

**HIGH COURT OF TRIPURA
AGARTALA**

MAC APP No.18 of 2023

The Managing Director,
North Bengal State Transport Corporation,
North Bengal Bus Depot, Malaguri, Pradhan Nagar,
P.O and P.S- Coochbihar, District-Coochbihar,
Siliguri, West Bengal-736101,
(owner of vehicle bearing registration NO.WB-63-
2270, Bus).

.....Opposite Party-Appellant.

Versus

- 1. Smt. Nilu Saha,**
W/O. Late Sanjit Saha.
- 2. Ms. Nandita Saha,**
D/O. Late Sanjit Saha.
- 3. Master Raj Saha,**
S/O. Late Sanjit Saha,

All are residents of South Dhaleswar, near Water supply Road,
P.O- College Tilla, P.S. East Agartala, District- West Tripura-
799004 (Claimant-respondent No.2 and 3 being minor are
represented by their natural guardian, mother Smt. Nilu Saha).

.....Claimant-Respondents.

For Appellant(s)	:	Mr. T.K. Deb, Adv,
For Respondent(s)	:	Mr. Alik Das, Adv,
Date of Hearing	:	18.01.2024
Date of delivery of Judgment and Order	:	25.01.2024
Whether fit for Reporting	:	NO

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

The Managing Director, North Bengal State
Transport Corporation Limited is present before the High
Court as appellant. The appellant has preferred this appeal

under Section 173 of Motor Vehicles Act challenging the award dated 24.08.2022 passed in T.S.(MAC) 46 of 2014 by Motor Accident Claims Tribunal, Court No.1, West Tripura, Agartala for modification of the award impugned. Before analyzing the appeal on merit, let us visit the subject matter of the case.

02. The respondent claimants have filed one petition under Section 166 of the Motor Vehicles Act claiming compensation by an amount of Rs.49,00,000/- (Rupees forty nine lakhs only) for the death of one Sanjit Saha in a vehicular accident on 27.01.2012 at around 1330 hours while said Sanjit Saha was coming from coochbihar City to BSF Camp at Sonari by riding his bicycle through coochbihar Alipur Road and on the way the offending vehicle bearing No.W.B-63-2270(Bus) of North Bengal State Transport Corporation being driven by the driver rashly and negligently dashed against the said Sanjit Saha for which he sustained grievous injuries on his head and other parts of his body and was shifted to coochbihar Hospital by BSF authority. Since the physical condition of the victim was deteriorated, so, he was referred to Siliguri Hospital. But on 31.01.2012 in course of his treatment, the victim succumbed to his injuries in Siliguri Hospital. Further according to the respondent-claimants, at the time of death deceased was aged about 44 years and he used

to earn Rs.23,093/- (Rupees twenty three thousand and ninety three only) per month and hence, the respondent-claimants filed the claim petition. The appellant as O.P. inspite of receiving summons although appeared but did not file any written statement and as such by a judgment dated 12.04.2016 an amount of Rs.34,92,341/- along with 9% interest was awarded against the present appellant from the date of filing the petition till payment. After that, a condonation petition was filed but that was also rejected and thereafter, the present appellant preferred a revision petition before the High Court and the High Court vide order dated 19.06.2020 passed in CRP 99 of 2019 set aside the order passed in the condonation petition and directed the Court to hear the application under Order IX Rule 13 of CPC to set aside exparte award dated 12.04.2016 and the present case was restored to file before the Learned Tribunal and the appellant contested the proceeding by filing written statement. Before the Learned Tribunal the following issues were framed:

“(1)Did deceased Sanjit Saha die in a road traffic accident occurred on 27.01.2012 at 1330 hours near BSR Campus Sonari of 181 Bn. BSF on Cooch Behar, Alipurduar Road under Kotwali P.S., Cooch Behar, West Bengal out of use of vehicle bearing registration No.WB-63-2270 (Bus) due to rash and negligent driving by its driver?

(2) Are the petitioners entitled to get compensation, as prayed for and if so, to what amount and who is liable to pay the same?

(3) To what other reliefs the parties are entitled?”

03. To substantiate the case the respondent claimant-petitioner No.1 Nilu Saha was examined as PW-1 and relied upon some documents which were marked as exhibits in the case, on the other hand, on behalf of the appellant one Sampad Das, UD Clerk of North Bengal State Transport Corporation was examined as OPW-1 and he also relied upon some documents which were marked as exhibits-A to H and finally, Learned Tribunal after hearing both the sides passed an award for an amount of Rs.34,92,341/- along with 9% interest per annum from the date of filing the petition till recovery and challenging that judgment the appellant is before the High Court by filing this appeal.

04. In course of hearing, Learned Counsel for the appellant submitted that the Learned Tribunal without making any observation and findings allowed the claim petition which needs to be interfered with and there was no eye witness of the alleged occurrence of offence and the claimant-petitioner No.1 was at Agartala at the time of accident, so although she later on filed a claim petition, so, legally there is no scope to place any reliance upon the FIR laid by the claimant-petitioner No.1. Further, Learned Counsel drawn the attention of the Court referring the post-mortem report of the deceased and submitted that there is no indication that the deceased expired due to road traffic accident rather from the contents of the post mortem report,

it appears that the deceased expired due to head injury which was ante mortem in nature and according to Learned Counsel this injury could sustain by any other means but the claimant-petitioner has failed to prove that the deceased succumbed to his injuries due to the road traffic accident of the offending vehicle of the appellant. Learned Counsel further drawn the attention of the Court that the claimant-petitioner before the Learned Tribunal save and except Voter ID Card could not produce any other documentary evidence to substantiate the age of the deceased but the Learned Tribunal determined the age of the deceased as 45 years at the time of death and applied multiplier 13 but according to the appellant at the time of accident the age of the deceased would be 46 years and in that case multiplier would be 14, which the Learned Tribunal failed to consider at the time of determination of compensation. Learned Counsel further submitted that only the salary certificate was produced by the claimant-petitioner in support of their claim but the Issuing Authority of the salary certificate was not produced to prove the salary certificate. So, legally there is no scope to place any reliance upon that and finally, Learned Counsel for the appellant submitted that since the respondent-claimants failed to prove their case before the Learned Tribunal, so, urged he before this Court to set aside the award passed by the Learned Tribunal. On the other hand,

Learned Counsel for the respondent-claimants submitted that on the day of alleged accident the respondent claimant-petitioner No.1 was available at Siliguri and she laid the FIR on the same day i.e. on 27.01.2012 and on the issue of accident, a police case was registered vide Kotwali P.S case No.50 of 2012 under Section 279/338/427 of IPC and finally the case was ended in charge-sheet.

05. Furthermore, according to Learned Counsel for the respondent-claimants, the accident report as relied upon by the appellant O.P. before the Learned Tribunal clearly shows the involvement of the offending vehicle of the appellant O.P. in connection with the matter and the Learned Tribunal after taking into consideration all aspects rightly and reasonably delivered the award in favour of the respondent-claimants of the case which needs no interference and urged before the Court to uphold the judgment of Learned Tribunal.

06. I have heard arguments of both the sides and gone through the record of the Learned Tribunal below. There is no dispute on record that the alleged accident took place on 27.01.2012 and due to that accident, the deceased victim sustained severe injuries and ultimately, he succumbed to his injuries on 31.01.2021. It is also on record that earlier the Learned Member, Motor Accident Claims Tribunal by an exparte award dated 12.04.2016 awarded a sum of Rs. 34,92,341/-(Rupees thirty-four lakhs ninety-two

thousand three hundred forty-one only) with 9% interest per annum which was challenged before the Hon'ble High Court and later on, as per direction of the Hon'ble High Court, the present appellant contested the case and adduced evidences. Thereafter, by a fresh judgment dated 24.08.2022 the concerned Member, Motor Accident Claims Tribunal, West Tripura, Agartala also awarded the said amount in favour of the respondent-claimants of the case.

07. In course of hearing of arguments, Learned Counsel for the appellant raised some issues which I have discussed above. I have gone through the record of the Learned Tribunal below and it appears that on the day of accident i.e. on 27.01.2012, the respondent claimant-petitioners No.1 laid one FIR to Officer-in-Charge of Kotwali P.S., Cooch Behar. Showing her address at Government Quarter No.8, Type-II, 181 Bn. B.S.F., Sonari, District Cooch Behar and on the same day the Officer-in-Charge of the said P.S. at about 2125 hours registered kotwali P.S. case No. 50 of 2012 under Section 279/338/427 of IPC. So, the submission of Learned Counsel for the appellant cannot be accepted that no FIR was laid on the day of alleged accident. Learned Counsel for the appellant further submitted that no eye witness was examined, who were present to the P.O. at the time of accident. In this regard, it is submitted that we are dealing with a compensation case not a Criminal Trial so

it is the subject matter of the Police Authority to investigate the criminal case and thereafter to file charge sheet or final report as the case may be. But in the given case we are to see as to whether the respondent-claimants are entitled to compensation or not. It is on record that during trial the respondent claimant-petitioners before the Learned Tribunal relied upon FIR, seizure list, Post mortem examination report and the copy of charge sheet and from the charge sheet it appears that regarding the alleged incident after completion of investigation the I.O. of that case laid charge sheet under Section 279/338/427/304(A) of IPC against the driver Shri Hari Mahanta. And from post mortem examination report further, it appears that on the basis of Matigara P.S. U/D Case No.83 of 2012 the concerned Medical Officer conducted post mortem over the dead body of the deceased and from the report of I.O., further, it appears that "from the mechanical examination of the vehicle it also appeared to him that the accident occurred due to other than mechanical failure". Now, if we go through the exhibited documents relied upon by the appellant, further, it appears that on the alleged day that is on 27.01.2012, the accident occurred due to collision of the deceased with the offending vehicle of the appellant who was on a bi-cycle and for that a case was registered (Exhibit-B, 2 sheets) and other exhibited documents like Exhibit-A is the certificate of registration,

Exhibit-B is the accident and enquiry report, Exhibit-C is the letter of Divisional Manager, NBSTC, Cooch Behar, Exhibit-D is the certificate of insurance, issued by the Managing Director NBSTC, Cooch behar, Exhibit-E is the circular of the Government of India, Exhibit-F is the order dated 21.06.1960 of the Home Department, Government of India. Exhibit-G is the office order dated 16.02.1982 of General Manager, NBSTC, Cooch Behar, Exhibit-H is the fitness certificate. So, from the exhibited documents relied upon by the parties, it can be conclusively come to the conclusion that on 27.01.2012 the accident occurred and due to that accident, the victim Sanjit Saha succumbed to his injuries.

08. In course of hearing, Learned Counsel for the appellant relied upon one judgment of our High Court in MAC Appeal No. 04 of 2020 wherein in Para 3, Hon'ble High Court opined (**"Police investigation cannot be the sole basis for deciding negligence in Motor Accident case"**).

Relying upon the same, Learned Counsel for the appellant submitted that on the basis of this judgment of the High Court, since the respondent claimants only relied upon the charge sheet, so simply on the basis of police investigation no award can be granted, and Learned Tribunal committed serious error in calculating or awarding compensation.

09. In this regard, it is further submitted that to substantiate the claim and the defence, it appears that both the contesting parties have adduced their evidences before the Learned Tribunal below and after going through the oral as well as documentary evidence, the Learned Tribunal below allowed the application of the respondent claimant-petitioners and awarded accordingly and furthermore, it appears that the appellant as opposite-party respondent before the Learned Tribunal could not raise any circumstance to disbelieve the evidence on record of the claimant-petitioner in this respect. So, the citation as referred cannot be accepted at this stage by this Court.

10. Hon'ble the Supreme Court in **(2018) 5 SCC 656 Mangla Ram vs. Oriental Insurance Company Limited and Others** dated 06.04.2018 in Para 25 and 26 observed as under:

"25. In *Dulcina Fernandes*:(2013) 10 SCC 646, this Court examined similar situation where the evidence of claimant's eyewitness was discarded by the Tribunal and that the respondent in that case was acquitted in the criminal case concerning the accident. This Court, however, opined that it cannot be overlooked that upon investigation of the case registered against the respondent, prima facie, materials showing negligence were found to put him on trial. The Court restated the settled principle that the evidence of the claimants ought to be examined by the Tribunal on the touchstone of preponderance of probability and certainly the standard of proof beyond reasonable doubt could not have been applied as noted in *Bimla Devi*:(2009) 13 SCC 530. In paras 8 & 9 of the reported decision, the dictum in *United India Insurance Co. Ltd. Vs. Shila Datta*:(2012) 3 SCC (Civ) 798, has been

adverted to as under: (*Dulcina Fernandes Case: (2013) 10 SCC 646, SCC p. 650*)

"8. In *United India Insurance Co. Ltd. v. Shila Datta*: (2012) 3 SCC (Civ) 798 while considering the nature of a claim petition under the Motor Vehicles Act, 1988 a three-Judge Bench of this Court has culled out certain propositions of which Propositions (ii), (v) and (vi) would be relevant to the facts of the present case and, therefore, may be extracted hereinbelow: (SCC p. 518, para 10)

10.(ii) The rules of the pleadings do not strictly apply as the claimant is required to make an application in a form prescribed under the Act. In fact, there is no pleading where the proceedings are suo motu initiated by the Tribunal.

(v) Though the Tribunal adjudicates on a claim and determines the compensation, it does not do so as in an adversarial litigation. ...

(vi) The Tribunal is required to follow such summary procedure as it thinks fit. It may choose one or more persons possessing special knowledge of and matters relevant to inquiry, to assist it in holding the enquiry.'

9. The following further observation available in para 10 of the Report would require specific note: (*Shila Datta case: (2012) 3 SCC (Civ) 798, SCC p. 519*)

'10. ... We have referred to the aforesaid provisions to show that an award by the Tribunal cannot be seen as an adversarial adjudication between the litigating parties to a dispute, but a statutory determination of compensation on the occurrence of an accident, after due enquiry, in accordance with the statute.'

In para 10 [*Dulcina Fernandes and Ors. (2013) 10 SCC 646*], the Court opined that non-examination of witness per se cannot be treated as fatal to the claim set up before the Tribunal. In other words, the approach of the Tribunal should be holistic analysis of the entire pleadings and evidence by applying the principles of preponderance of probability.

26. In the above conspectus, the appellant is justified in contending that the High Court committed manifest error in reversing the holistic view of the Tribunal in reference to the statements of

witnesses forming part of the charge-sheet, FIR, jeep Seizure report in particular, to hold that Jeep No.RST-4701 driven by respondent No.2 was involved in the accident in question. Indeed, the High Court was impressed by the Mechanical Investigation Report (Ext. 5) which stated that only a scratch mark on the mudguard of the left tyre of the vehicle had been noted. On that basis, it proceeded to observe that the same was in contradiction to the claim of the appellant claimant, ruling out the possibility of involvement of the vehicle in the accident. This conclusion is based on surmises and conjectures and also in disregard of the relevant fact that the vehicle was seized by the police after investigation, only after one month from the date of the accident and the possibility of the same having been repaired in the meantime could not be ruled out. In other words, the reasons which weighed with the High Court for reversing the finding of fact recorded by the Tribunal upon holistic analysis of the entire evidence, about the involvement of Jeep No. RST 4701 in the accident, cannot be countenanced. For, those reasons do not affect the other overwhelming circumstances and evidence which has come on record and commended to the Tribunal about the involvement of the subject jeep in the accident in question. This being the main edifice, for which the High Court allowed the appeal preferred by Respondents 2 & 3, it must necessarily follow that the finding of fact recorded by the Tribunal on the factum of involvement of Jeep No. RST 4701 in the accident in question will have to be restored for reasons noted hitherto."

11. Further, the Hon'ble Supreme Court in **(2023) SCC OnLine Mad 5467 in Malaravan vs Praveen Travels Private Limited and Others** dated 18.08.2023 para No.28 and 31 observed as under:

"28. The Parliament in its wisdom has ensured that the hapless victims of motor accidents need not depend upon stakeholders in Court for the purpose of initiation of proceedings. The proceedings itself is initiated on the basis of the report filed by the Police Authorities. In effect, the petition under Section 166 is only a reminder to the Court that the police have already filed the Detailed Accident Report containing all the requisite details like the First Information Report, Interim Accident

Report, First Accident Report and therefore, it has to take up the said report as a claim petition. In other words, the claim petition is only a reminder to the Motor Accidents Claims Tribunal to perform its duty under Rule 21 Annexure XIII of Central Motor Vehicles Rules and to process the claim petition.

31. A reading of Section 166(4) shows that *if any report of the accident is forwarded to it under Section 159, the same shall be treated as an application for compensation.* It is no more the discretion of the police. Rule 4(A)(5)(1) of the Tamil Nadu Rules read with the Central rules make it mandatory. It has now become a statutory duty of the Police to send a report. It is pertinent to point out that the amendment under Section 166(4) does not speak about the Interim Accident Report(IAR), First Accident Report(FAR) and Detailed Accident Report(DAR) but speaks about *"any report that has been sent by the police."* Therefore, even if an FIR sent by the police to the Tribunal, the same should be treated a Claim Petition."

From the above law laid down by the Hon'ble Apex Court in the aforementioned cases, it appears that the approach of the tribunal should be holistic analysis of the entire pleadings and evidence by applying the principles of preponderance of probability. Even the Hon'ble Apex Court also observed that even if an FIR is sent by a police to the tribunal, the same should be treated as a claim petition. Here in the case at hand, from the documentary evidence on record, it appears that soon after the accident an FIR was laid, case was registered and after completion of investigation the I.O. laid charge sheet against the driver of the offending vehicle of the appellant and after considering oral/documentary evidence on record Learned Tribunal below awarded compensation in favour of the respondent

claimants. So, in view of the principles of law laid down by the Hon'ble Supreme Court it cannot be said that no compensation can be granted based on police investigation.

12. Learned Counsel for the appellant in course of hearing of argument further relied upon another citation of the Hon'ble Supreme Court of India in **Rangammal vs. Kuppuswami & Anr.** dated 13.05.2011 reported in **(2011) 12 SCC 220** Para 34 observed as under:

"34. It has been further held by the Supreme Court in *State of J&K vs. Hindustan Forest Co.* (2006) 12 SCC 198 wherein it was held that the onus is on the plaintiff to positively establish its case on the basis of the material available and it cannot rely on the weakness or absence of defence to discharge the onus."

Referring the same Learned Counsel submitted that it was the duty of the respondent claimant-petitioners to establish its case on the basis of material evidence but the respondent-claimants before the Learned Tribunal could not produce material evidence on record to substantiate the claim. To counter this submission raised by Learned Counsel for the appellant, Learned Counsel for the respondent-claimants submitted that the respondent-claimants could well prove their case before the Learned Tribunal and the Learned Tribunal after considering all the facts and circumstances awarded the compensation in favour of the claimants. So, at this stage, this plea cannot be taken into consideration. To this point, it is observed that Learned

Tribunal after considering oral/documentary evidence on record of both the sides, concluded the trial and awarded compensation in favour of the respondent-claimants. So, the submission of Learned Counsel cannot be accepted.

13. Learned Counsel for the appellant further referred another judgment of our High Court reported in **(2013) 2 TLR 917** in **Bani Biswas vs Juthika Bhowmik and Ors.** in para no 4 Hon'ble the High Court observed as under:

"4. Under the Law of Torts, basically, the first person who is liable is the wrongdoer. In this case, the wrongdoer is the driver and once the driver is liable, the owner becomes liable by applying the principle of vicarious liability which means that the master is liable for the negligent acts of his servant. As far as the Insurance Company is concerned, it becomes liable to pay the compensation in view of the contract of insurance entered into by it with the insured agreeing to indemnify the insured for the compensation, if any, payable by the insured. Obviously, the award can only be made once it is found that the driver was negligent. If there is no negligence, then no award under Section 166 of the Motor Vehicles Act can be passed. Once the driver is negligent, the owner becomes vicariously liable and the Insurance Company under the contract of indemnity becomes liable to pay the awarded amount."

Referring the same Learned Counsel submitted that the respondent-claimants could not prove that the Tribunal was negligent. So, there was no scope on the part of the Tribunal to award any compensation but the Learned driver in absence of cogent evidence on record awarded compensation in favour of the respondent-claimants. It is on record that the Learned Tribunal below considering the oral/documentary evidence on record specifically Exhibit-3

where it was specifically mentioned that on the alleged day the accident was occurred due to over speed rash and negligent driving of the NBSTC Bus bearing No.W.B-63-2270 by its driver. So, there is no scope to disbelieve that part of evidence and it cannot be said that there was no negligence on the part of the driver on the alleged date and time at the time of the accident.

14. Finally, Learned Counsel for the appellant submitted that Learned Tribunal in determining the compensation applied multiplier 14 because treating the age of the deceased as 45 years, which Learned Tribunal wrongly calculated and according to the Learned Counsel for the appellant on the date of death, the age of the deceased should be 46 years and in that case in pursuance to the judgment of **Sarla Verma(SMT) And Others vs. Delhi Transport Corporation and Another**, multiplier would be 13 not 14 and submitted before the Court to take note of that fact and to modify the award accordingly. In this regard, in para no 42 of dated 15.04.2009, reported in **(2009) 6 SCC 121** of **Sarla Verma**(supra), Hon'ble the Apex Court observed as under:

"42. 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, *Trilok Chandra*:(1996) 4 SCC 362 and *Charlie*:(2005) 10 SCC 720, 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 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."

From the above, it appears that as per the principle laid down in the aforesaid judgment the multiplier would be 14 if the deceased was in between 41-45 years on the date of death and multiplier would be 13 if the deceased was in between 46-50 years on the date of death. Here in the case, Learned Tribunal below applied multiplier treating his age as 45 years on the date of death.

15. As per Exhibit-6 Voter ID card relied upon by the respondent-claimants, it appears that on 01.01.2007 the age of the deceased was 40 years, so on 01.01.2012 his age would be 45 and the accident occurred on 27.01.2012 and the deceased died on 31.01.2012. So, it appears that Learned Tribunal below rightly determined multiplier 14 in determining the compensation and in this case as submitted by Learned Counsel for the appellant M-13 could not be applied for determining the amount of compensation.

16. Thus, after hearing both the sides and going through the evidence on record, it appears that Learned Tribunal below rightly and reasonably determined the amount of compensation in favour of the respondent-claimants which needs no interference by this Court in this appeal.

Accordingly, the appeal filed by the appellant is dismissed on contest with costs. Pending application, if any, also stands disposed of. The judgment and award dated 24.08.2022 passed by Learned Tribunal, is accordingly upheld and affirmed. The appellant is asked to comply the judgment within a period of 30 days from the date of the judgment.

Send down the LCR along with a copy of judgment.

JUDGE



MOUMITA
DATTA
Purnita

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MOUMITA DATTA
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