

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE BIVAS PATTANAYAK

FMA 28 of 2022

CAN 3 of 2022

Bajaj Allianz General Insurance Company Limited

versus

Ruma Sen & Others

With

COT 51 of 2021

Ruma Sen & Another

versus

Bajaj Allianz General Insurance Co. Ltd. & Another

For the Appellant-Insurance Company : Mr. Rajesh Singh, Advocate

For the Respondents-Claimants : Mr. Abu Abbas Uddin, Advocate
Ms. Nahid Rahaman, Advocate

Heard on : 14.09.2022, 23.09.2022, 05.01.2023

Judgment on : 06.09.2023

Bivas Pattanayak, J. :-

1. This appeal is preferred against the judgment and award dated 26th July, 2019 passed by learned Judge, Motor Accident Claims Tribunal, IXth Bench, City Civil Court, Calcutta in M.A.C. Case No. 84 of 2012 granting compensation of Rs. 34,05,000/-together with interest in favour of the claimants under Section 166 of the Motor Vehicles Act, 1988.

2. The brief fact of the case is that on 7th June, 2011 while the victim was proceeding in the offending vehicle bearing registration no. WB-20G-8518 (Car) from Guwahati to Kolkata and when it reached near Srikrishna Kalibari under Islampur Police Station the car, on being driven in rash and negligent manner, overturned on NH-31 and fell down on a road side ditch.

As a result of the said accident, the victim and other passengers sustained serious injuries and were removed to Islampur Sub-Divisional Hospital by the local people. The attending doctor declared the victim brought dead. On account of sudden demise of the deceased, the claimants being the widow and daughter of the victim filed application for compensation of Rs. 40,00,000/- together with interest under Section 166 of the Motor Vehicles Act, 1988.

3. The claimants in order to establish their case, examined two witnesses and produced documents which have been marked as **Exhibits-1** to **10** respectively.

4. The appellant-insurance company did not adduce any evidence.

5. Upon considering the materials on record and the evidence adduced on behalf of the claimants, learned Tribunal granted compensation of Rs.34,05,000/- together with interest in favour of the claimants under Section 166 of the Motor Vehicles Act.

6. Being aggrieved by and dissatisfied with the impugned judgment and award of the learned tribunal, the insurance company has preferred the present appeal.

7. Challenging the said award of the learned tribunal, the respondents-claimants have also filed cross objection being COT 51 of 2021.

8. Both the appeal and the cross-objection are taken up together for consideration and disposal.

9. Mr. Rajesh Singh, learned advocate for the appellant-insurance company submitted that in a proceeding under Section 166 of the Motor Vehicles Act, 1988, it is settled principles of law that the claimants must

prove and establish the fact that the driver of the offending vehicle was guilty of rash and negligent act. In the instant case, the claimants did not adduce the evidence of any eyewitness to establish such fact of negligence of the driver of the offending vehicle. Only on the basis of oral evidence of PW1, who was not an eyewitness to the occurrence, the learned tribunal held the issue of rash and negligent act of the driver of the offending vehicle to have been proved in favour of the claimants without proper analysis of the contents of the written complaint which was clearly not lodged by an eyewitness to the occurrence and the final report submitted by the investigating agency mentioning that no evidence could be collected during the course of investigation against the driver which is explicit that the driver of the offending vehicle was not guilty of negligence. Thus, the claimants are not entitled to get compensation in absence of cogent proof of negligence of the driver of the offending vehicle in the said accident. In support of his contentions, he relied on the following decisions of the Hon'ble Supreme Court:

- i. ***Minu B. Mehta and Ors. versus Balkrishna Ramchandra Nayan and Ors.*** reported in ***(1977) 2 SCC 441***
- ii. ***Surender Kumar Arora and Ors. Manoj Bisla and Ors.*** reported in ***(2012) 4 SCC 552***
- iii. ***Lachoo Ram and Ors. Himachal Road Transport Corpn. and Ors.*** reported in ***(2014) 13 SCC 254.***

He further submitted that the evidence of the claimants shows that the offending vehicle bearing registration no. WB-20G-8518 was given to the deceased by Swami Ishatmananda, Secretary of Ramakrishna Mission as

per certificate issued by the Ramakrishna Mission Authority for taking the said vehicle to Kolkata for repairing. On the relevant date of accident, the offending vehicle was driven by deceased Arindam Sen and not by Bibhas Adhikary which is comprehensible from the fact that during investigation the police authority seized the driving license of Arindam Sen and not of Bibhas Adhikary. Since said Bibhas Adhikary was not driving the offending vehicle on the relevant date of accident hence the investigating agency could not collect any materials against him resulting in submission of final report upon completion of investigation. The materials on record clearly indicates that the accident occurred on the relevant date due to rash and negligent driving of the deceased Arindam Sen, however, in order to get compensation, the driver's name was swapped and changed to Bibhas Adhikary in the First Information Report lodged after 9 days of accident and thereby seeking to commit fraud upon the insurance company to grab public money.

Furthermore he submitted that even if it is assumed to be true as per the First Information Report that the driver of the offending vehicle was Bibhas Adhikary, then the materials on record goes to show the said driver was not having any valid and effective driving license to drive any vehicle and more particularly the offending vehicle and, therefore, the appellant-insurance company being the insurer cannot be held liable to pay compensation to the claimants in the event of statutory violation of the condition of the insurance policy. The investigating agency during the course of investigation has not seized any driving license of Bibhas Adhikary which also clearly indicates that the said driver did not have

valid and effective driving license to drive the offending vehicle. The owner of the offending vehicle did not appear before the learned tribunal and produce any valid and effective driving license of the authorised driver which raises adverse inference against the owner that he was well aware of such fact. In circumstances where it is found that the driver was not holding valid and effective driving license to drive the vehicle, the settled proposition of law is to pass an order directing for payment of compensation to the claimants by the insurance company and liberty thereof be given to the insurance company to recover the compensation satisfied from the owner of the offending vehicle. To buttress his contention, he relied on the decisions of Hon'ble Supreme Court passed in ***National Insurance Co. Ltd. versus Challa Bharathamma and Ors.*** reported in ***(2004) 8 SCC 517*** and in ***Oriental Insurance Co. Ltd. versus Nanjappan and Ors.*** reported in ***(2004) 13 SCC 224.***

Challenging the quantum of compensation assessed by the learned Tribunal, Mr. Singh, learned advocate for the appellant-insurance company, submitted that the learned Tribunal erred in determining the income of the deceased on the basis of the income tax return for Assessment Year 2011-2012 which has admittedly been filed on 25th April, 2012 after the death of the deceased. As per settled proposition of law, income tax return filed after the death of the deceased cannot form basis of determination of income of the deceased-victim. To buttress his contentions, he relied on the decision of Hon'ble Supreme Court passed in ***V. Subbulakshmi and Ors. versus S. Lakshmi and Ors.*** reported in ***(2008) 4 SCC 224.***

Further since the victim, at the time of accident, was 40 years of age, the multiplier should be 15 instead of 16 adopted by the learned Tribunal in view of the decision of the Hon'ble Supreme Court passed in ***Sarla Verma (Smt) and Others versus Delhi Transport Corporation and Another*** reported in **(2009) 6 SCC 121**.

Moreover, the general damages under the conventional heads should be Rs. 70,000/- instead of Rs. 1,10,000/- granted by the learned Tribunal in view of observation of the Hon'ble Supreme Court in ***National Insurance Company Limited versus Pranay Sethi and Others*** reported in **(2017) 16 SCC 680**.

In light of his aforesaid submissions, he prayed for setting aside and/or modification of the impugned judgment and award of the learned Tribunal.

10. In reply to the contentions raised on behalf of the appellant-insurance company, Mr. Abu Abbas Uddin, learned advocate for the respondent nos. 1 and 2 (claimants) submitted that PW1, widow of the deceased has categorically stated of rash and negligent driving of the driver of the offending vehicle. Even if the evidence of PW1 with regard to the negligence of the driver of the offending vehicle is discounted, from the manner in which the accident has taken place resulting in death of the victim and one other and injury to the driver, the negligence of the driver of the offending vehicle is clearly conceivable. The fact of the accident may sometimes constitute evidence of negligence and in such circumstances, the principle of *res ipsa loquitur* is applicable. In support of his aforesaid contentions, he relied on the following decisions:

- i. ***Shyam Sunder and Others versus The State of Rajasthan*** reported in **1974 AIR SC 890**
- ii. ***N. K. V. Bros (P) Ltd. versus M. Karumai Ammal and Ors. Etc.*** reported in **1980 AIR SC 1354**
- iii. ***Iffco Tokio General Insurance Company Ltd. versus Pearl Beverages Ltd.*** reported in **(2021) 7 SCC 704**
- iv. ***Smt. Kamlesh Balmiki @ Kamalesh Balmiki and Ors. versus United India Insurance Company Limited and Anr. (FMA 987 of 2013)***

He further submitted that in proceedings relating to claim cases, the claimants are merely to establish their case on the touchstone of preponderance of probability and the standard of proof beyond reasonable doubt cannot be applied by the learned Tribunal while dealing with the motor accident cases. To buttress his contentions, he relied on the decision of the Hon'ble Supreme Court passed in ***Sunita & Ors. versus Rajasthan State Road Transport Corporation & Anr.*** reported in **(2020) 13 SCC 486**. Further the oral evidence of PW1 should be taken into account in the absence of any contrary evidence and he relied on the decision of Orissa High Court passed in ***Mataji Bewa and Ors. versus Hemanta Kumar Jena and Anr.*** reported in **1994 ACJ 1303**. Placing reliance on the decision of the Hon'ble Supreme Court passed in ***Shamanna and Anr. versus The Divisional Manager, The Oriental Insurance Co. Ltd. and Ors.*** reported in **(2018) 9 SCC 650** he conceded that in the event the court finds that the driver was not holding effective driving license it may apply the principles of pay and recovery.

He also submitted that the claimants are entitled to an amount equivalent to 25% of the annual income of the victim towards future prospect since at the time of accident the victim was 40 years of age and was on fixed salary as well as self-employed.

11. Despite service of notice of appeal, none appeared on behalf of the respondent no.3, owner of the offending vehicle.

12. Having heard learned advocates for the respective parties, the following issues have fallen for consideration:

Firstly, whether there was rash and negligent driving on the part of the driver of the offending vehicle on the relevant date of accident.

Secondly, whether on the relevant date of accident the offending vehicle was driven by Bibhas Adhikary or the deceased Arindam Sen.

Thirdly, whether the driver of the offending vehicle was holding a valid and effective driving licence to drive such vehicle on the relevant date of accident.

Fourthly, whether the learned Tribunal erred in determining the income of the deceased-victim.

Fifthly, whether the multiplier should be 15 instead of 16 adopted by the learned Tribunal.

Sixthly, whether the general damages under the conventional heads should be restricted to Rs. 70,000/- instead of Rs. 1,10,000/- granted by the learned Tribunal.

And *lastly*, whether the claimants are entitled to an amount equivalent to 25% of the annual income of the deceased towards future prospect.

13. The first issue relates to whether there was rash and negligent driving on the part of the driver of the offending vehicle on the relevant date of accident. It is not in quarrel that in a proceeding under Section 166 of the Motor Vehicles Act, 1988, the claimants are to establish the proof of negligence of the driver of the offending vehicle as has been rightly argued by Mr. Singh, learned advocate for the appellant-insurance company relying on *Minu B. Mehta (supra)*, *Surender Kumar Arora (supra)* and *Lachoo Ram*. The claimants in order to establish such fact of rash and negligent driving of the driver of the offending vehicle, have examined the widow of the deceased (claimant no.1), Ruma Sen as PW1. Though PW1 in her evidence-in-chief deposed that the accident took place due to rash and negligent driving of the driver of the offending vehicle, however, in cross-examination, she admitted that she came to know about the accident from the police authority. Thus, it goes without saying that PW1 has not witnessed the accident. Mr. Abu Abbas Uddin, learned advocate for respondents-claimants relying on *Mataji Bewa (supra)* strenuously argued that evidence of PW1 can be taken into consideration in the absence of contrary evidence. In *Mataji Bewa (supra)*, the positive evidence of the claimants that the deceased was a pedestrian and the truck came and knocked him down, has not been impeached in any manner by way of cross-examination. Whereas in the case at hand, PW1 herself has admitted that she came to learn of the incident from the police. Thus, the evidence of PW1 is not a direct evidence. The facts of the cited decision is thus distinguishable.

Therefore, the evidence of PW1 in respect of rash and negligent driver on the part of the driver of the offending vehicle is inconsequential. Be that as it may, in claim cases, the claimants are merely to establish their case on the touchstone of preponderance of probability and the standard of proof beyond reasonable doubt as in criminal cases is not applicable to motor accident cases. [See *Sunita (supra)*]. The Court has to analyze the materials before it to decide whether the case of the claimant is acceptable or not. From the written complaint (**Exhibit-1**), it is found that, on the relevant date, the deceased-victim along with his friend Sk Morshed Ali was travelling in the said vehicle driven by one Bibhas Adhikary. The vehicle turned turtle and fell on nearby ditch. Due to such accident, the victim Arindam Sen and his friend Sk. Morshed Ali died in the hospital and the driver sustained injuries. The fact that the vehicle turned turtle on the relevant date and time, resulting in death of two persons who were travelling in the said vehicle and injury to the driver has never been disputed. As a rule, mere proof that an event has happened or an accident has occurred, the cause of which is unknown, is not evidence of negligence. But the peculiar circumstances constituting the event or accident, in a particular case, may themselves proclaim in concordant, clear and unambiguous voices the negligence of somebody as the cause of the event or accident. The driver of the offending vehicle on the relevant date had the charge of the vehicle which overturned is an instance of special kind of accident which tells its own story. The manner in which the accident has taken place resulting in death of two persons and injury to the driver clearly attracts the principles of *res ipsa loquitur* where the facts

of the accident constitute evidence of negligence. I find substance in the submission of Mr. Abu Abbas Uddin, learned advocate for the respondent nos. 1 and 2, relying on *Shyam Sunder (supra)*, *N. K. V. Bros (P) Ltd. (supra)* and *Smt. Kamlesh Balmiki @ Kamalesh Balmiki (supra)*. In *Pearl Beverages Ltd. (supra)* cited on behalf of respondents-claimants, the question which arose before the Hon'ble Court is whether the NCDRC was correct in holding that the appellant is not entitled to invoke the shield of Clause (2c) of the Contract of Insurance, under which, it was not liable, if the person driving the vehicle, was under the influence of intoxicating liquor, or drugs. The facts of the cited decision is dissimilar to the case at hand. It is true that final report has been submitted against the driver of the offending vehicle since no evidence could be collected against him. However, the final report at best can be corroborative and not a substantive piece of evidence. The appellant-insurance company has not adduced any evidence in the contrary to negate the claim of the claimants relating to negligence of the driver of the offending vehicle. In view of the above discussion upon analysis of the materials on record, negligence of the driver of the offending vehicle is transparently clear.

In *Minu B. Mehta (supra)*, the Hon'ble Court agreed with the finding of the Tribunal and High Court that due to rash and negligent driving of the lorry that the car in which the applicant and one other were travelling was hit causing injuries to both of them. It accepted the testimony of doctor and customs officer that the lorry crossed the road dividers, ran into wrong side and hit the car which was driven by the applicant. The finding of the

Tribunal rejecting the plea that accident was due to mechanical defect was upheld. The facts involved in the cited decision is factually different.

In *Surender Kumar Arora (supra)*, the claimants were the parents of the deceased person. The deceased was a doctor by profession. The deceased was travelling in the motor vehicle driven by the respondent no.1 who happens to be a close associate/friend. It has come in the evidence of the claimants as well as the respondent no.1 that the vehicle in question was not driven in rash and negligent manner by the respondent no.1. Since the claimants-parents of the deceased failed to establish rash and negligence driving, the judgment of the High Court was upheld which sustained the order passed by the learned Tribunal rejecting the claim of the parents of compensation. The facts involved in the aforesaid case is quite dissimilar to the case at hand and thus is distinguishable.

In *Lachoo Ram (supra)*, the bus was standing at the red light and on being asked, soon after starting from the traffic signal it stopped at 100 to 150 yards and it was found that the bus could not have started on a high speed. The road at the place of the accident was very narrow and the witness present on the spot has not claimed that the bus driver had given a signal to the deceased motorcyclist to overtake him. The witness could not see the actual accident because at that time the motorcyclist in an effort to overtake the bus had gone to his right side and was not visible and, therefore, he could only hear the sound of crash. It was not the case of any witnesses that the bus driver took any sudden turn while proceeding from the traffic signal or that he swerved the bus to the right side. On such basis, the Hon'ble Court did not accept the contention of the

claimants of rash and negligent act of the driver. The facts of the cited decision are quite dissimilar to the case at hand and, therefore, it is distinguishable.

14. With regard to the second issue as to whether the alleged vehicle was driven by Bibhas Adhikary or not, Mr. Singh, learned advocate for the appellant-insurance company, has strenuously argued that on the relevant date of accident, the offending vehicle was driven by deceased Arindam Sen and not by Bibhas Adhikary which is comprehensible from the fact that during investigation the police authority seized the driving license of Arindam Sen and not of Bibhas Adhikary and the name of driver Bibhas Adhikary has been swapped to get compensation. It is found that PW1, widow of the deceased, though not an eye-witness to the occurrence, in her cross-examination has stated that on the relevant date Bibhas Adhikary was driving the vehicle and not her husband Arindam Sen. The written complaint **(Exhibit 1)** shows that on the relevant date the vehicle was driven by Bibhas Adhikary, which is also depicted in the final report **(Exhibit 2)**. The aforesaid fact in the written complaint and final report has not been disputed by leading any evidence of rebuttal. It is true as per final report the driving licence of the deceased Arindam Sen was seized and not of Bibhas Adhikary. However, seizure of driving licence of the victim does not *per se* lead to the fact that on the relevant date the victim was driving the vehicle. The appellant-insurance company did not adduce any contrary evidence to primarily establish that on the relevant date it was Arindam Sen who was driving the vehicle and not Bibhas Adhikary. Precisely there is nothing on record to suggest that on the relevant date

the vehicle was driven by the victim and not by Bibhas Adhikary. Thus the materials placed on record manifest that the offending vehicle on the relevant date was driven by Bibhas Adhikary. The argument advanced on behalf of appellant-insurance company fall short of merit.

15. With regard to the third issue as to whether the driver of the offending vehicle was holding valid and effective licence on the relevant date of accident, it is found that the insurance company in its written statement has raised the plea that the alleged offending driver on the relevant date of accident was not having a valid and effective driving licence to drive the particular class of vehicle alleged to be involved in the accident. Mr. Singh, learned advocate for appellant-insurance company vociferously argued that since there was no seizure of driving licence of the driver of the alleged vehicle, hence he was not having such driving licence. Save and except that the driving licence of the driver of that offending vehicle was not seized, there is no other materials to suggest that the driver was not holding valid and effective driving licence on the relevant date of accident. The non-seizure of driving licence by the investigating authority does not *ipso facto* establish the fact that the driver of the offending vehicle was not holding valid and effective driving licence. The insurance company having raised such specific plea, burden of proof was upon it to discharge, however, in spite of getting opportunity, the appellant-insurance company has not made any endeavour to adduce the evidence of the driver of the offending vehicle or any other evidence to establish the fact that the driver was not holding valid and effective driving licence to drive such vehicle. In the absence of such evidence, it cannot be said that the driver of the

offending vehicle on the relevant date was not holding valid and effective licence. For such reasons, the principle of pay and recovery as laid down in *Challa Bharathamma (supra)*, *Nanjappan (supra)* and *Shamanna (supra)* is not applicable to the facts of the case.

16. With regard to the fourth issue relating to determination of the income of the victim, it is found that learned Tribunal has determined income of the victim at Rs. 3,08,665/- per annum considering the income tax return for the Assessment Year 2011-2012 (**Exhibit-9 collectively**). Mr. Singh, learned advocate for the appellant-insurance company, relying on *V. Subbulakshmi (supra)* intensely argued that the income tax return filed after the death of the victim cannot be taken into consideration. It is not in dispute that the accident has taken place on 7th June, 2011 and the income tax return for the Assessment Year 2011-2012 has been filed on 25th April, 2012. Thus, it manifest that the income tax return for the Assessment Year 2011-2012 has been filed after the death of the victim. I find substance in the submission of Mr. Singh relying on *V. Subbulakshmi (supra)* wherein the Hon'ble Supreme Court has upheld the observation of High Court in not relying on the income tax return filed after the accident. However, the claimants have claimed the income of the victim on two heads namely, income from salaries and income from business. Admittedly at the time of accident, the victim was an employee of Hindal Co, Belur. The Form 16 for the Assessment Year 2011-2012 has been filed by the claimants issued on 2nd May, 2011 prior to the death of the victim. The Form 16 shows annual income from salary of Rs.1,87,627/- which is also appearing in the income tax return for the Assessment Year 2011-2012.

Thus, the annual income from salary of Rs. 1,87,627/- of the deceased is acceptable. The Form 16 shows that such income from salary is not taxable. It is noted that the tax on employment is Rs. 1,410/-. Now coming to the income from business, it is found that save and except Trade Enlistment Certificate (**Exhibit 6**), there is no other documentary evidence of income from business. PW1, Ruma Sen, widow of the deceased, stated in her evidence-in-chief that her deceased husband used to run business of general order supplier. In cross-examination, she deposed that her husband used to carry on such business along with her father-in-law Basanta Kumar Sen. It is relevant to note that said Basanta Kumar Sen was never examined before the Court to primarily establish that the deceased used to carry on the business of general order supplier along with his father. It is specifically contended that the victim used to earn income of Rs.2,20,265/- from business. However, such income is not supported by any sort of document. The Form 16 filed by the claimants shows that the victim disclosed to his employer of not having any other source of income. Such being the position, the income from business is far from being acceptable. Accordingly in light of the above discussion, the annual income of the deceased from salary of Rs. 1,87,627/- less Rs.1,410/- (tax on employment) which comes to Rs.1,86,217/- should be considered as the actual annual income of the victim.

17. With regard to the multiplier, it is found that the learned Tribunal has adopted multiplier of 16. Admittedly the victim at the time of accident was 40 years old. Following the observation of Hon'ble Supreme Court in *Sarla*

Verma (Smt) (supra), the multiplier should be 15 instead of 16 adopted by the learned Tribunal.

18. So far as the general damages are concerned, it is found that the learned Tribunal has granted Rs. 10,000/- towards funeral expenses and Rs. 50,000/- each towards loss of estate and loss of consortium respectively. However, following the observation of Hon'ble Supreme Court in *Pranay Sethi (supra)*, the claimants are entitled to general damages under the conventional heads of loss of estate, loss of consortium and funeral expenses to the tune of Rs. 15,000/-, Rs. 40,000/- and Rs.15,000/- respectively.

19. With the regard to future prospect, it is found that at the time of accident the victim was admittedly 40 years old and was on fixed salary. Bearing in mind the aforesaid and following the proposition laid down by the Hon'ble Supreme Court in *Pranay Sethi (supra)*, the claimants are entitled to an amount equivalent to 25% of the annual income of the victim towards future prospect.

20. In view of the above discussion, the calculation of compensation is made hereunder:

Calculation of Compensation

Annual income	Rs. 1,87,627/-
Less: Tax on employment	Rs. 1,410/-
Actual annual income	Rs. 1,86,217/-
Add: Future prospect @ 25% of the actual annual income	Rs. 46,554/-
	Rs. 2,32,771/-
Less: 1/3 rd towards personal and living expenses	Rs. 77,590/-
	Rs. 1,55,181/-
Adopting multiplier 15 (Rs. 1,55,181/- x 15)	Rs. 23,27,715/-

Add: General damages Loss of estate: Rs.15,000/- Loss of consortium: Rs.40,000/- Funeral expenses: Rs. 15,000/-	Rs. 70,000/-
Total compensation	Rs. 23,97,715/-

21. Thus, total compensation comes to Rs. 23,97,715/- together with interest at the rate of 6% per annum from the date of filing of the claim application (i.e. on 27.03.2012) till the date of actual payment.

22. It is found that the appellant-insurance company has deposited an amount of Rs. 53,76,495/- in terms of order of this Court vide OD Chalan No. 1829 dated 25.01.2022 and also made deposit of statutory amount of Rs. 25,000/- vide OD Chalan No. 3136 dated 25.03.2021. Both the aforesaid deposits together with accrued interest be adjusted against the entire compensation amount and interest thereon.

23. Respondents-claimants are directed to deposit balance court fees on the compensation assessed, if not already paid.

24. Learned Registrar General, High Court, Calcutta shall release the compensation amount together with interest in favour of the respondents-claimants in equal proportion, after making payment of Rs. 40,000/- in favour of respondent no.1, widow of the deceased, towards spousal consortium, upon satisfaction of their identity and payment of balance court fees, if not already paid.

25. Upon full satisfaction of the award, if any amount is left over, the same shall be refunded to the appellant-insurance company.

26. With the aforesaid observation, the appeal and the cross-objection stand disposed of. The impugned judgment and award of the learned Tribunal is modified to the above extent. No order as to costs.

- 27.** All connected applications, if any, stand disposed of.
- 28.** Interim order, if any, stands vacated.
- 29.** Let a copy of this order along with the lower court records be sent to the learned Tribunal in accordance with the rules.
- 30.** Urgent photostat certified copy of this judgment, if applied for, be given to the parties upon compliance of necessary legal formalities.

(Bivas Pattanayak, J.)