

**HIGH COURT OF TRIPURA**  
**AGARTALA**  
**MAC.APP.No.83 of 2024**

**1. Smt. Mina Das,**  
wife of Sri Dulal Chandra Das,  
resident of Padmadepha, Melaghar,  
P.S. Melaghar, District-Sepahijala, Tripura,  
presently residing at Care of Smt. Krishna Bhowmik,  
wife of Late Tushar Bhowmik of Badharghat, Matripalli,  
P.S. Amtali, District-West Tripura

**2. Sri Dulal Chandra Das,**  
son of late Dharendra Chandra Das,  
resident of Padmadepha, Melaghar,  
P.S. Melaghar, District-Sepahijala, Tripura,  
presently residing at Care of Smt. Krishna Bhowmik,  
wife of Late Tushar Bhowmik of Badharghat, Matripalli,  
P.S. Amtali, District-West Tripura

-----Claimant-Appellant(s)

Versus

**1. Sri Tapan Saha,**  
son of late Sudhanshu Ranjan Saha,  
resident of Shibnagar, College Road extension,  
Agartala, P.S. East Agartala, District-West Tripura

**2. The New India Assurance Company Limited,**  
Divisional Office at Old mantribari Road, RMS Chowmuhan, Agartala, P.S. West Agartala, District-West Tripura

-----Opposite Party/Respondent(s)

|                           |   |                      |
|---------------------------|---|----------------------|
| For Appellant(s)          | : | Mr. B. Debnath, Adv. |
| For Respondent(s)         | : | Mr. A. Das, Adv.     |
| Date of Hearing           | : | 18.09.2024           |
| Date of Judgment & Order  | : | 19.09.2024           |
| Whether fit for reporting | : | YES                  |

**HON'BLE MR. JUSTICE BISWAJIT PALIT**  
**Judgment & Order**

This appeal under Section 173 of the Motor Vehicles Act is preferred challenging the judgment and award dated 03.06.2024 delivered by Learned Member, Motor Accident Claims Tribunal, Court No.5, West Tripura, Agartala in connection with Case No.T.S.(MAC)195 of 2022. By the said

judgment/award, Learned Tribunal below has awarded a sum of Rs.8,16,500/- as compensation in favour of the claimant-petitioners appellants and fastened the liability of payment of compensation to the O.P. No.2 i.e. the New India Assurance Company Limited being the insurer of the offending vehicle bearing registration No.TR-01-AC-1888(TATA Tripper Truck).

**[2]** Heard Mr. B. Debnath, Learned counsel appearing for the appellants/claimants and also heard Mr. A. Das, Learned counsel appearing on behalf of the New India Assurance Company Limited i.e. the respondent No.2. None appeared on behalf of the respondent No.1 in spite of service of notice.

**[3]** In course of hearing of argument, Mr. B. Debnath, Learned counsel appearing for the appellants/claimants confined his arguments only on two points that the tribunal below determined the monthly income of the deceased at Rs.10,000/- per month all though he was a student of Ram Thakur College pursuing his studies in BA stream in English Honours, 4<sup>th</sup> Semester as an unskilled worker which according to Learned counsel for the petitioner appellants/claimant the Learned Tribunal below committed an error which actually should be Rs.20,000/- per month. Learned counsel for the appellants/claimants further submitted that by the said judgment, the Learned Tribunal below in para No.33 determined the total amount of compensation at Rs.16,33,000/- but the Learned Tribunal below decided that there was contributory negligence on the part of the deceased. So, the Learned Tribunal below deducted 50% of amount towards contributory negligence and awarded only 50% of amount in favour of the present appellants as compensation which according to Learned counsel for the appellants was perverse and the Learned Tribunal below did not consider the oral and documentary evidence on record adduced by the appellants properly.

**[4]** Finally, Learned counsel for the appellants urged for allowing this appeal by setting aside the judgment of the Learned Tribunal below and further submitted before this Court to increase the amount of monthly income

from Rs.10,000/- to Rs.20,000/- and also to exclude the part of contributory negligence and to direct the Insurance Company to pay the entire amount of compensation in favour of the appellants/claimants.

**[5]** On the other hand, Mr. A. Das, Learned counsel appearing on behalf of the New India Assurance Company Limited i.e. the respondent No.2 submitted that before the Learned Tribunal the appellants relied upon the charge-sheet and as per charge-sheet, there was clear, contributory negligence on the part of the deceased at the time of accident. So, according to Learned counsel for the Insurance Company there was no infirmity in the judgment of the Learned Tribunal below. He further submitted that in support of income, just by mere assertions that the deceased was a student there was no scope on the part of the tribunal to determine Rs.20,000/- as monthly income of the deceased. So, in summing up Learned counsel for the Insurance Company submitted that since there was no any documentary evidence on record regarding monthly income of the deceased. So, there was no perversity in the judgment of the Learned Tribunal below and urged for dismissal of this appeal with costs.

**[6]** In the given case, the appellants as claimant-petitioners submitted one claim petition before the Tribunal below under Section 166 of M.V. Act due to the death of the deceased Dipsmith Das who met with an accident on 07.11.2021. According to the appellants on 07.11.2021 when the victim Dipsmith Das (since dead) was proceeding towards Agartala from Melagarh by riding his motorbike bearing No.TR-07-E-8589 (Bajaj Pulsar NS 200) in normal speed along the left hand side of the road and on the way towards Agartala when he reached at Bishalgarh Forest Range Office near Manu Fakir Dargah at Bishalgarh at that time one vehicle bearing registration No.TR-01-AC-1888 (Tata Tripper Truck) being driven rashly and negligently by its driver came from the opposite direction in dash and negligent manner and dashed against the motor bike of the victim for which the victim fell down from

the motor bike and sustained fatal injuries on his person and succumbed his injuries at the spot. Immediately, thereafter, the victim was shifted to Bishalgarh Sub-Divisional Hospital with the help of Bishalgarh police where the attending doctor declared him as dead. According to the appellants, the victim was aged about 20 years at the time of accident and he was a student of Ram Thakur College pursuing his studies in BA stream in English Honours, 4<sup>th</sup> Semester and he used to earn Rs.20,000/- per month from his profession as private tutor. Further, according to the appellants, the accident occurred due to the rash and negligent driving of the offending vehicle bearing registration No.TR-01-AC-1888 (Tata Tripper Truck). After the accident a police case was registered at Bishalgarh P.S. vide Bishalgarh P.S. Case No.94/2021 dated 08.11.2021 under Section 279/304(A) of IPC and under Section 184 of the M.V. Act. Hence, the appellants as claimants filed the claim petition.

**[7]** The OP No.1, the owner of the Tata Tripper Truck contested the case by filing written statement denying the assertions made by the claimant-petitioners in the claim petition. It was submitted that at the time of accident the offending vehicle was being drive by Sri Samarjit Debbarma who had valid driving license. But the OP No.1 denied the fact that accident occurred due to rash and negligent driving of the driver of the offending vehicle, rather, according to the OP No.1 the accident occurred due to the fault of the deceased rider and it was further submitted that at the time of accident the vehicle was duly insured with the New India Assurance Company Limited and the vehicle had valid Insurance policy. So, by the WS the said OP No.1 prayed for dismissal of the claim petition.

**[8]** The OP No.2, the Insurance Company also contested the case by filing written statement denying the assertions made by the claimant-petitioners in the claim petition and further submitted that the claim petition was subjected to strict proof by the claimant petitioners.

**[9]** Upon the pleadings of the parties, the Learned Tribunal below framed 3 (three) numbers of issues which are as follows :

**“(i) Whether the claim petition is maintainable ?  
(ii) Whether the deceased Dipsmith Das sustained injury on 07.11.2021 at about 1230 hours at Bishalgarh Range Forest Office near Mano Fakir Darga under Bishalgarh PS in a road traffic accident involving the vehicle bearing No.TR-01-AC-1888 (Tata Triper Truck) due to rash and negligent driving of the driver of said Triper Truck and resulting death of Dipsmith Das who died on spot on the day of accident ?  
(iii) Whether the petitioner is entitled to award as claimed for and whether OP No.2 i.e. the Noticee be held liable to pay the same ?”**

**[10]** To substantiate the issues the claimant-petitioners have adduced 2(two) witnesses including the claimant No.1, Sri Dulal Chandra Das and relied upon some documents which were marked as Exhibits in this case. On the other hand, the OP No.1, i.e. the owner of the offending Tripper Truck was examined as OPW-1 and relied upon some documents which were also marked as Exhibits in the case. For convenience, the list of witnesses of the parties and their Exhibits are mentioned below :

**“LIST OF CLAIMANT’S WITNESSES**

**Sri Dulal Ch. Das PW.1  
Sri Rahul Sarkar PW.2**

**LIST OF CLAIMANT’S EXHIBITS**

**Certified copy of Printed FIR Ext.1/1,1/2  
Certified copy of FIR/ejaha Ext.2  
Certified copy of seizure list Ext.3/1,3/2,3/3  
Certified copy of PM Report Ext.4/1,4/2,4/3  
Certified copy of charge sheet Ext.5/1,5/2,5/3,5/4  
Birth certificate of Dipsmith Das Ext.6  
Admit card of Dipsmith Das Ext.7  
Certificate of registration  
(Tripura University) Ext.8  
ID card of Dipsmith Das Ext.9  
Voter ID card of Dipsmith Das Ext.10  
Adhar card of Dipsmith Das Ext.11  
Driving license of Dipsmith Das Ext.12  
Election ID and Adhar card of PW-1 Ext.13  
Election ID and Adhar card of Mina Das (mother of deceased)  
Ext.14  
Copy of mark sheet of Dipsmith Das Ext.15  
Driving license of PW.2 Ext.16**

**LIST OF OPPOSITE PARTY’S WITNESSES**

**Sri Tapan Saha OPW.1**

**LIST OF OPPOSITE PARTY’S EXHIBITS**

**Certificate of registration Ext.A  
Certificate of insurance Ext.B  
Driving license of Samarjit Debbarma Ext.C**

**Permit Ext.D  
Vehicle Particulars Ext.E"**

**[11]** Finally, on conclusion of the proceeding, Learned Tribunal below awarded compensation amounting to Rs.8,16,500/- and fastened the liability of the payment of compensation upon the Insurance Company. The operative portion of the judgment/award of the Learned Tribunal below is mentioned here as under :

**"40. The instant application under Section 166 of the Motor Vehicles Act, 1988 is hereby partly allowed and a sum of Rs.8,16,500/- (Rupees eight lacs sixteen thousand five hundred only) is awarded in favour of the claimant-petitioners as compensation for the death of Dipsmith Das, in a road traffic accident, as aforesaid and the opposite party No.2, the New India Assurance Company Limited, being insurer of the offending vehicle bearing registration No.TR-01-AC-1888(Tata Tripper Truck) shall pay the entire amount of compensation within a period of one month from today. The aforesaid amount shall carry interest at the rate of 7% per annum to be paid from the date of filing of the claim application i.e. from 12.07.2022 till the date of payment.**

**Distribution of Compensation**

**41. The claimant Nos. 1 and 2 being legal heirs of the deceased are entitled to get compensation equally.**

**Protection Awarded Compensation**

**42. In the event of the deposit of the awarded amount with interest, 50% of the amount shall be released in favour of claimant-petitioner Nos.1 and 2 in their individual bank accounts and the remaining 50% shall be kept in fixed deposit scheme in any Nationalized Bank for five years in their name.**

**43. In case of necessity, the Tribunal can be approached for withdrawal of fixed deposited amount. On maturity of the fixed deposits the Banker shall credit the amounts to the sole SB Accounts of the claimants without any further order from the Tribunal.**

**44. Furnish a copy of the award to both sides.**

**45. The case stands disposed of on contest.**

**46. Make necessary entry in the TR and CIS.**

**47. Pronounced in the open Court."**

Challenging this judgment and award, this present appeal is before this High Court.

**[12]** I have heard arguments of both the sides and gone through the record of the Learned Tribunal below including the judgment. Admittedly, in this case, there is no dispute on record regarding the date and time of accident and also the fact of death of the deceased due to the accident.

Here, in this appeal, we are to see whether the tribunal below rightly determined the monthly income of the deceased at Rs.10,000/- per month and whether the tribunal below rightly deducted 50% of the amount of compensation towards contributory negligence or not. To substantiate the case, the appellant claimant-petitioners relied upon the certified copy of the charge-sheet which were marked as Ext.5/1 to 5/4. On perusal of the same, it appears that the IO on conclusion of investigation, laid charge-sheet against the driver of the offending Tripper Truck and also against the rider of the bike (since dead).

**[13]** In course of hearing of argument, Learned counsel for the appellants submitted that no reliance can be placed upon the charge-sheet because the tribunal below simply on the basis of charge-sheet ignoring the evidence on record of the appellants decided that the accident took place due to contributory negligence on the part of the deceased. As already stated, the claimant petitioners, i.e. the appellants to substantiate the claimant petition adduced two witnesses.

**[14]** PW-1, the claimant petitioner No.1, Dulal Chandra Das filed examination-in-chief in affidavit. In his examination-in-chief in affidavit in para Nos.1,2 & 3 he asserted the following facts :

**"1. That I am the Claimant Petitioner No.2 of the above noted claim case bearing No.T.S.(MAC) 195 of 2022 before the Learned Motor Accident Claims Tribunal, Addl. District Judge, Court No.5, West Tripura, Agartala. A tragic accident leading to the death of my son deceased Dipsmith Das due to the tragic road traffic accident which was occurred on 07.11.2021 at about 1230 hours at Bishalgarh Range Forest Office near Mano Fakir Darga, under Bishalgarh Police Station, District-Sepahijala Tripura. When my son Dipsmith Das was proceeding towards Agartala side Melagarh by riding motor bike bearing No.TR-07-E-8589 (Bajaj Pulsar NS 200) very slowly keeping himself in the extreme left side of the road and when he reached at Bishalgarh Forest Range Office near Manu Fakir Dargah of Bishalgarh in the mean time one vehicle bearing Registration No.TR-01-AC-1888 (Tripper Truck) was coming from opposite direction side and the said vehicle was being driven very rashly and negligently at a very high speed by its driver and dashed the motor cycle bearing No. TR-07-E-8589 (Bajaj Pulsar NS 200) driven by my son Dipsmith Das. As a result of which my son Dipsmith Das fell down from the motor**

cycle and sustained grievous injuries on his person and died at spot.

That, my son died at the spot and thereafter Bishalgarh police personnel came to the spot and taken the body of my son Dipsmith Das to Bishalgarh Sub-Divisional Hospital where the attending doctor declare that my son Dipsmith Das succumbed to his injuries due to the aforesaid road traffic accident and post mortem examination was held over the body of my son Dipsmith Das by the doctor of Bishalgarh Sub-Divisional Hospital, Bishalgarh, Sepahijala, Tripura.

2. That, the said accident was occurred due to rash and negligent driving by the driver of the offending vehicle bearing Registration No. TR- 01-AC-1888 (Tripper Truck) and the said accident was registered in the Bishalgarh Police Station, Dist. Sepahijala Tripura, Bishalgarh P.S. vide Case No. 94 of 2021, dated 08/11/2021, under Section 279/304 (A) of IPC & 184 of M.V. Act.

3. That my son Dipsmith Das was student of Ramthakur College stream B.A. in English Honours, 4th semester. My son also doing tuition in one rented room situated at C/O. Smti. Krishna Bhowmik, W/O. Late Tushar Bhowmik, Badharghat, Matripalli, P.S.-Amtali, District-West Tripura and was earning Rs.20,000/- per month. He was aged 20 years at the time of his death. His future prospect was very bright and it was expected that he would make more and more contribution towards his family and for himself had he not been died due to the said road traffic accident in his prime age. It is pertinent to mention here that my son Dipsmith Das was unmarried at the time of his death."

During cross-examination by the OP respondent No.1 he stated that at the time of accident he was at Melagarh. Nothing more came out relevant from his cross-examination by the said OP No.1. Similarly, in course of cross-examination by OP No.2, i.e. the Insurance Company following question was raised by the Learned Tribunal below :

" Question-In the charge sheet it is mentioned that "it has well been established against driver of the offending vehicle bearing registration No.TR-01-AC-1888 (tripper truck), Sri Samarjit Debbarma (34), S/o Lt Pradip Debbarma of Champaknagar, Jangalia, PS-Radhapur, West Tripura and rider of motor cycle bearing registration No.TR-07-E-8589 (bajaj pulsar NS 200) namely Dipsmith Das (20), S/o Dulal Ch Das of Padmadepha, PS-Melagarh" do you agree ?

In Reply Ans- When I received the information I came to the spot and I found triper in the spot and I came to know from local people that accident occurred due to negligent of triper vehicle. At that time my son has already been removed to hospital."

[15] PW-2, Rahul Sarkar is a para legal volunteer. His house is situated nearby the place of occurrence. In his examination-in-chief in affidavit he asserted the following facts :

2. That, I am the permanent resident of North Charilam Puranbari near Mano Fikir Darga under Bishalgarh P.S. Tripura. On 07/11/2021 at about 1230 hours when I was stan Bishalgarh (Charilam) Forest Range Office near Mano Fikir Darga at that time 1 saw that one person was proceeding

**towards Agartala by riding motor bike bearing No.TR-07-E-8589 (Bajaj Pulsar), very slowly and cautiously keeping himself in the extreme left side of the road and when the said motor bike reached at Bishalgarh (Charilam) Forest Range Office near Manu Fakir Darga in the mean time one Tripper Truck vehicle bearing No.TR-01-AC-1888 which was coming from opposite direction and the very high struck vehicle was being driven very rasiya direction and the very high speed by its driver and dashed the said motor bike bearing No.TR-07-E-8589 (Bajaj Pulsar). As a result of which the rider of the motor bike fell down from the motor bike and he sustained grievous injuries on his person and ultimately died on the spot.**

**3. That, the said accident was occurred due to rash and negligent driving by the driver of the offending vehicle bearing Registration No. TR- 01-AC-1888 (Tripper Truck).**

**4. That the claimant petitioner of the instant claim petition somehow got the information that I am one of the eye witness of the incident of accident, as aforesaid. Thereafter, they requested me to depose before the Ld. Tribunal on behalf of them, to effect that what I have seen at the time of aforesaid accident. Thereafter, I being agreed by me, the instant examination in chief is prepared as per my version."**

During cross-examination by OP No.1 nothing came out relevant save and except denial and during cross-examination by OP No.2 he stated that he came to the Court being requested by the claimant. Further stated that after the accident he informed Fire Service and the police also but he did not submit any written FIR to police station. Also admitted that he gave his statement to the police whatever asked by police.

**[16]** The OP No.1, Tapan Saha being the owner of the vehicle also filed his examination-in-chief in affidavit and he relied upon the relevant documents. But during cross-examination by the claimant-petitioner save and except denial nothing more came out relevant and during cross-examination by the Insurance Company he stated that the accident occurred due to fault of the bike and he came to know about the fact of the accident from his driver and further stated that the police filed charge-sheet against the driver of the tripper truck and driver of the motor bike. From the evidence on record it appears that the OPW-1 was not present to the PO at the time of accident. The Insurance Company to rebut the case of the claimant petitioners did not adduce any oral/documentary evidence on record nor by the style of cross-examination they could raise any cloud to

disbelieve the case of the appellants regarding involvement of the driver of the OP No.1 with the alleged accident. Even the Insurance Company by the trend of cross-examination PW-2 who is one of the eye witness of the accident who was present to the PO at the time of accident and in his examination-in-chief in para-2 he specifically stated how the accident occurred. The Insurance Company in spite of cross-examination could not demolish his evidence nor could raise any circumstance to disbelieve his evidence, although, the IO laid charge-sheet against the driver of OPW-1 and also against the deceased.

**[17]** In course of hearing of argument, Learned counsel for the appellants fairly submitted that there was no scope to rely upon the charge-sheet. But in the given case, the Learned Tribunal below overlooking the oral evidence on record only relied upon the charge-sheet laid by the IO in the criminal case and in support of his contention, Learned counsel for the appellants referred one citation of this High Court in **Smt. Kalpana Majumder versus Sri Sankar Debnath** [MAC.APP.No.16 of 2016 dated 08.05.2017] where this High Court observed as under :

**"6. ....**

**11. Motor accident claim case is in the nature of a civil suit and certainly not a criminal case. Therefore, the Tribunal has grossly erred in law in relying on the contents of the ejahar and the Police investigation report to disbelieve and discard the case of the claimant. The claimant, on the contrary, is entitled to prove her case on the basis of the evidence adduced by her, which was corroborated in material particulars by the evidence of PW-2, who personally saw the accident resulting in the death of the deceased, in the course of trial. On my above findings, I have no hesitation in holding that the deceased was killed in the vehicular accident on 2-4-2004 due to the rash and negligent driving of the driver of the respondent No. 1. Resultantly, the insurer, who admittedly insured the vehicle in question at the time of the accident, is vicariously liable to satisfy the award."**

**[18]** I have also perused the said judgment of this High Court. It is the settled position of law that Motor Accident claim case is in the nature of a civil suit. It is also well settled that the evidence recorded in criminal case

and the findings arrived therein should not be used in claim cases and such evidence for the purpose of claim cases is inadmissible. The Hon'ble Madhya Pradesh High Court in this regard in **Shabbir Ahmad and Another versus M.P.S.R.T.C., Bhopal and Others** reported in **AIR 1984 MP 173** wherein in para No.8 it has been observed as under :

"8. We have gone through the award dt. 30-9-1981. The learned Member of the Tribunal has disbelieved the evidence of Sherinkhan (AW 2) mainly on the ground that he was at a distance of about 225 feet from the place of the accident. For this he has relied upon a copy of the judgment of the Chief Judicial Magistrate, Jhabua, in Criminal Case No. 385 of 1980, thereby acquitting the respondent 3 of the charge under Section 304A, I.P.C. This judgment of the Criminal Court contains a reference to the spot inspection made by the Magistrate himself and on that basis the Tribunal has discarded the testimony of Sherinkhan (AW 2) as unreliable. Suffice it to say that this approach of the learned Member of the Tribunal is palpably wrong. Firstly, the claimants were not a party to the proceedings in which the spot map was prepared and secondly the evidence in criminal case cannot be used as a basis for discarding the testimony of a witness recorded before the Tribunal itself. The spot map prepared by the Magistrate has neither been produced nor proved before the Tribunal by the respondents. Such evidence recorded behind the back of the appellants cannot be used against them. (See Ram Dulare Shukla v. M.P.S.R.T. Corporation, 1970 Jab LJ 626 : 1969 MPLJ 922). A mere production of a certified copy of the judgment of the Criminal Court containing a reference to such a spot-map having been prepared by the Magistrate is no evidence by itself unless it is proved as a fact. Therefore, this evidence should have been excluded from consideration by the Tribunal. The fact that Nisar. Ahmed (respondent 3) was acquitted in the criminal case is not itself sufficient to absolve him of his liability as a respondent. In claim cases, acquittal may have some bearing or relevance, but that by itself would not be a proof of the fact that the driver was not negligent. The learned Member of the Tribunal has overlooked the numerous decisions that evidence recorded in a criminal court and the findings arrived at therein should not be used in claim cases. Such evidence for the purposes of claim cases is inadmissible. Above all it is a settled principle of law that any evidence recorded behind the back of a party cannot be used against him. The learned Member of the Tribunal should not have disbelieved Sherinkhan (AW 2) merely because he is shown to be at a distance of 225 feet from the place of accident, in the spot-map, which is inadmissible."

[19] Further, the Hon'ble Supreme Court of India in **National Insurance Company Limited versus Chamundeswari and Others** reported in **(2021) 18 SCC 596** in para-8 it has been observed as under :

"8. It is clear from the evidence on record of PW-1 as well as PW-3 that the Eicher van which was going in front of the car, has taken a sudden right turn without giving any signal or

indicator. The evidence of PW-1 & PW-3 is categorical and in absence of any rebuttal evidence by examining the driver of Eicher van, the High Court has rightly held that the accident occurred only due to the negligence of the driver of Eicher van. It is to be noted that PW-1 herself travelled in the very car and PW-3, who has given statement before the police, was examined as eye-witness. In view of such evidence on record, there is no reason to give weightage to the contents of the First Information Report. If any evidence before the Tribunal runs contrary to the contents in the First Information Report, the evidence which is recorded before the Tribunal has to be given weightage over the contents of the first information report."

[20] In another case of the Hon'ble Supreme Court of India in **Rajwati alias Rajjo and Others versus United India Insurance Company Ltd. and Others** reported in **2022 SCC Online SC 1699** the said Apex Court in paras Nos.18, 19 & 20 also observed as under :

**18. Reference in this connection may also be made to the observations made by this Court in the case of Sunita & Ors. Vs. Rajasthan State Road Transport Corporation & Ors. : (2020)13 SCC 486 , wherein it was observed as under :-**

*"It is thus well settled that in motor accident claim cases, once the foundational fact, namely, the actual occurrence of the accident, has been 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. 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."*

**19. Similarly, in the case of Kusum Lata & Ors. Vs. Satbir & Ors. : (2011) 3 SCC 646, this Court observed that it is well known that in a case relating to motor accident claims, the claimants are not required to prove the case as it is required to be done in a criminal trial. The Court must keep this distinction in mind.**

**20. It is well settled that Motor Vehicles Act, 1988 is a beneficial piece of legislation and as such, while dealing with compensation cases, once the actual occurrence of the accident has been established, the Tribunal's role would be to award just and fair compensation. As held by this Court in Sunita (Supra) and Kusum Lata (Supra), strict rules of evidence as applicable in a criminal trial, are not applicable in motor accident compensation cases, i.e., to say, "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".**

From the principles of law laid down by the Hon'ble Apex Court of India in the aforementioned cases it appears that strict principles of evidence and standards of proof like in a criminal trial are in applicable in MACT claim

cases. The standard of proof in such like matters is one of the preponderance of probabilities, rather than beyond reasonable doubt.

**[21]** Here in the given case, on perusal of the judgment of the Learned Tribunal below it appears that at the time of delivery of judgment, Learned Tribunal below only relied upon the charge-sheet but did not consider the oral evidence on record of the appellants i.e. the claimants. It is already discussed that to rebut the claim petition the contesting Ops failed to adduce any contrary evidence on record to disbelieve the claim of the claimant petitioners.

**[22]** Situated thus, this Court is of the considered view that the Learned Tribunal below committed error in passing award solely relying upon the charge-sheet laid by the IO in the given case ignoring the oral evidence on record for which interference of the Court is required. The findings of the Learned Tribunal below that there was contributory negligence on the part of the deceased was not based on any legal reasoning and the same is contrary to the law for which in the given case, the entire amount of compensation should be fastened upon the Insurance Company because the Insurance Company by their defence have failed to rebut/demolish/dismantle the claim of the appellant claimant-petitioners. Regarding determination of the monthly income of the deceased on perusal of the record nowhere I find that the claimant-petitioners could adduce any strong supportive evidence to substantiate that the monthly income of the deceased at Rs.20,000/- per month. Thus, it appears that the Learned Tribunal below at the time of delivery of judgment rightly determined the monthly income of the deceased at Rs.10,000/- per month in absence of any cogent evidence on record, relying upon the notification of this High Court.

**[23]** In the result, the appeal filed by the appellants is hereby partly allowed. The judgment and award of the Learned Tribunal below dated 03.06.2024 is hereby modified to the extent that as mentioned in para No.33 of the award, the total amount of compensation as determined by the tribunal below at Rs.16,33,000/- be awarded in favour of the appellant claimant-petitioners in place of Rs.8,16,500/-. The appellant claimant-petitioners are entitled to get the aforesaid amount from the Insurance Company with 7% interest from the date of filing of the claim petition i.e. w.e.f. 12.07.2022 to till the date of payment. The aforesaid amount with interest be released in pursuance of the judgment and award delivered by the Learned Tribunal below dated 03.06.2024 in favour of the appellants/claimants. The amount would be disbursed as per the judgment and award of the Learned Tribunal below on enhanced amount. The respondent Insurance Company is hereby asked to deposit the amount with interest either to the Registry of the High Court or to the Tribunal below within a period of 2(two) months from the date of delivery of this judgment.

Send down the LCRs along with a copy of this judgment. Also supply the copy of the judgment to the counsel for the parties for information and compliance.

**JUDGE**

Digitally signed by SABYASACHI  
BHATTACHARJEE  
Date: 2024.09.20 11:00:35 +05'30'

*Sabyasachi B*