

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

**PRESENT:
THE HON'BLE JUSTICE BIVAS PATTANAYAK**

**FMA 301 of 2019
Bajaj Allianz General Insurance Company Limited
versus
Mousumi Das (Chatterjee) & Ors.
With
COT 53 of 2019
Mousumi Das (Chatterjee) & Ors.
versus
Bajaj Allianz General Insurance Company Limited & Anr.**

For the Appellant-Insurance Company	: Mr. Rajesh Singh, Advocate
For the Respondents-Claimants	: Mr. Subir Banerjee, Advocate Mr. Sandiup Bandyopadhyay, Advocate Ms. Ruxmini Basu Roy, Advocate
Heard on	: 03.04.2023, 10.04.2023, 17.04.2023
Judgment on	: 10.01.2024

Bivas Pattanayak, J. :-

1. This appeal is preferred against the judgment and award dated 27th June, 2018 passed by learned District Judge-cum-Judge, Motor Accident Claims Tribunal, Jalpaiguri in MAC Case No. 15 of 2014 granting compensation of Rs. 58,74,106/- in favour of the claimants under Section 166 of the Motor Vehicles Act, 1988.

2. The brief fact of the case is that on 28th September, 2013 at about 8:45 A.M. while the victim along with his friend Dhruba Narayan Mitra Das was proceeding towards Maynaguri side on a scooter bearing registration no. WB-72A/5325 for their official purpose, at that time the offending vehicle

bearing registration no. WB-73B/2296 (truck) in a rash and negligent manner dashed the said scooter from behind. As a result of which, the victim and his friend sustained injuries. The friend of the victim was shifted to Sadar Hospital. The victim was directly taken to Dr. Chang's Super Specialty Hospital Pvt. Ltd., Siliguri where he was hospitalised from 28th September, 2013 to 24th October, 2013. Since the condition of the victim deteriorated day by day, he was shifted to Neotia Health Care Nursing Home, Siliguri on 24th October, 2013 where he was hospitalised till 11th November, 2013. However, the victim ultimately succumbed to his injuries and died on 11th November, 2013. On account of sudden demise of the victim, the claimants being the widow, one major daughter and one minor daughter filed application for compensation of Rs. 60,00,000/- together with medical expenses under Section 166 of the Motor Vehicles Act, 1988.

3. The claimants in order to establish their case examined five witnesses and produced documents which have been marked as **Exhibits 1 to 18** respectively. During cross-examination of O.P.W.2, two documents were also exhibited on behalf of the claimants namely, medical bills and discharge summary as **Exhibit 19-Series** and **20** respectively.

4. The appellant-insurance company also adduced the evidence of two witnesses and produced documents which have been marked as **Exhibits A to B** respectively.

5. Respondent no.4-owner of the offending vehicle though entered appearance before the learned Tribunal and filed written statement, but ultimately did not contest the case and the same was disposed of *ex parte*

against him. In the aforesaid backdrop, service of notice of appeal upon the said respondent stands dispensed with.

6. Upon considering the materials on record and the evidence adduced on behalf of the respective parties, the learned tribunal granted compensation of Rs. 58,74,106/- in favour of the claimants under Section 166 of the Motor Vehicles Act, 1988.

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

8. Challenging the impugned judgment and award of the learned Tribunal, the claimants have also filed a cross objection being COT 53 of 2019.

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

10. Mr. Rajesh Singh, learned advocate for appellant-insurance company submitted as follows:

The learned Tribunal failed to appreciate that on the relevant date and time, the alleged offending vehicle bearing registration no. WB-73B/2296 (truck) was not involved in the accident. The inquest report prepared by the police authorities under Section 174 of the Criminal Procedure Code did not mention the involvement of the alleged vehicle bearing registration no. WB-73B/2296 (Truck) in the concerned accident and it has been noted that the accident had taken place by one unknown truck. The so called eyewitness to the occurrence was a tutored eyewitness for which reason no reliance can be placed on his testimony to decide the fact of involvement of

the truck bearing registration no. WB-73B/2296 in the said accident. Further from the statement made before the investigating agency under Section 161 of the Criminal Procedure Code by Sri Dhruba Narayan Mitra, who was riding the scooter bearing registration no. WB-72A/5325 on the relevant date of accident, it is apparent that they were hit by the truck bearing registration no. WB-73B/0229 and not the insured truck bearing registration no. WB-73B/2296 as alleged by the claimants. The evidence of the Legal Executive (D.W.1) of the insurer also shows non-involvement of the alleged truck in the concerned accident. He also indicated that the First Information Report has been lodged on 6th December, 2013 after almost 69 days of the accident which took place on 28th September, 2013 and as such the case of claimants is doubtful for the reasons of unexplained delay in lodging F.I.R. Thus, the facts and circumstances emanated from the materials on record clearly shows non-involvement of the alleged vehicle due to which the insurance company cannot be saddled with the liability to pay compensation. The alleged vehicle has been implanted to gain illegal and unlawful benefits from the insurance company.

In light of his aforesaid submissions, he prayed that the impugned judgment and award of the learned Tribunal should be set aside in the interest of justice.

11. In reply to the contention raised on behalf of appellant-insurance company, Mr. Subir Banerjee, learned advocate for respondents-claimants submitted that the insurance company has not taken any specific plea that the offending vehicle was not involved in the accident. In spite of leave

been granted to file additional written statement, the insurance company did not file the same disclosing such fact of non-involvement of the offending vehicle in the said accident. Further, the insurance company has also not produced any independent investigation report of its investigator showing non-involvement of the offending vehicle. The only plea that is raised challenging the involvement of the offending vehicle is of delay in filing of the F.I.R. Referring to the decision of the Hon'ble Supreme Court passed in ***Ravi versus Badrinarayan and Others***¹ and another decision of this Court passed in ***Cholamandalam MS General Insurance Company Limited versus Smt. Ratnamaya Rai & Others***², he submitted that delay in lodging F.I.R. *per se* does not effect the claimant's case until and unless there is proven fact of concoction, engineering and fabrication of the F.I.R. Since no evidence of concoction, engineering and fabrication of the F.I.R. has come on record, even if there is delay that is not fatal to the claimant's case. He further submitted that even though the vehicle number is not mentioned in the inquest report that does not entitle the Tribunal to disbelieve that the vehicle implicated in the claim application was the offending vehicle. To buttress his contention, he relied on the decision of this Court passed in ***National Insurance Company Ltd. versus Smt. Sarmishta Sikdar and Others***³. Moreover, he submitted that the insurance company has not examined the owner or the driver of the offending vehicle to establish the fact of non-involvement of the offending vehicle in spite of taking leave under Section 170 of the

¹ 2011 (1) T.A.C. 867 (S.C.)

² FMA 920 of 2021 (High Court at Calcutta)

³ 2018 (4) T.A.C. (Cal.)

Motor Vehicles Act, 1988 and thus, the Tribunal has no other option but to accept the contention of the claimants of the involvement of the offending vehicle since the same has not been controverted by cogent evidence from the side of the insurance company. That apart, P.W.2, Chandan Das, who is also a chargesheeted witness, has categorically stated that he has witnessed the accident in which the offending vehicle was involved and such evidence of P.W.2 has remained unchallenged in cross-examination. In support of his contention, he relied upon the decision of this Court passed in ***The New India Assurance Co. Ltd. versus Mita Samanta & Others***⁴. Moreover, he indicated that not a single suggestion has been given to P.W.2 challenging involvement of the vehicle. The rule of evidence is wherever the opponent has declined to avail himself of the opportunity to put his essential and material case in cross-examination, it must follow that he believed the testimony given could not be disputed at all. In support of his contention, he relied on the decision of this Court passed in ***A.E.G. Carapiet versus A.Y. Derdarian***⁵ and another decision of this Court passed in ***National Insurance Co. Ltd. Versus Smt. Runu Singh & Ors.***⁶.

He further submitted that it is a normal rule that in civil proceedings a fact is said to be established if it is proved by preponderance of probabilities. In support of his contention, he relied on the decisions of Hon'ble Supreme Court passed in ***Dr. N. G. Dastane versus Mrs. S. Dastane***⁷ and in

⁴ 2010 (1) T.A.C. 343 (Cal.)

⁵ AIR 1961 Calcutta 359

⁶ F.M.A. 3896 of 2015 (High Court at Calcutta)

⁷ AIR 1975 SC 1534

Mangla Ram versus Oriental Insurance Company Limited and Others⁸. Since the evidence of the eyewitness P.W.2 of the involvement of

the vehicle has not been challenged or thwarted by any rebuttal evidence, hence applying the principles of preponderance of probabilities, the involvement of the offending vehicle has been well-established by the claimants. He also indicated that though the statement of the witness, Dhruba Narayan Mitra recorded under Section 161 of the Criminal Procedure Code (**part of Exhibit A**) reveals of some other vehicle and the inquest report under Section 174 of the Criminal Procedure Code does not disclose of offending vehicle in the accident, however, none of the aforesaid statements/reports is substantive piece of evidence to rely upon.

Moreover, he submitted that the learned Tribunal erred in determining the income of the deceased at Rs. 43,840/- per month whereas it ought to have considered the gross income of Rs. 56,370/- less Income Tax and Professional Tax as the actual income of the victim. Although the salary register does not disclose of any tax been paid but if the annual income comes within taxable range, the same needs to be deducted from gross income. To buttress his contention, he relied on the decision of Hon'ble Supreme Court passed in ***Vimal Kanwar and Others versus Kishore Dan and Others⁹***.

Further the learned Tribunal ought to have granted future prospect of 15% of the annual income of the deceased.

⁸ (2018) 5 SCC 656

⁹ (2013) 7 SCC 476

He further submitted that the learned Tribunal has erred in not granting medical expenses of Rs. 86,060/- (**Exhibit 19-series**) and Rs. 1,68,445/- towards hospitalisation charges (**X-series**). There is no case made out that such bills are erroneous or inflated, as such the same should have been allowed in favour of the claimants even if the same is not proved by the representative of the hospital. In support of his contention, he relied on the decision of this Court passed in **Istasam & Ors. versus Bajaj Allianz General Insurance Company & Anr.**¹⁰ Referring to the decision of Hon'ble Supreme Court in **Rekha Jain versus National Insurance Company Limited and Others**¹¹, he submitted that in the absence of rebuttal evidence against the pecuniary damages towards medical expenses, the same should be considered to have attained finality which rule is also applicable to the motor claims cases.

Moreover, he further submitted that the learned Tribunal erred in granting Rs.2,000/- only towards funeral expenses whereas it ought to have granted compensation on the general damages of Rs. 70,000/-.

He further indicated that the learned Tribunal has not granted interest on the compensation amount and the interest has been imposed as a default clause which needs to be modified.

In light of his aforesaid submissions, he prayed for modification and/or enhancement of the compensation amount.

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

¹⁰ **F.M.A. 1062 of 2019 (High Court at Calcutta)**

¹¹ **(2013) 8 SCC 389**

Firstly, whether the offending vehicle was involved in the said accident.

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

Thirdly, whether the learned Tribunal ought to have granted future prospect of 15% of the annual income of the deceased-victim.

Fourthly, whether the learned Tribunal ought to have granted medicine and incidental charges and hospitalisation charges.

Fifthly, whether the claimants are entitled to general damages of Rs. 70,000/-.

And *lastly*, whether the learned Tribunal erred in not granting interest on the compensation amount.

Issue No.1: Whether the offending vehicle was involved in the said accident.

13. With regard to the aforesaid issue, it has been specifically stated by the claimants in their claim application under Clause 15 that vehicle bearing registration no. WB-73B/2296 (truck) was involved in the accident. On the contrary, the insurance company in its written statement has pleaded that since there was no satisfactory explanation given for delay in lodging F.I.R., the occurrence as well as involvement of the alleged vehicle is doubtful. The claimants in order to establish the involvement of the offending vehicle have examined one Chandan Das as P.W.2 who deposed that on 28th September, 2013 at about 8:45 A.M. while he was standing near *Jay Matadi Petrol Pump* at Paharpur More, he noticed two persons coming from Jalpaiguri side by riding on a scooter bearing registration no. WB-72A/5325 and all of a sudden the offending vehicle

bearing registration no. WB-73B/2296 (truck) which was also proceeding in the same direction in a rash and negligent manner dashed the scooter from behind. As a result of which, both the persons on the scooter were thrown away. He also deposed that subsequently he came to know that the driver of the scooter was Dhruba Narayan Mitra and the pillion rider was one Ashu Ranjan Das (the victim herein). The aforesaid evidence of P.W.2 that he witnessed the involvement of the offending vehicle has remained unchallenged in cross-examination.

13.1. The involvement of the offending vehicle is challenged precisely on two fold grounds. *Firstly*, that the registration number of the offending vehicle was not revealed during inquest under Section 174 of the Criminal Procedure Code, rather the statement of the rider of the scooter Dhruba Narayan Mitra under Section 161 of the Criminal Procedure Code shows involvement of another vehicle bearing registration no. WB-73B/0229. *Secondly*, on the ground of unexplained delay in lodging of the F.I.R.

13.2. It is a fact that the inquest report prepared under Section 174 of the Criminal Procedure Code does not state the registration number of the alleged offending vehicle. The statement of one Dhruba Narayan Mitra recorded under Section 161 of the Code reveals of involvement of some other vehicle bearing registration no. WB-73B/0229. Be that as it may, the object of proceedings under Section 174 of the Code is merely to ascertain whether a person has died under suspicious circumstances or an unnatural death and if so, what is the cause of his death. The question regarding other details is foreign to the ambit and scope of the proceedings under Section 174 of the Code (***See Pedda Narayana and Others versus***

State of Andhra Pradesh¹²). Thus, non-mentioning of the registration number of the offending truck in the inquest report *ipso facto* does not raise a presumption that the offending truck was not involved in the accident. Further the inquest report is not a substantive evidence (***See Tehseen Poonawalla versus Union of India¹³***).

13.3. The statement under Section 161 of the Code is also not a substantive piece of evidence. Statement under Section 161 of the Code filed by the investigating agency along with chargesheet cannot be relied upon by the Court unless it is brought on record as evidence through some witness and is used only for corroborating and contradicting while questions are put to witnesses and investigating officer. Needless to mention that in the present case at hand the insurance company has neither adduced the evidence of the investigating officer who recorded such statements nor the deponent of such statement to establish its veracity. Therefore, such statement of witness also fails to come in aid of the case of the insurance company of non-involvement of alleged vehicle.

13.4. Now coming to the aspect of delay in lodging of the F.I.R., it is seen that the accident has taken place on 28th September, 2013 and the F.I.R. has been lodged on 6th December, 2013 and as such, there is a delay of 69 days in lodging the F.I.R. P.W.1, Mousumi Das, widow of the deceased is the maker of the F.I.R. In her written complaint (**Exhibit 1**), she has stated that due to prolonged treatment of her husband in consequence of the accident and his subsequent demise, there was delay in lodging the F.I.R.

¹² (1975) 4 SCC 153

¹³ (2018) 6 SCC 72

The explanation of delay given in the F.I.R. has remained unchallenged in the absence of rebuttal evidence. There is no material on record to suggest of any fabrication, engineering or concoction of F.I.R. In *Ravi (supra)*, the Hon'ble Supreme Court has observed as follows:

“20. It is well-settled that delay in lodging FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the Police Station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than to rush to the police station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the Police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim. In cases of delay, the Courts are required to examine the evidence with a closer scrutiny and in doing so; the contents of the F.I.R. should also be scrutinized more carefully. If Court finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons then, even if there is a delay in lodging the FIR, the claim case cannot be dismissed merely on that ground.”

Thus, bearing in mind the aforesaid proposition laid down by the Hon'ble Supreme Court and in the absence of any evidence of fabrication or concoction or engineering of the F.I.R., delay *per se* in lodging of the F.I.R. in the facts and circumstances of the present case does not make the claimants' case doubtful.

13.5. The insurance company, however, has not led any evidence of the owner or driver of the offending vehicle in order to establish the aspect of non-involvement of the offending truck in spite of taking leave under Section 170 of the Motor Vehicles Act, 1988. This Court in *Mita Samanta (supra)* has observed as follows:

“17. Therefore, the Insurance Company in spite of taking leave under Section 170 of the Act having failed to summon the owner or the driver of the vehicle to disprove the allegation of the claimants of the involvement of the vehicle concerned or the rash and negligent driving, the Court is left with no other alternative but to accept the allegation of the claimants unless there is either admission of the claimants or their witness about non-involvement of the vehicle or about the contributory negligence of the victim in the accident or there exists other evidence of unimpeachable nature given by uninterested witness showing falsity of the allegation of the claimants. In this case, there is no such admission or evidence of that nature. In this case, the driver has been charge sheeted and thus, there is no reason why the Insurance Company in spite of taking leave under Section 170 of the Act should not summon the said driver to give evidence for disclosing the truth. We are unable to presume collusion between the driver and the claimants when the driver has been indicted in the criminal proceedings. It will be a travesty of justice in the facts of the present case to disbelieve the eye-witness of the claimants when the owner and the driver are neither appearing nor are they even summoned by the Insurance Company even after taking leave under Section 170 of the Act to face cross-examination at the instance of the claimants.”

The aforesaid proposition has also been followed by this Court in *Smt. Ratnamaya Rai (supra)*.

Bearing in mind the aforesaid proposition laid down by this Court, it will be a travesty of justice in the facts of the circumstances of the present case to disbelieve P.W.2, eyewitness to the occurrence which is otherwise reliable, when the owner or the driver of the offending truck has not been summoned by the insurance company in spite of taking leave under Section 170 of the Act to face cross-examination at the instance of the claimants.

13.6. It has already been noted that the evidence of the eyewitness P.W.2 of involvement of the offending vehicle has remained unchallenged. Precisely, there is no cross-examination with regard to the essential and material case of the insurance company. That apart, no suggestion at the least has been given to the witness challenging the involvement of the vehicle. In *A.E.G. Carapiet (supra)*, this Court has observed as follows:

“(10) The law is clear on the subject. Wherever the opponent has declined to avail himself of the opportunity to put his essential and material case in cross-examination, it must follow that he believed that the testimony given could not be disputed at all. It is wrong to think that this is merely a technical rule of evidence. It is a rule of essential justice. It serves to prevent surprise at trial and miscarriage of justice, because it gives notice to the other side of the actual case that is going to be made when the turn of the party on whose behalf the cross-examination is being made comes to give and lead evidence by producing witnesses. It has been stated on high authority of the House of Lords that this much a counsel is bound to do when cross-examining that he

must put to each of his opponent's witnesses in turn, so much of his own case as concerns that particular witness or in which that witness had any share. If he asks no question with regard to this, then he must be taken to accept the plaintiff's account in its entirety. Such failure leads to miscarriage of justice, first by springing surprise upon the party when he has finished the evidence of his witnesses and when he has no further chance to meet the new case made which was never put and secondly, because such subsequent testimony has no chance of being tested and corroborated."

Bearing in mind the aforesaid proposition, the appellant-insurance company in effect declined to avail itself of the opportunity to put its essential and material case in cross-examination to the eyewitness, P.W.2 produced at the instance of the respondents-claimants. It must, therefore, follow because of law laid down in the case of *A.E.G. Carapiet (supra)* that *"he believed the testimony given could not be disputed at all"*. The principle that culls out from above decision is that it is wrong to think that the aforesaid proposition is merely a technical rule of evidence. It is a rule of essential justice. It serves to prevent surprise at trial and miscarriage of justice, because it gives notice to the other side of the actual case that is going to be made when the turn of the party on whose behalf the cross-examination is being made comes to give and lead evidence by producing witnesses. This much a counsel is bound to do when cross-examining that he must put to each of his opponent's witnesses in turn, so much of his own case as concerns that particular witness or in which that witness had

any share. The above proposition has been cited on behalf of the respondents-claimants in this regard.

13.7. The insurance company in order to prove non-involvement of the offending vehicle has adduced the evidence of one Sourav Sarkar, Executive, Legal, Bajaj Allianz General Insurance Company Limited as O.P.W.1. Though the aforesaid witness stated that offending vehicle was not involved in the accident, however, in cross-examination, he has admitted that they did not submit their investigation report. In the absence of such investigation report, it would not be proper to disbelieve the unchallenged evidence of eyewitness P.W.2 of the involvement of the vehicle which is otherwise reliable.

13.8. In *Mangla Ram (supra)*, the Hon'ble Supreme Court has considered the aspect that the claimants were merely to establish their case on the touchstone of preponderance of probability and standard of proof beyond reasonable doubt cannot be applied by the Tribunal while dealing with motor accident cases.

13.9. In this connection though that case related to matrimonial dispute, the general rule governs when a fact can be said to have been established, was laid down authoritatively in the case of *Dr. N. G. Dastane (supra)* at paragraphs 24 and 25 which are reproduced hereinbelow:

“24. The normal rule which governs civil proceedings is that a fact can be said to be established if it is proved by a preponderance of probabilities. This is for the reason that under the Evidence Act, Sec. 3, a fact is said to be proved when the court either believes it to exist or considers its existence so probable that a prudent man

ought, under the circumstances of the particular case, to act upon the supposition that it exists. The belief regarding the existence of a fact may thus be founded on a balance of probabilities. A prudent man faced with conflicting probabilities concerning a fact-situation will act on the supposition that the fact exists, if on weighing the various probabilities he finds that the preponderance is in favour of the existence of the particular fact. As a prudent man, so the court applies this test for finding whether a fact in issue can be said to be proved. The first step in this process is to fix the probabilities, the second to weigh them, though the two may often intermingle. The impossible is weeded out at the first stage, the improbable at the second. Within the wide range of probabilities the court has often a difficult choice to make but it is this choice which ultimately determines where the preponderance of probabilities lies. Important issues like those which affect the status of parties demand a closer scrutiny than those like the loan on a promissory note : “the nature and gravity of an issue necessarily determines the manner of attaining reasonable satisfaction of the truth of the issue” Per Dixon, J. in *Wright v. Wright*, (1948) 77 CLR 191 at p. 210; or as said by Lord Denning, “the degree of probability depends on the subject-matter. In proportion as the offence is grave, so ought the proof to be clear. *Blyth v. Blyth*, 1966-1 All ER 524 at p. 536.” But whether the issue is one of cruelty or of a loan on a promissory note, the test to apply is whether on a preponderance of probabilities the relevant fact is proved. In civil cases this, normally, is the standard of proof to apply for finding whether the burden of proof is discharged.

25. Proof beyond reasonable doubt is proof by a higher standard which generally governs criminal trials or trials involving inquiry into issues of a quasi-criminal nature. A criminal trial involves the liberty of the subject

which may not be taken away on a mere preponderance of probabilities. If the probabilities are so nicely balanced that a reasonable, not a vacillating, mind cannot find where the preponderance lies, a doubt arises regarding the existence of the fact to be proved and the benefit of such reasonable doubt goes to the accused. It is wrong to import such considerations in trials of a purely civil nature.”

13.10. The decisions rendered by this Court in *A.E.G. Carapiet (supra)* and the Hon’ble Supreme Court in *Dr. N. G. Dastane (supra)* have been followed by this Court in *Smt. Sarmishta Sikdar (supra)*.

13.11. This Court in *Smt. Runu Singh (supra)* has accepted the evidence of the eyewitness since in cross-examination nothing could be brought out that the offending vehicle was not involved in the accident.

13.12. Applying the principles as above and bearing in mind the evidence on record, this Court has no hesitation in holding that the offending vehicle bearing registration no. WB-73B/2296 (truck) was involved in the said accident. Accordingly, the aforesaid ground of non-involvement of the offending vehicle falls short of merit.

Issue No.2: Whether the learned Tribunal erred in determining the income of the deceased victim.

14. So far as above issue is concerned, in their claim application, it is averred by the claimants that at the time of accident the victim was a Central Government employee under Superintendent of Sample Survey of India and his monthly income was Rs. 54,000/- per month. The widow of the deceased Mousumi Das, P.W.1 deposed that her deceased husband used to work in the Office of Sample Survey of India, a Central

Government concern and his monthly income is Rs. 52,340/-. The claimants in order to establish the avocation and income of the deceased examined one Pranab Saha as P.W.5, a stenographer attached to National Survey Office, who deposed that the deceased Ashu Ranjan Das was a Superintending Officer. He brought the pay certificate dated 9th March, 2018 of the deceased issued by K. D. Bakshi (**Exhibit 17**). The learned Tribunal has considered the net salary of the victim of Rs. 43,840/- per month after deduction of CGEGIS, GPF contribution, house building advance recovery and Professional Tax. It is a trite law that gross income of the deceased less Income Tax and Professional Tax is the actual income which should be considered for assessment of compensation. Though the claimants produced the pay certificate but it appears that the deceased was paid upto 11th November, 2013 as on date of death at proportionate rate and thus the pay certificate although certifies pay and allowances for the month of November, 2013 but it does not include the salary for the entire month. Hence, the salary of the preceding month i.e. October, 2013 would be appropriate for determination of income of the victim which is the last full month salary drawn by the victim just prior to the accident. As per salary register (**Exhibit 18**), the gross income of the victim for the month of October, 2013 is Rs. 52,340/-. The Professional Tax is Rs. 200/-. The salary register does not disclose of any Income Tax paid or payable. Bearing in mind the proposition in *Vimal Kanwar (supra)* now it is to be seen whether the annual income taking into account the monthly income of Rs. 52,340/- per month of the deceased-victim falls within the taxable range. The annual income of the deceased comes to Rs. 6,28,080/- (Rs.

52,340/- x 12). The tax rates for individual for Assessment Year 2014-15, which is applicable in the present case, is reproduced hereunder:

“Income Tax Rates applicable for Individuals, Hindu Undivided Family (HUF), Association of Persons (AOP) and Body of Individuals (BOI) in India is as under:

Assessment Year 2014-15, Relevant to Financial Year 2013-14

For Individuals below 60 years age (including Woman Assesseees):

Income	Tax Rate
<i>Upto 200,000</i>	<i>Nil</i>
<i>200,000 to 500,000</i>	<i>10% of the amount exceeding 200,000</i>
<i>500,000 to 1,000,000</i>	<i>Rs.30,000 + 20% of the amount exceeding 500,000</i>
<i>1,000,000 & above</i>	<i>Rs.130,000 + 30% of the amount exceeding 1,000,000</i>

For Individuals aged 60 years and above but below 80 years (Senior Citizen):

Income	Tax Rate
<i>Upto 250,000</i>	<i>Nil</i>
<i>250,000 to 500,000</i>	<i>10% of the amount exceeding 250,000</i>
<i>500,000 to 1,000,000</i>	<i>Rs.25,000 + 20% of the amount exceeding 500,000</i>
<i>1,000,000 & above</i>	<i>Rs.125,000 + 30% of the amount exceeding 1,000,000</i>

For Individuals aged 80 years and above (Very Senior Citizen):

Income	Tax Rate
<i>Upto 500,000</i>	<i>Nil</i>
<i>500,000 to 1,000,000</i>	<i>20% of the amount exceeding 500,000</i>
<i>1,000,000 & above</i>	<i>Rs.100,000 + 30% of the amount exceeding 1,000,000</i>

Tax Credit: Rs. 2,000 for every person whose income doesn't exceed Rs. 500,000

Surcharge on Income Tax: 10% of the Income Tax payable, in case the total taxable income exceeds Rs.10,000,000. Surcharge shall not exceed the amount of income that exceeds Rs.10,000,000.

Education Cess: 3% of Income Tax plus Surcharge”¹⁴

Applying the aforesaid tax rates, the Income Tax would be 10% of Rs. 4,28,080/- i.e. Rs. 42,808/-. The actual income of the deceased would be Rs. 6,28,080/- less Rs. 42,808/- and Rs. 200/- which comes to Rs.5,85,072/-.

Issue No.3: Whether the learned Tribunal ought to have granted future prospect of 15% of the annual income of the deceased victim.

15. With regard to the aforesaid issue, it is found that the learned Tribunal has allowed 1/3rd of the income of the deceased towards future prospect. Be that as it may, considering the age of the victim of 54 years and since admittedly the victim was a permanent employee under the Central Government and also bearing in mind the principles laid down by Hon'ble Supreme Court in **National Insurance Company Limited versus Pranay Sethi and Others**¹⁵, the claimants are entitled to an amount equivalent to 15% of the annual income of the deceased towards future prospect.

Issue No.4: Whether the learned Tribunal ought to have granted medicine and incidental charges and hospitalisation charges.

¹⁴ <https://www.smartpaisa.in/income-tax-rates-assessment-year-ay-2014-2015-financial-year-fy-2013-2014/>

¹⁵ (2017) 16 SCC 680

16. With regard to the aforesaid issue, it is found that the expenses towards medicine and incidental charges and hospitalisation charges Dr. Chang's Super Specialty Hospital have not been allowed by the learned Tribunal. It is relevant to note that medical expenses of Rs. 7,28,242/- of Neotia General Health Care Centre has been allowed by the learned Tribunal. The bills in respect of medicine and incidental charges during cross-examination have been shown to O.P.W.2, Manager at Dr. Chang's Super Specialty Hospital Pvt. Ltd., Matigara, Siliguri, who identified those medical bills which was initially marked Y-series and subsequently upon identification marked **Exhibit 19-series**. The bills for hospitalisation charges at Dr. Chang's Super Specialty Hospital has been marked X for identification since it has not been proved by the representative of the Hospital. The aforesaid bills for hospitalisation showing expenses of Rs.1,68,445/-, have not been challenged by any rebuttal evidence on behalf of the insurance company, nor any dispute has been raised that the bills are inflated or includes any unusual purchase or charge. No case has been made out that the entry in the bills is erroneous. I find substance in the submission of Mr. Banerjee, learned advocate on behalf of respondents-claimants relying on *Rekha Jain (supra)* and *Istasam (supra)* that in the absence of rebuttal evidence, the medical expenses should be allowed. The Exhibit 19-Series consist of 33 bills. The medical bill at page-144 of the paper book is illegible, hence could not be considered. The total medical expenses of rest 32 bills comes to Rs.85,410/- which should be taken into account for determination of compensation.

Issue No.5: Whether the claimants are entitled to general damages of Rs. 70,000/-.

17. With regard to the above issue, it is found that the learned Tribunal has granted Rs. 2,000/- towards funeral expenses. However, bearing in mind the proposition laid down by 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.

Issue No.6: Whether the learned Tribunal erred in not granting interest on the compensation amount.

18. With regard to the aforesaid issue, it is found that the learned Tribunal has directed for satisfaction of the award within two months from the date of order, in default, the principal amount shall carry interest @ 9% per annum from the date of application till realisation. The learned Tribunal in its judgment has not cited any reason for not allowing interest on the compensation amount from the date of filing of the claim application. As per Section 171 of the Motor Vehicles Act, 1988, where any Claims Tribunal allows a claim for compensation made under the Act, such Tribunal may direct that in addition to the amount of compensation, interest shall also be paid on the compensation amount. There is no material on record to negate the grant of interest on compensation. Thus, the compensation shall carry interest @ 6% per annum considering the prevailing banking rate of interest from the date of filing of the claim application till payment.

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

Calculation of Compensation

Annual income	Rs. 5,85,072/-
Add: Future prospect @ 15% of the annual income	Rs. 87,761/- (approx)
	Rs. 6,72,833/-
Less: 1/3 rd towards personal and living expenses	Rs. 2,24,278/- (approx)
	Rs. 4,48,555/-
Adopting multiplier 11 (Rs. 4,48,555/- x 11)	Rs. 49,34,105/-
Add: Medical expenses incurred Rs. 7,28,242/- Rs. 1,68,445/- Rs. 85,410/-	Rs. 9,82,097/-
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. 59,86,202/-

20. Thus, the claimants are entitled to compensation of Rs. 59,86,202/- together with interest @ 6% per annum from the date filing of the claim application till payment.

21. It is found that the insurance company has deposited a sum of Rs.86,85,469/- vide OD Challan No. 139 dated 18th April, 2019 in terms of order of this Court dated 4th April, 2019 and Rs. 25,000/- towards statutory deposit vide OD Challan No. 1996 dated 6th December, 2018. Both the aforesaid deposits along with accrued interest shall be adjusted against the entire compensation amount and the interest thereon.

22. Balance amount of compensation, if any, be deposited by the appellant-insurance company before the learned Registrar General, High Court, Calcutta by way of cheque within six weeks from date of this order.

23. Respondents-claimants are directed to deposit *ad valorem* court fees on the compensation amount, if any.

24. Learned Registrar General, High Court, Calcutta shall release the aforesaid amount of compensation and interest in favour of the respondents-claimants after making payment of Rs. 40,000/- in favour of the respondent no.1-widow of the deceased towards spousal consortium in the proportion that respondent no.1 shall receive 40% and respondent nos. 2 and 3 shall receive 30% each of the compensation amount, upon satisfaction of their identity and payment of *ad valorem* court fees.

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

26. Respondent no.1 being mother and natural guardian of minor-respondent no.3 shall receive the share of the said minor on her behalf and shall keep the share of the minor in fixed deposit scheme of any nationalised bank or post office till attainment of majority of the said minor.

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

28. All connected applications, if any, stand disposed of.

29. Interim order, if any, stands vacated.

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.)