IN THE HIGH COURT AT CALCUTTA

1.

CIRCUIT BENCH AT JALPAIGURI

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEEE DAS

FMA 33 of 2023

SHEFALI @ SHEPHALI RABIDAS & ORS

Vs

UNITED INDIA INSURANCE CO. LTD. & ANR.

With

FMA 56 of 2026

UNITED INDIA INSURANCE CO. LTD. & ANR.

Vs.

SHEFALI @ SHEPHALI RABIDAS & ORS.

For the appellants		
(In FMA 33 of 2023)	:	**Mr. Gobinda Saha, Adv.**
For the respondents		**Ms. Srija Bhowmik, Adv.**
(In FMA 56 of 2026)		**Ms. Priyanka Dey, Adv.**
		Mr. Milan Chandra Laskar, Adv.
For the respondent no.2	:	**Mr. Kalipada Das, Adv.**
		Ms. Saheli Roy Dakua, Adv.
For the Insurance Company	:	**Mr. Rishin Chakraborty, Adv.**
Reserved On	:	**13.08.2026**
Judgement On	:	**20.08.2026**
Uploaded On	:	**20.08.2026**

1. Assailing the judgement and award dated 9th day of August, 2023 passed by the Learned Judge Motor Accident Claims Tibunal, Jalpaiguri in M.A.C case no. 74 of 2021 both the claimants and the Insurance Company filed the appeals. For the sake of brevity and convenience as in both the appeals the parties are same, this court vide this common judgement dispose of both the appeals in the following manner .

<u>Brief Fact of the case</u>

2. The tractor was purchased by Mr. Dilip kumar Basu on 31.10.2020 from the Dealer M/s. Balaji Enterprise. The owner of the vehicle did not have any policy with the United insurance Company and on November 2, 2020 the accident took place and the husband and the father of the claimants died. The claimants filed the claim application claiming an amount of Rs. 18, 25,000/- on various heads claiming that the deceased was aged about 50 years and was a cobbler. The Learned Tribunal passed the award after assessing the evidences. Of R. 4, 56,100/- . Being aggrieved the claimant preferred the appeal being FMA 33/2023 the insurance Company also challenged the award on the ground of maintainability of the claim application being FMA 56/2026.

<u>Submission</u>

3. The grounds of challenge by the claimant pertains to the computation of the compensation considering the notional income of the deceased at Rs.3,300 instead of Rs 9000/-without following the decision of the Hon'ble Supreme

Court in ***Sarathi Barman***[1]. That apart the future prospect has not been considered in consonance with the celebrated decision of the ***Hon'ble Supreme Court in the case of National Insurance Company vs Pranay Shetty***[2]**.** Furthermore no interest was awarded violating the provision of Section 171 of the Motor Vehicles Act as decided of the decision of ***Kaushnuma Begum and Ors Vs. The New India Assurance Co. appeal (civil) 6 of 2001 on Jan 3, 2001.*** Further ground taken that the general damages as calculated by the tribunal, failed to take note towards the loss of spouse and parental consortium. According to the appellant the amount towards general damage to be Rs. 1,90,000 and the total amount of compensation should have been Rs. 15,06,250. lastly the Learned Tribunal Judge erred in law in not awarding the interest at the rate of 9% per annum over the assessed compensation from the date of filing of the claim application following the principal decided in the case of ***Kohinur Begum Vs. New India Insurance Company Limited*** reported in[3]***,Niva Devi Vs. New India Assurance Co. Limited*** reported in[4] and ***Pathmavathi and ors Vs Bharthi AXA General Insurance Co. Ltd***[5]**.** The claimants further challenged the maintainability of the Appeal filed by Insurance Company as filed only with intent to delay and drag the payment of compensation to which they are entitled. Accordingly prayed for setting aside such award.

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[1] (2014) 2 SCC 735
[2] (2017)16SCC 680
[3] AIR 2018 (Cal) 84 (2)
[4] (2014) 2 TAC 864
[5] 2026 (1)T.A.C 705 (SC)

4. The Learned Advocate representing the Insurance company on the other hand opposes such contention of the appellant and submits that there is no hard and fast rule that Rs. 9,000/- to be considered as a notional income on the contrary it could at best be Rs. 5,000/- . The Learned Advocate relied upon the decision of Hon'ble Supreme reported in ***Bebi Giri Vs. Insurance Company Limited***[6] where it was held that mother of the deceased is not entitled to compensation towards loss of consortium and therefore the Learned Court has rightly considered the general damages and there is no need for interference. It is further argued that grant of interest is not mandatory which is a settled proposition of law as in Section 171 of Motor Vehicles Act, the word "may" has been used which means it is discretionary and the Learned Tribunal has not exercised his discretion considering the facts and circumstances of the case.

5. In the appeal being FMA 56 of 2026 filed by the Insurance company mostly on the ground that the nature of the policy do not cover the third party risk and hence the Insurance company is not liable to pay the compensation . It is their specific case that the alleged insurance policy was a road risk insurance policy executed to M/s. Balaji Enterprises, proprietor Haribans Prasad and Rima Debi Prasad and it was issued on the basis of trade license which was basically in the nature of a transit policy that is valid only from factory to show room.

6. It is their case that these policies are usually for a period of 1 year and remains valid only till the sale of the vehicle. When the vehicle is sold to 3rd person the policy coverage expires. In this regard relied upon the decision of ***S. Raja***

[6] 2023 SEJ 343

Sekharan Vs. Union of india and Ors. passed in ***Writ petition s (civil) No. (s) 295/2012 dated 20.07.2018.*** In the said case the vehicle was sold on 31st August 2020 and accident took place on 2nd November,2020 therefore the vehicle was not covered under this road risk policy and hence the Insurance company is not liable to pay any amount of compensation as awarded by the learned Tribunal.

7. The Learned Advocate further argued that in terms of the notification issued by the Ministry of Road Transport and Highways and in terms the decision of ***Gahar Mohammad Vs. State Road Transport Corporation and Ors[7].*** by virtue of an amendment made in Section 146, insurance of motor vehicle has been made mandatory and a motor vehicle cannot ply on pubic place nor is allowed to be used at a public place unless insured. Accordingly prayed for setting aside this appeal.

8. The Learned Advocate representing the M/s. Balaji Enterprise and Anr. Submits that the insurance policy was very much valid and the vehicle was covered under such policy and the accident occurred after the vehicle was sold and from their showroom and on the way towards the home of the purchaser the accident took place whereby the victim died. Therefore the entire liability to pay compensation rests on the insurance company.

[7] 2023 (1) TSE 353 SC

Analysis

9. Having heard the submissions of both the Learned Advocates of the respective parties since both the appeal arises out of the same judgement this court heard both the appeals together for convenience and to avoid the repetitive discussions on the subject matter. Considering the materials on record this court finds the issues to be decided by this court are **i)** the liability of the Insurance company to pay the compensation to the claimant **ii)** The claimants if are entitled enhancement of the compensation on the heads of General damage in the light of the guidelines framed by Hon'ble Supreme Court **iii)**Whether the claimants are entitled to interest on compensation from the date of filing the compensation till realization in accordance with section 171 of the Motor Vehicle Act **iv)** Whether the rate of interest needs any modification.

10. The factual matrix of the case unveils that the applicants being the wife, sons and daughters of the deceased victim filed the claim application for grant of compensation on account of death of Nanadalal Rabidas who died in a motor vehicle accident. The victim was aged about 50 years and was a cobbler by occupation and his per day income was Rs. 400/-. The victim died because of multiple injuries due to accident who was sitting on the side of a road and the Post Mortem report reveals the cause of death was due to multiple injuries.

11. It was further averred in the claim application that the petitioners were completely dependent upon the income of the deceased and due to sudden demise of the victim the petitioners have suffered loss of pain, shock and suffering which will continue for a long period and the accident occurred due to rash and negligent driving on the part of the driver of the offending tractor. Hence claimed Rs. 18,25,000/-.

12. The pertinent point to be consider at the outset on the issue of maintainability of the appeal preferred by the Insurance company on the ground of non coverage by the insurance policy challenging the maintainability of claim petition. It is seen that the policy was issued in favour of M/s. Balaji enterprises which was a road risk package policy and was valid from 15.30 hours of 13.02.2020 to mid night on 12.02.2021. The point raised putting reliance on the decision of ***S. Raja Shekaran (supra)*** that the vehicle was sold and it was out from the show room without registration which is in gross violation of the observation of the Hon'ble Supreme Court where it has been mandatory that no vehicle should ply without having the 3rd party Insurance coverage. On careful perusal of the said decision it is found that the Supreme Court Committee held a meeting on road safety on 26th March,2018 where it was recorded that about 18 crore vehicle plying on the road and only 6 Crores vehicles have the mandatory 3rd party coverage. Therefore 66% vehicles are running without any 3rd party insurance coverage and the victims of accident including those who have died and their legal representatives are getting compensation because the vehicle are not injured. To get over this problem the committee took certain decisions and make it mandatory for all general Insurance companies to issue a 3 years 3rd party insurance cover for new car and 5 year 3rd party insured coverage for new two wheeler as a separate product or as a part of comprehensive insurance product.

13. Rule 40 of the Central Motor Vehicle Rules 1989 as relied upon by the Learned Counsel appearing on behalf of the insurance company imposed the restrictions on use of trade certificate or trade registration mark and number and in rule 42 reads as follows:- Rule 42 *"Delivery of vehicle subject to registration no holder of a trade certificate shall deliver a motor vehicle to a purchaser without registration , whether temporary or permanent".* Rule 47 relates to application for registration of motor vehicles and it contains as follows; (1) "an application for registration of motor vehicle shall be made in Form 20 to the Registering Authority within a period of 7 days from the date of taking delivery of such vehicle, excluding the period of journey and shall be accompanied by ……………." In the case of ***New India Assurance Company Limited Vs. Ranjan Singh and Ors.*** Two vehicles were involved and the issue arose whether the other vehicle was covered under Insurance policy or not which were released from the showroom having trade licence.

14. In the instant case the offending vehicle was admittedly was a tractor and admittedly the accident took place on the way from the showroom to the home and it was a comprehensive policy. In the additional written statement filed by said M/s. Balaji enterprise it was averred that after purchase the owner kept the vehicle in the show room for two days due to non availability of his driver and on 2nd November, 2020 at about 4 P.M. the manager of the showroom came to learn that the vehicle was met with an accident on the way to the purchaser's house. The vehicle in question was duly insured by the United India Insurance Company limited and was valid in the name of M/s. Balaji

Enterprises and the vehicle was plied by a driver having valid licence. The witness Karma Linda who adduced evidence on behalf of Insurance Company admitted that Exhibit 6 the Insurance policy was issued from their office which was valid for 1 year and was enforceable from 13.2.2020 to 12.2.2021. the packaged policy reflects it covers third party risks. Therefore there is no dispute with regard to the fact that the vehicle was duly insured and the driver possessed a valid license, and the showroom had valid Trade Licence. Hence the contention of the Learned Counsel of the insurance Company regarding non maintainability of the claim application is not sustainable. It is undisputed that Motor Vehicles Act is a beneficial legislation aimed to provide relief to the victims of their families. The contention of insurance Company that the Tractor was attached with a trolley and are separate entity and trolley was not injured was accepted by the Learned Tribunal due to lack of evidence and more so the policy issued was a comprehensive policy.

15. The claim was contested by both the Insurance Company as well as M/s. Balaji enterprise and the showroom dealer in whose name policy was purchased. The Learned Tribunal after considering the evidences adduced before the tribunal and after considering the documents exhibited calculated the income of the deceased as a notional income of Rs. 3,3000/- since the income as alleged victim as claimed of Rs. 400 per day was not proved. In the decision of ***Smt. Sarathi Barman Vs Reliance General Insurance Company limited and Another (supra)*** where the appeal was preferred for enhancement of the amount of compensation mostly on the ground of considering the notional income as Rs. 5,000/- per annum to the deceased who was aged about 21 years and was a vegetable vendor. The Hon'ble Supreme Court was of the view that notional income should not be less than Rs. 9,000/- per month. In the instant case the deceased a cobbler and the amount of monthly income was claimed to 12000/ considering Rs 400/- per day. It is not a hard and fast rule that the notional income of vegetable seller to be considered as the notional income of a cobbler however Rs 3,300/- can no way be considered as Notional income and therefore such amount as calculated warrants modification.

16. The point raised regarding the calculation of the future prospect the decision of ***National Insurance Company Vs. Pranoy Shthi and ors. (supra)*** is to be looked into where in para 59.4 it is held:-

> *(59.4) " In case the deceased was self-employed or on a fixed salary, and 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 42 years to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income minus the income minus tax component."*

17. It was further held in the decision that the age of the deceased should be the basis for applying the multiplier. In this case the age of the deceased was proved to be 50 years and no contrary evidence either oral or documentary was produced controverting such age of the victim. Considering the decision of

Sarala Varma's case[8], Tribunal considered the multiplier as 13 and calculated the actual income taking the notional income of Rs. 3,300/.-The learned Tribunal did not consider that addition of 40% of established income to be regarded as a necessary method of computation when the deceased was aged between 40 to 50 years. Regarding the general damages as assailed before this Court by the Learned Advocate the claimant put reliance on the decision of ***Pranay Sethi and ors. (supra)*** where Rs. 40,000/- was considered as a spousal consortium and towards parental consortium Rs. 40,000 × 3 , 1,20,000/- as parental consortium and therefore the total general damage should have been calculated at Rs. 1,90,000/- .The decision as relied upon by the Learned Advocate of the Insurance Company in this regard ***in Bebi Giri Vs. National insurance Co. Ltd.***[9]**.** Where the entitlement of the mother of the deceased to compensation towards loss of consortium was not considered on account of loss of consortium.

18. In this case the applicants/claimants are the wife, daughter, son and minor son. The decision relied upon has no application in this case as the mother is not the applicant. In the case of ***Pranay Sethi (Supra)*** in para 17 of the decision of ***Rajesh Vs. Rajbeer Sing***[10] was taken note of where it is said which is as follows"-

> *"17. … In legal parlance, "consortium" is the right of the spouse to the company, care, help, comfort, guidance,*

[8] (2009) 6 SCC 121
[9] (2023) ACJ 343
[10] (2013) 9 SCC 54

society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non- pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English courts have also recognised the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the courts award at least rupees one lakh for loss of consortium."

19. Hon'ble Supreme Court accordingly considered loss of consortium towards spouse as well as parental consortium for the minor child who suffered due to sudden demise of his father. The Learned Tribunal calculated the general damage and considering the funeral expenses loss of estate and Rs. 40,000/-

towards loss of consortium without considering spousal consortium of further Rs. 40,000/-.

20. In ***Sishu Pal @ Shish Ram &Ors vs Surjeet & Ors.***[11] the additional compensation under the head of loss of consortium which denotes emotional affection of the deceased towards her family members is considered. The Hon'ble Supreme Court took note of the case of ***Pranay Setthi (supra)*** and held that in all cases that have resulted in death, loss of consortium is to be paid to the claimants at the rate of Rs. 40,000/-per dependant along with 10% increase on the said amount every three years.

21. Spousal consortium is generally defined as rights pertaining to the relationship of a husband wife which allows compensation to the serving spouse for loss of company, society, co-operation, affection and aid of the other in every conjugal relationship. Parental Consortium is granted to the child upon the premature death of parent, for loss of parental aid, protection, affection, society, discipline, guidance and training. In the present case the father died leaving (minor) son and daughter other than spouse. In the decision of ***Kaushuma Begum and Ors. (supra)*** it was held by Hon'ble Supreme Court that Sections 171 empowers the tribunal to direct that in addition to the amount of compensation simple interest shall also be paid at such date and from such date not earlier than the date of marking claim. The Hon'ble Court fixed the interest at the rate of 9% per annum. In the decision of ***Boney Dubey***

[11] 2026 INSC 634

Vs. M/s. Shyam Bidi Worker and Anr.[12] by the insurance Company. The injured was a boy of 15 years and the national Insurance was considered as Rs.6000/- per month when in the present case the deceased was a cobbler and aged about 50 years and used to maintain his family on his income.

Conclusion

22. Accordingly this Court consider the Notional income as Rs. 9,000/-.In addition future prospect to be assessed 25% of Rs. 27,000/- that is total income of Rs. 1,35,000/-. After deducting 1/4th on account of his personal living expenses an amount of Rs. 1, 01,250 to be deducted and using multiplier of 13 the amount comes to Rs. 13, 16,250.

23. The general damage is considered as per ***Pranay Sethi (supra)*** Rs. 15,000/- for loss of estate, Rs. 15,000/-for funeral expenses, Rs. 40,000/- as spousal consortium and Rs. 40,000/- × 2 = 80,000/- as parental consortium. So general damage Rs. 1,20,000/- the total compensation therefore comes to Rs. 15,06,250/- the amount awarded by the tribunal is Rs. 4,56,100 .

24. Hence the claimants entitled to Rs. 10,50,150/- (15,06,250 – 4,46,100) along with an interest at the rate of Rs. 9% from the date of filing of the claim application that is from 29th January , 2021 to be awarded in favour of the claimants, since the victim passed away in the year 2020 and the claimants are pursuing with their claim till 2026.

25. No payment is made as yet. In terms of the award by issuing cheques in favour of the claimants, therefore the default clause as per the order impugned

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[12] 2025 (2) T.A.C. 38 (SC)

will remain operative till realization or issuing cheques in favour of the claimants.

26. This civil appeal thus stands disposed of on the aforesaid terms. Connected application if any shall stands closed.

27. Urgent certified copy if applied by any of the parties to be supplied subject to observance of all formalities.

(CHAITALI CHATTERJEE DAS, J.)