per annum from the date of filing this case i.e on 25.08.2022 till realization of the award.

The O.P No.-2 /The New India Assurance Co. Ltd. is directed to pay the awarded amount by issuing four Account Payee Cheques, equally along with interest as stated within **90** days hereof failing which claimants 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.

Let a copy of this judgment be given to the parties through their respective Learned Advocates for compliance after clearing DCF, but O.P No.-2/The New India Assurance Co. Ltd. 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 WB00812