IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

FMA 1464 Of 2009

Ramanibala Das & Anr.

Versus

Ajit Das & Ors.

For the appellants	:	Mr. Saptarshi Mal, Adv. Mr. Amal Kumar Saha, Adv. Mr. Iresh Pal, Adv.
Heard on	:	30.08.2023
Judgment on	:	26.09.2023

Ajay Kumar Gupta, J:

1. This instant appeal is directed against the judgment and award dated 17th Day of February, 2009 passed by the Motor Accident Claims Tribunal, 1st Court, Bankura in MACC No. 20 of 2007/110 of 2005, thereby the learned Tribunal has dismissed the claim application on contest against the respondent no. 3/Insurance company and ex parte against other respondent nos. 1 and 2/owners of the offending vehicle without order as to costs in a death case filed under Section 166 of the Motor Vehicles Act, 1988 (herein after referred as ' the said Act').

2. The facts leading to filing of this appeal, is summarised as follows: The victim, Rabilochan Das, being one of the passengers of the offending bus bearing No. WB-67/2057 name and style as "Maa Kamakhya" was proceeding towards Bankura on 28th July, 1998 at about 3.40 p.m. At that point of time, a serious accident occurred due to rash and negligent driving by the driver of the said offending vehicle causes and serious injuries on the person of the victim. Victim succumbed due to his serious injuries. The said accident was taken place when the bus reached near Gandeswari River Bridge. A case was registered being FIR No. 99/98 dated 28/07/1998 against the driver of the offending vehicle under Section 279/338/304A of the Indian Penal code. After completion of investigation, the investigating officer has submitted charge sheet against the driver of

the offending vehicle bearing No. WB-67/2057 under Sections 279/337/ 338/ 304 of the IPC.

3. The appellants have filed an application for compensation under Section 166 of the Motor Vehicles Act before the Motor Accidents Claims Tribunal impleading the owners of the vehicle and insurer of the offending vehicle, the New India Assurance Company Limited. However, the owners of the offending vehicle did not contest the case from the beginning whereas, the New India Assurance Company Limited has contested the case by filing written statement contending therein that respondent no. 3 does not admit the death of the victim, Rabilochan Das due to the alleged motor traffic accident. The plea of the insurance Company was that the deceased was not the bona fide passenger of the offending vehicle in question. Furthermore, the Insurance Company denied and disputed all the allegations levelled by the appellants/claimants and finally contended that actually the victim was on the roof of the bus and when the bus reached near Lalbazar at that time one calf suddenly crossed the road in a running condition as such driver of the vehicle tried to save the accident applying sudden brake. As a result, wheel of the bus skidded under the flank portion of the pitch road. At that point of time, the victim jumped from the roof to save himself and sustained injuries. Victim died due to his own fault, carelessness and negligence. Therefore, the insurance company is not liable to indemnify the insured.

4. The appellants/claimants have adduced evidence and examined one Smt. Ramanibala Das, mother of the victim as P.W. 1, who narrated the incident as similar as averred in an application for compensation. She further stated in her examination-in-chief that his son was proceeding in a bus towards Bankura from Beliator and when the bus reached near Looksatora Burning Ghat, the said bus known as "Maa Kamakhya" capsized by the side of the road due to rash and negligent driving of the driver as a result his son received injuries on his person. He was admitted to Bankura Medical College and Hospital and on the next date his son succumbed to his injuries. She further deposed that her son was a lecturer (Part time) of Sonamukhi College and he used to impart private tuition. He used to give the claimants a sum of Rs. 8000/- every month for their day-to-day expense. She also filed the copy of PM report, Xerox copy of FIR, certified copy of charge sheet, Xerox copy of insurance policy and also the educational certificate of her son. The education of her son was MA, B.Ed. The claimants have already received a sum of Rs. 50,000/- from the opposite party/insurance company in a proceeding under Section 140 of the Motor Vehicles Act in MACC No. 88 of 1998. The copies of FIR, charge sheet and PM report are marked as Exhibit 1 to 3.

5. During cross-examination, she denied the suggestion put by the insurance company that her son was not giving a sum of Rs. 8000/- to

9000/- per month. However, she is unable to file any paper to show that her son was a part time lecturer of Sonamukhi College and also imparting private tuition.

6. To prove the income of the victim, the appellants/claimants adduced evidence of Mathuranath Rajjak as P.W. No. 2, who deposed that Rabilochan Das was tenant under him. He further stated he was Professor (Part Time) of Sonamukhi College. Victim was also used to impart private tuition near about 60 to 70 students in two shifts. He was Professor of Political Science and he came to know the facts from the said Rabinlochan Das that he used to receive Rs. 100/- per student per month and he used to pay him rent of Rs. 1200/- per month for his tenanted portion. During cross-examination, he failed to name of the students and their guardians who were getting tuition from Rabilochan Das. During cross-examination it also reveals Rabilochan Das was unmarried.

7. Respondent No. 3 did not adduce any witness to support its case that the victim, Rabilochan Das, was at fault and negligent for his accident.

8. The learned Tribunal has dismissed the claim application after appreciation of the entire evidence, only on the ground that the appellants/claimants have not filed any copy of insurance policy of the

offending vehicle showing that the insurance policy was valid on the date of accident. Consequently, learned Tribunal is not in a position to hold whether the offending vehicle was insured with the respondent no. 3, the New India Assurance Co. Ltd. at the material point of time of the accident. Hence, appellants filed this appeal.

9. Learned advocate appearing on behalf of the appellants/claimants vehemently submitted that the learned Tribunal has committed a serious mistake in dismissing the claim application considering that the insurance policy was not filed to show the insurance policy was valid on the date of accident though there was valid Insurance policy. Appellants have furnished particulars of the insurance policy in their claim application and also filed copy of the insurance policy before the learned Tribunal. Even for the sake of argument, if the insurance policy was not valid at the time of accident even then the claim application ought not to be dismissed.

10. Ld. Advocate referred Section 158 of the Motor Vehicles Act, 1988 to convince this court that Section provides the driver or owner of the offending vehicle is liable to produce the relevant documents including the insurance policy of the offending vehicle to the police station at which the driver makes the report required by Section 134. The police officer (S.H.O.) shall submit accident information Report along with relevant documents including insurance policy of the offending vehicle before the

Jurisdictional Motor vehicle claims Tribunal within 30 days of the registration of FIR. On the basis of such report, the learned Tribunal can proceed with the claim case and award compensation to the claimants, who suffered injuries and/or death of his/her near relative owing to Motor traffic Accident. He also pointed out that the appellants have filed several documents including the insurance policy with fhiristi before the learned Tribunal; the copies of the said documents were also served during pendency of claim application upon the respondent no. 3 on 23rd July, 2008. Despite of the facts, the respondent no. 3 neither denied nor put questions or suggestions regarding the validity of the insurance policy but Ld. Tribunal erred in dismissing the claim application only on the ground that insurance policy was neither filed nor exhibited. Learned Tribunal could have presumed the insurance policy was valid on the date of accident, considering the copy of Insurance policy which was filed before the Ld. Tribunal and full details of insurance policy has been stipulated in an application for compensation. Accordingly, impugned judgment and award passed by the learned Tribunal ought to be set aside since claim application was dismissed without applying judicious mind.

11. The learned advocate further referred a judgment of Hon'ble Supreme court reported in **Vimla Devi and Anothers vs National Insurance Company Limited and Another**[1] in order to support his

[1] **(2019) 2 SCC 186**

contention that documents not exhibited during examination of the witnesses is a procedural lapse which is not definitely disentitled a claim for compensation, when otherwise sufficient evidence is adduced and documents produced by the appellants to establish their case before the learned Tribunal.

12. He further referred another judgment of the Supreme Court reported in **Rajinder Sharma Vs Arpana Sharma**[2] in support his contention that this appellate Court can disposed of the instant appeal without remanding back the case to the learned Tribunal after re-assessing the evidence as this instant appeal was filed in 2009 and if it would be remanded, it will again prolong the proceeding and appellants/claimants will suffer from pillar to post from getting compensation on account of death of the victim though the Act is enacted for the benefit of claimants, who suffered due to Motor traffic accident as the Act is beneficial piece of legislation. Ld. Advocate prays for disposal of the instant appeal on the basis of evidence, both oral and documentary as led by the appellants/claimants.

13. Having heard the submission of the Ld. Advocate appearing on behalf of the appellants and on perusal of the record as well as the judgments referred by the appellants/claimants. It appears the learned

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[2] **(2011) 15 SCC 300**

Tribunal without proper appreciation of evidence, oral and documentary, surreptitiously jumped to a conclusion that the insurance policy did not produce by the appellants/claimants though the particulars of the insurance policy Number and period of validity have been specifically mentioned in the Column No. 20 of the Claim Application i.e. Policy No. 3151260230429 issued by Kharagpur Branch Office, District Medinipur and the same was valid from 28th March, 1998 to 27th March, 1999. The accident was occurred on 28.07.1998 at about 3.40 pm. Thus, the said insurance policy was valid with the respondent no. 3, New India Assurance Company Limited on the date of accident. In addition, the copy of insurance policy was also filed before the learned Tribunal with firisthi after serving the same during pendency of the claim application upon the respondent No. 3/Insurance Company but that insurance policy did not mark at the time of marking other documents. That is a procedural lapse from the side of Ld. Tribunal. That apart, insurance company neither denied nor put any question or suggestion to the witnesses to rebut the facts that the insurance policy was not valid on the date of the accident. In view of aforesaid facts, this court of the opinion that Ld. Tribunal has overlooked and committed error in dismissing the claim case though on the face of record, it appears the appellants have given all particulars of Insurance policy of the offending vehicle in her claim application and Xerox copy of insurance policy was filed before the Ld. Tribunal.

14. In view of the aforesaid facts, issues emerge before the Appellate Court for consideration as follows:

a) Whether the accident occurred due to rash and negligent driving of the driver of the offending vehicle bearing No. WB-67/2057 (Bus)?

b) Whether the appellants/claimants are entitled to get compensation as prayed for from the insurance company or not?

15. No body appeared on behalf of the respondent no. 3/Insurance Company in spite of service of notice by the appellants.

16. Section 158 of the Act itself imposes the responsibility upon the driver as well as the owner to produce the relevant documents including insurance policy of the offending vehicle before the police station when the accident took place. Thereafter Police officer (SHO) shall forward a Accident information report before the Jurisdictional Motor vehicle Claims Tribunal within 30 days of the registration of the FIR. In addition, Accident information report shall be accompanied by the attested copies of the FIR, driving license of the driver, insurance policy, P. M Report in case of death, Injury/wound certificate in case of injuries, and names/address of injured or dependent family members of the deceased should also be furnished to the learned Tribunal. On the basis of said report, the learned

Tribunal can proceed with the matter and decide the same. Sub-section (6) of the Section 158 was added by way of amendment in 1994 casted a duty on the Officer-in-Charge of the police station as aforesaid.

Some guidelines were laid down by the Supreme Court in a case **Jai Prakash Vs National Insurance Co. Ltd & others**[3]

In this case, the Hon'ble Supreme Court has given guidelines in details as follows:

> *4. The third problem relates to the procedural delays in adjudication/settlement of claims by Motor Accidents Claims Tribunals (for short `Tribunals') and consequential hardship to the victims and their families. In cases where the accident victim dies, the family - usually the widow and children - loses its sole bread winner and are virtually driven to the streets. Many a time, the widow and children are forced to take up unaccustomed manual labour for their survival, the children foregoing their education. Payment of compensation without delay will help them to sustain themselves and pick up the threads to live with dignity.*
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> *4.1) Most of the accident victims (who are injured) are not able to access quality medical treatment for want of funds, as their earning capacity is either permanently lost or is put on hold on account of the injuries. They get the compensation only after the treatment and after a contested trial. Many a time lack of treatment or inadequate treatment for want of funds, itself converts what could have been a temporary disability into permanent disability for the victim, thereby increasing the*

[3] **(2010) 2 SCC 607**

compensation payable. The Insurance Companies know full well that timely payment of compensation or timely better treatment of the victims can ultimately reduce the quantum of compensation payable by them. The insurance companies also know that they will have to ultimately reimburse the cost of medical treatment of the accident victim with interest. But still they fail to extend timely aid to the injured victims, but wait for the injured to file a claim petition, after completing the treatment at his own cost.

4.2) The Legislature tried to reduce the period of pendency of claim cases and quicken the process of determination of compensation by making two significant changes in the Act, by Amendment Act 54 of 1994, making it mandatory for registration of a motor accident claim within one month of receipt of first information of the accident, without the claimants having to file a claim petition. Sub-section (6) of section 158 of the Act provides:

"As soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under this section is completed by a police officer, the officer-in-charge of the police station shall forward a copy of the same within thirty days from the date of recording of information or, as the case may be, on completion of such report to the Claims Tribunal having jurisdiction and a copy thereof to the concerned insurer, and where a copy is made available to the owner, he shall also within thirty days of receipt of such report, forward the same to such Claims Tribunal and insurer". Sub-section (4) of Section 166 of the Act reads thus:- "The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6)

of section 158 as an application for compensation under this Act".

Rule 150 of Central Motor Vehicle Rules, 1989 prescribes the form (No.54) of the Police Report required to be submitted under section 158(6) of the Act. 4.3) This Court in General Insurance Council v. State of A.P. [2007 (12) SCC 354] emphasised the need for implementing the aforesaid provisions. This Court directed:

"It is, therefore, directed that all the State Governments and the Union Territories shall instruct all police officers concerned about the need to comply with the requirement of Section 158(6) keeping in view the requirement indicated in Rule 150 and in Form 54, Central Motor Vehicles Rules, 1989. Periodical checking shall be done by the Inspector General of Police concerned to ensure that the requirements are being complied with. In case there is non-compliance, appropriate action shall be taken against the erring officials. The Department of Road Transport and Highways shall make periodical verification to ensure that action is being taken and in case of any deviation immediately bring the same to the notice of the State Governments/Union Territories concerned so that necessary action can be taken against the officials concerned."

4.4) But unfortunately neither the police nor the Motor Accidents Claims Tribunals have made any effort to implement these mandatory provisions of the Act. If these provisions are faithfully and effectively implemented, it will be possible for the victims of accident and/or their families to get compensation, in a span of few months. There is, therefore, an urgent need for the concerned

police authorities and Tribunals to follow the mandate of these provisions.

Problem (iv)

*5. Courts have always been concerned that the full compensation amount does not reach and benefit the victims and their families, particularly those who are uneducated, ignorant, or not worldly-wise. Unless there are built-in safeguards, they may be deprived of the benefit of compensation which may be the sole source of their future sustenance. This court has time and again insisted upon measures to ensure that the compensation amount is appropriately invested and protected and not frittered away owing to ignorance, illiteracy and susceptibility to exploitation. [**See Union Carbide Corporation v. Union of India - 1991 (4) SCC 584 and General Manager, Kerala State Road Transport Corporation v. Susamma Thomas - 1994 (2) SCC 176]**. But in spite of the directions in these cases, the position continues to be far from unsatisfactory and in many cases unscrupulous relatives, agents and touts are taking away a big chunk of the compensation, by ingenious methods. Reports of Amicus Curiae.*

6. In this background, to find some solutions, on 9.9.2008, this Court requested Shri Gopal Subramaniam, to assist the Court as Amicus Curiae. The learned amicus curiae with his usual thoroughness and commitment has examined the issues and submitted a series of reports and has also made several suggestions for consideration. He has also referred to and relied on a series of zealous directions issued by a learned Single Judge of the Delhi High Court to expedite and streamline the

adjudication of motor vehicle claims and disbursement of compensation.

7. Having considered the nature of the problems and taking note of the several suggestions made by the learned Amicus Curiae and after hearing, we propose to issue a set of directions to the police authorities and Claims Tribunals. We also propose to make some suggestions for implementation by Insurance Companies and some suggestions for the consideration of the Parliament and the Central Government.

Directions to Police Authorities

8. The Director General of Police of each State is directed to instruct all Police Stations in his State to comply with the provisions of Section 158(6) of the Act. For this purpose, the following steps will have to be taken by the Station House Officers of the jurisdictional police stations:

(i) Accident Information Report in Form No. 54 of the Central Motor Vehicle Rules,1989 (`AIR' for short) shall be submitted by the police (Station House Officer) to the jurisdictional Motor Vehicle Claims Tribunal, within 30 days of the registration of the FIR. In addition to the particulars required to be furnished in Form No. 54, the police should also collect and furnish the following additional particulars in the AIR to the Tribunal: (i) The age of the victims at the time of accident; (ii) The income of the victim; (iii) The names and ages of the dependent family members.

(ii) The AIR shall be accompanied by the attested copies of the FIR, site sketch/mahazar/photographs of the place of occurrence, driving licence of the driver, insurance policy (and if

necessary, fitness certificate) of the vehicle and postmortem report (in case of death) or the Injury/Wound certificate (in the case of injuries). The names/addresses of injured or dependant family members of the deceased should also be furnished to the Tribunal.

(iii) Simultaneously, copy of the AIR with annexures thereto shall be furnished to the concerned insurance company to enable the Insurer to process the claim.

(iv) The police shall notify the first date of hearing fixed by the Tribunal to the victim (injured) or the family of the victim (in case of death) and the driver, owner and insurer. If so directed by the Tribunal, the police may secure their presence on the first date of hearing.

9. To avoid any administrative difficulties in immediate implementation of sections 158(6) of the Act, we permit such implementation to be carried out in three stages. In the first stage, all police stations/claims Tribunals in the NCT Region and State Capital regions shall implement the provisions by end of April 2010. In the second stage, all the police stations/claims Tribunals in district headquarters regions shall implement the provisions by the end of August 2010. In the third stage, all police stations/Claims Tribunals shall implement the provisions by the end of December, 2010. The Director Generals shall ensure that necessary forms and infrastructural support is made available to give effect to Section 158 (6) of the Act.

10. Section 196 of the Act provides that whoever drives a motor vehicle or causes or allows a motor vehicle to be driven in contravention of the provisions of Section 146 shall be

punishable with imprisonment which may be extended to three months, or with fine which may extend to Rs. 1000/-, or with both. Though the statute requires prosecution of the driver and owner of uninsured vehicles, this is seldom done. Thereby a valuable deterrent is ignored. We therefore direct the Director Generals to issue instructions to prosecute drivers and owners of uninsured vehicles under Section 196 of the Act.

11. The Transport Department, Health Department and other concerned departments shall extend necessary co- operation to the Director-Generals to give effect to Section 158 (6).

Directions to the Claims Tribunals

12. The Registrar General of each High Court is directed to instruct all Claims Tribunals in his State to register the reports of accidents receive under Section 158 (6) of the Act as applications for compensation under Section 166 (4) of the Act and deal with them without waiting for the filing of claim applications by the injured or by the family of the deceased. The Registrar General shall ensure that necessary Registers, forms and other support is extended to the Tribunal to give effect to Section 166 (4) of the Act.

13. For complying with section 166(4) of the Act, the jurisdictional Motor Accident Claims Tribunals shall initiate the following steps:

(a) The Tribunal shall maintain an Institution Register for recording the AIRs which are received from the Station House Officers of the Police Stations and register them as miscellaneous petitions. If any private claim petitions are directly filed with reference to an AIR, they should also be recorded in the Register.

(b) The Tribunal shall list the AIRs as miscellaneous petitions. It shall fix a date for preliminary hearing so as to enable the police to notify such date to the victim (family of victim in the event of death) and the owner, driver and insurer of the vehicle involved in the accident. Once the claimant/s appear, the miscellaneous application shall be converted to claim petition. Where a claimant/s file the claim petition even before the receipt of the AIR by the Tribunal, the AIR may be tagged to the claim petition.

(c) The Tribunal shall enquire and satisfy itself that the AIR relates to a real accident and is not the result of any collusion and fabrication of an accident (by any `Police Officer - Advocate - Doctor' nexus, which has come to light in several cases).

(d) The Tribunal shall by a summary enquiry ascertain the dependent family members/legal heirs. The jurisdictional police shall also enquire and submit the names of the dependent legal heirs.

(e) The Tribunal shall categories the claim cases registered, into those where the insurer disputes liability and those where the insurer does not dispute the liability.

(f) Wherever the insurer does not dispute the liability under the policy, the Tribunal shall make an endeavour to determine the compensation amount by a summary enquiry or refer the matter to the Lok Adalat for settlement, so as to dispose of the claim petition itself, within a time frame not exceeding six months from the date of registration of the claim petition.

(g) The insurance companies shall be directed to deposit the admitted amount or the amount determined, with the claims tribunals within 30 days of determination. The Tribunals should

ensure that the compensation amount is kept in Fixed deposit and disbursed as per the directions contained in ***General Manager, KSRTC v. Susamma Thomas [1994 (2) SCC 176]****.*

(h) As the proceedings initiated in pursuance of Section 158(6) and 166(4) of the Act, are different in nature from an application by the victim/s under Section 166(1) of the Act, Section 170 will not apply. The insurers will therefore be entitled to assist the Tribunal (either independently or with the owners of the vehicles) to verify the correctness in regard to the accident, injuries, age, income and dependents of the deceased victim and in determining the quantum of compensation.

14. The aforesaid directions to the Tribunals are without prejudice to the discretion of each Tribunal to follow such summary procedure as it deems fit as provided under Section 169 of the Act. Many Tribunals instead of holding an inquiry into the claim by following suitable summary procedure, as mandated by Section 168 and 169 of the Act, tend to conduct motor accident cases like regular civil suits. This should be avoided. The Tribunal shall take an active role in deciding and expeditious disposal of the applications for compensation and make effective use of Section 165 of the Evidence Act, 1872, to determine the just compensation".

Time and again the Apex Court passed various directions to be complied with letter and spirit.

17. Now, it is settled principle that the there is no need to file any claim application from the side of claimant although the

appellants/claimants have filed their claim application as well as documents, which were available with them and those documents are FIR, charge sheet, PM report, insurance policy, educational qualification of the victim. Those documents are sufficient for adjudication of the claim application as because there is no strict provision to conduct trial like regular civil suits. This Court relying a judgment of the Supreme Court passed in **Vimla Devi Vs. the National Insurance Company**[4] in order to support of contention that the documents filed before the Ld. Tribunal are not exhibited would be procedural lapses, which would not fatal the claim case.

The Hon'ble Supreme Court held in the said case as follows:

15. At the outset, we may reiterate as has been consistently said by this Court in a series of cases that the Act is a beneficial piece of legislation enacted to give solace to the victims of the motor accident who suffer bodily injury or die untimely. The Act is designed in a manner, which relieves the victims from ensuring strict compliance provided in law, which are otherwise applicable to the suits and other proceedings while prosecuting the claim petition filed under the Act for claiming compensation for the loss sustained by them in the accident.

16. Section 158 of the Act casts a duty on a person driving a motor vehicle to produce certain certificates, driving licence

[4] **(2019) 2 SCC 186**

and permit on being required by a police officer to do so in relation to the use of the vehicle. Sub-section (6), which was added by way of amendment in 1994 to Section 158 casts a duty on the officer in charge of the police station to forward a copy of the information (FIR)/report regarding any accident involving death or bodily injury to any person within 30 days from the date of information to the Claims Tribunal having jurisdiction and also send one copy to the insurer concerned. This sub-section also casts a duty on the owner of the offending vehicle, if a copy of the information is made available to him, to forward the same to the Claims Tribunal and the insurer of the vehicle.

17. The Claims Tribunal is empowered to treat the report of the accident on its receipt as if it is an application made by the claimant for award of the compensation to him under the Act by virtue of Section 166(4) of the Act and thus has jurisdiction to decide such application on merits in accordance with law.

18. The object of Section 158(6) read with Section 166(4) of the Act is essentially to reduce the period of pendency of claim case and quicken the process of determination of compensation amount by making it mandatory for registration of motor accident claim within one month from the date of receipt of FIR of the accident without the claimants having to file a claim petition. (See Jai Prakash v. National Insurance Co. Ltd.)

19. There are three sections, which empower the Claims Tribunal to award compensation to the claimant viz. Sections 140, 163-A and 166 of the Act:

19.1. …….

19.2. ……..

19.3. ……..

19.4. So far as Section 166 of the Act is concerned, it also deals with payment of compensation. Section 168 of the Act deals with award of the Claims Tribunal whereas Section 169 of the Act provides procedure and powers of the Claims Tribunal. As has been held by this Court (three-Judge Bench), the claim petition filed under the Act is neither a suit nor an adversarial lis in the traditional sense but it is a proceeding in terms of and regulated by the provisions of Chapter 12 of the Act, which is a complete code in itself. (See United India Insurance Co. Ltd. V. Shila Datta.)

20. Keeping in view the aforementioned principle of law, when we examine the facts of the case at hand, we are of the considered opinion that the Claims Tribunal and the High Court were not justified in dismissing the appellants' claim petition. In our view, the appellants' claim petition ought to have been allowed for awarding reasonable compensation to the appellants in accordance with law. This we say for the following reasons:

20.1. Firstly, the appellants had adduced sufficient evidence to prove the accident and the rash and negligent driving of the driver of the offending vehicle, which resulted in death of Rajendra Prasad.

20.2. Secondly, the appellants filed material documents to prove the factum of the accident and the persons involved therein.

20.3. Thirdly, the documents clearly established the identity of the truck involved in the accident, the identity of the driver driving the truck, the identity of the owner of the truck, the name of the insurer of the offending truck, the period of coverage of insurance of the truck, the details of the lodging of FIR in the police station concerned in relation to the accident.

20.4. In our view, what more documents could be filed than the documents filed by the appellants to prove the factum of the accident and the persons involved therein.

20.5. Fourthly, so far as the driver and owner of the truck were concerned, both remained ex parte since inception and, therefore, neither contested the appellants' claim petition nor entered into the witness box to rebut the allegations of the appellants made in the claim petition and the evidence. An adverse inference against both could be drawn.

20.6. Fifthly, so far as the Insurance Company is concerned, they also did not examine any witness to rebut the appellants' evidence. The Insurance Company could have adduced evidence by examining the driver of the offending truck as their witness but it was not done.

20.7. Sixthly, on the other hand, the appellants examined three witnesses and thereby discharged their initial burden to prove the case.

20.8. Seventhly, if the Court did not exhibit the documents despite the appellants referring to them at the time of recording evidence, then in such event, the appellants cannot be denied of their right to claim the compensation on such ground. In our opinion, it was nothing but a procedural lapse, which could not be made basis to reject the claim petition. It was more so when the appellants adduced oral and documentary evidence to prove their case and the respondents did nothing to counter them.

21. In the light of the aforementioned seven reasons, we are of the considered opinion that the appellants were able to prove the factum of the accident so also the factum of rash and negligent act of the driver causing the accident. It is also proved that the offending truck was insured with Respondent 1 at the time of accident and was owned by Respondent 3."

18. In view of the observations made as above by the Supreme Court and the present case in hand, the claimants have also proved their case as well as produced sufficient documents. The Ld. Tribunal ought not to be dismissed the claim application on the following reasons:-

Firstly, the appellants had adduced sufficient evidence to prove that the accident was occurred due to rash and negligent driving of the driver of the offending vehicle, which resulted in death of Rabilochan Das.

Secondly, the appellants filed sufficient documents i.e. certified copy of FIR, Xerox copy of insurance policy, educational certificate of

victim, Charge sheet, Post mortem report to prove the factum of the accident, insurance policy was valid and the persons involved therein.

Thirdly, the documents filed by the claimants clearly established the identity of the offending vehicle bus bearing No. WB-67/2057 involved in the accident, the identity of the driver driving the bus, the identity of the owner of the bus, the name of the insurer of the offending bus, the period of coverage of insurance of the bus, the details of the lodging of FIR in the police station concerned in relation to the accident and charge sheet.

Fourthly, so far as the owner of the bus are concerned, case remained ex parte against him since inception and, therefore, neither contested the appellants' claim petition nor entered into the witness box to rebut the allegations of the appellants made in the claim petition and the evidence. An adverse inference could be drawn.

Fifthly, so far as the Insurance Company is concerned, they also did not examine any witness to rebut the appellants' evidence. The Insurance Company could have adduced evidence by examining witness on its behalf but it was not done.

Sixthly, on the other hand, the appellants examined two witnesses and thereby discharged their initial burden to prove the case.

Seventhly, if the Court did not exhibit the insurance policy despite filing of Xerox copy of insurance policy before the Ld. Tribunal and also referred the particulars of insurance policy in their claim application as well as evidence, even in such situation, the appellants cannot be denied of their right to claim the compensation on such ground. In view of the supreme observation as aforesaid, it was nothing but a procedural lapse, which could not be made basis to reject the claim petition. Moreover, when the appellants adduced oral and documentary evidence to prove their case and the respondent No.3/ Insurance Company did nothing to counter them.

19. Nature of the claim case under the Motor Vehicles Act is an inquiry into the claim case is to be held by summary procedure. Even if documents not marked at the time of inquiry bear no consequences, while disposing of the case. It is the duty of the appellants/claimants to prove the rash and negligent driving/fault on the part of the driver of the offending vehicle, when the claim case filed under Section 166 of the Motor Vehicles Act. This Court has a power to dispose of the appeal considering the question of law and facts involved at this appellate stage because all evidence and documents are available on record. This Court

is required to decide the controversy in accordance with law for the interest of justice since the matter is pending since long after full satisfaction with the observation made in a judgment referred by the appellant in **Rajinder Sharma Vs Arpana Sharma[5].**

The Hon'ble Supreme Court has held therein as follows:

> *"5. It appears that most of the documents which are sought to be adduced by way of adducing evidence are on record. In that view of the matter, the order to remit the matter to the trial court is not warranted. The High Court, being the first appellate court, is a court of both fact and law. Therefore, it will be in the interest of justice for the High Court to decide the controversy in accordance with law. In the facts of the case the order of remand will merely prolong the proceedings between the parties."*

20. From the entire evidence, it reveals that the appellants have proved the case that accident was occurred due to rash and negligent driving of the driver of the offending vehicle bearing No. WB-67/2057. Furthermore, the FIR, charge sheet, PM report also substantiate that the victim was died due to road traffic accident. It was not disputed from the side of insurance company that the accident was not taken place, so there is no slight doubt that the accident was occurred due to the rash and negligent driving of the vehicle. Moreover, the charge sheet has been filed against the driver under Section 279/337/338/304A of the IPC, also prima facie established that due to his rash and negligent driving, the accident

[5] **(2011) 15 SCC 300**

occurred and due to such accident, the victim suffered serious injuries on his person and finally succumbed to his injuries. Hence, the appellants/claimants are entitled to get compensation.

21. Now, the question arises before this Court, what would be the actual compensation to be awarded in favour of the appellants/claimants. From the evidence of P.Ws. 1 and 2, it is very much clear that prior to the date of accident the victim was a part time lecturer and he was also used to impart tuition to the 60-70 students in a two shifts charging @ 100/- per students. Even, if he is unable to produce any document. It can be safely accepted that his earning was Rs. 6000/- per month. An educated person, who has completed his M.A. could easily earn minimum Rs. 6000/- per month at the time of accident. That apart the insurance company did not adduce any evidence to rebut the claim of the appellants/claimants. Accordingly, this Court can safely accept his income as Rs. 6000/- per month considering the facts and circumstances of the present case as well as with some guess work relying on a decision of the Hon'ble Supreme Court in **Chandra @ Chnada @ Chandraram vs Mukesh Kumar Yadav**[6] where the Hon'ble Supreme Court held as, inter alia:

> "10. It is the specific case of the claimants that the deceased was possessing heavy vehicle driving licence and was earning

[6] **(2022) 1 SCC 198**

Rs. 15000/- per month. Possessing such licence and driving of heavy vehicle on the date of accident is proved from the evidence on record. 1 (2021) 2 SCC 166 C.A. @ S.L.P. (C) No. 6466 of 2019 though the wife of the deceased has categorically deposed as AW 1 that her husband Shivpal was earning Rs. 15000/- per month, same was not considered only on the ground that salary certificate was not filed. The Tribunal has fixed the monthly income of the deceased by adopting minimum wage notified for the skilled labour in the year 2016. In absence of salary certificate the minimum wage notification can be a yardstick but at the same time cannot be some amount of guesswork is required to be done. But at the same time the guesswork for assessing the income of the deceased should not be totally detached from reality. Merely because claimants were unable to produce documentary evidence to show the monthly income of Shivpal, same does not justify adoption of lowest tier of minimum wage while computing the income. There is no reason to discard the oral evidence of the wife of the deceased who has deposed that late Shivpal was earning around Rs. 15,000/- per month."

22. From the PM report of the victim, the age of the victim as 28 years and he was unmarried. To substantiate his age, PM report is sufficient to

accept his actual age. He was 28 years old on the date of accident. So he falls within the age group of 25 to 30 years. For that, multiplier would be 17 in view of the decision of the Hon'ble Supreme Court passed in a case of **Sarala Verma and Others vs Delhi Trasport Corporation and another**[7] wherein the Hon'ble Supreme Court held that the multiplier should be selected in the following manner:-

M-18 for (15 to 25 years)
M-17 for (26 to 30 years)
M-16 for (31 to 35 years)
M-15 for (36 to 40 years)
M-14 for (41 to 45 years)
M-13 for (46 to 50 years)
M-11 for (51 to 55 years)
M-9 for (56 to 60 years)
M-7 for (61 to 65 years)
M-5 for (66 to 70 years)

23. Ld. Advocate for the appellants finally contended that on the basis of proposition laid down by the Apex Court in **National Insurance Company Limited vs. Pranay Setty and Anr.**[8] General damages should be Rs. 70,000/- . Apart from that, the future prospect of the victim should be added @ 40% in case of self-employed or on a fixed salary where the deceased was less than 40 years.

[7] **(2009) 6 SCC 121**
[8] **(2017) 16 SCC 680**

24. With regard to issues raised by the appellants pertaining to entitlement of future prospect as well as general damages, the Hon'ble Supreme Court in the aforesaid Pranay Sethi's case (supra) has laid down the proposition towards future prospect and method of calculation, *inter alia*, as follows:

> *"In case the deceased was self-employed or on a fixed Salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the ages of 50 to 60 years should be regarded as the necessary method of computation. The Established income means the income minus the tax component".*

25. It was specifically held in the said judgment that the General damages should be reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15000/-, Rs. 40,000/- and Rs. 15000/- respectively. Thus, this Court finds substance in the submissions of the Ld. Advocates for the appellants/claimants in this regard.

26. In the light of above discussion and proposition laid down by the Apex Court, appellants are also entitled to get an additional amount of 40% of the annual income of the deceased, whose ages was less than 40

years towards future prospect in addition to General damages as aforesaid. Age was taken as 28 years at the time of his death and for that multiplier would be 17 considering the age group of the victim between 26 to 30 years. Indeed, it is taken on the basis of evidence on record.

27. Keeping in mind the above observation, the calculation of compensation is assessed as follows:

CALCULATION OF COMPENSATION

Monthly Income	Rs. 6, 000/-
Annual Income (Rs. 6000/- X 12)	Rs. 72,000/-
Add: Future prospect @ 40% of the income of victim	Rs. 28,800/-
Total Income	Rs. 1,00,800/-
Less: deduction 1/2rd of the total Annual income (towards personal and living expenses of unmarried victim)	Rs. 50,400/-
Total income after deduction	Rs. 50,400/-
Total loss of Dependency Rs. 50,400/- X 17 (	Rs. 8,56,800/-

Multiplier)	
Add: Loss of estate	Rs. 15, 000/-
Add: Funereal Expenses	Rs. 15, 000/-
Add: Loss of consortium	Rs. 40, 000/-
Total compensation	Rs. 9,26,800/-

28. Thus, the appellant/claimant is entitled to get compensation amount comes to Rs. 8,76,800/= (Rs. 9,26,800/- minus Rs. 50,000/- already received as per Section 140 of the M.V. Act, 1988) which shall carry interest @ 6% per annum from the date of filing of the claim application i.e. from 1st July, 2005 till final payment.

29. The impugned judgment and award of the learned Tribunal dated 17th February, 2009 is hereby set aside.

30. The respondent no. 1-Insurance Company is directed to deposit compensation amount i.e. Rs. 8,76,800/= and the interest as indicated above by way of cheque before the learned Registrar General, High Court Calcutta within a period of 4 weeks from this date.

31. Learned Registrar General, High Court, Calcutta, upon deposit of the amount and interest as indicated above, shall release the amount in favour of the appellants /claimants upon proper identification and subject to verification of the payment of ad valorem Court fees forthwith.

32. With the above observations, the instant appeal stands disposed of without orders as to costs.

33. Let a copy of this Judgment along with Lower Court records be sent back to the learned Tribunal forthwith for information.

34. All parties shall act on a server copy of the judgment and order uploaded from the official website of High Court at Calcutta.

35. Urgent photostat copy of this Judgment and Order be given to the parties upon compliance of all legal formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)