Judgment Dated: 27-11-2026
WBCHCJ0011682025

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CIVIL REVISIONAL JURISDICTION

BEFORE:
THE HON'BLE JUSTICE OM NARAYAN RAI

FMAT(MV) 23 OF 2025
CAN 1 OF 2025

LIBERTY GENERAL INSURANCE COPANY LIMITED .....APPELLANT

-VERSUS-

BABITA KHAITAN& ORS. .....RESPONDENTS

For the Appellant : Mr. Hirak Barman, Adv.

For the Respondents : Mr. Bikash Singha, Adv.
Mr. Abdul Habib, Adv.

WITH

COT 1 OF 2026

BABITA KHAITAN & ANR. ..... CROSS OBJECTORS

-VERSES-

LIBERTY GENERAL INSURANCE COMPANY LIMITED & ANR

..... RESPONDENTS

For the Cross Objectors : Mr. Bikash Singha, Adv.
Mr. Abdul Habib, Adv.

For the Respondents : Mr. Hirak Barman, Adv.

Reserved on : 20.11.2026

Judgment on : 27.11.2026

OM NARAYAN RAI, J.:-

1. The insurance copmany has come up in this appeal under Section 173 of the Motor Vehicles Act, 1988[1] against the judgment and award dated December 09, 2024 passed by the learned Additional District & Sessions Judge, 2nd Court, Alipurduar (being the Motor Accident Claims Tribunal[2]) in M.A.C.C No. 7 of 2022. The claimants (i.e. the parents of the deceased) have also filed a cross objection being COT 1 of 2026 assailing the said judgment and award on a limited ground seeking enhancement of the compensation awarded.

2. For the sake of convenience and ease of understanding the parties to these proceedings will be identified by their original status before the learned Tribunal.

FACTUAL MATRIX:

3. The case run by the claimants in their application under Section 166 of the 1988 Act may briefly be noticed:-

a. The claimants are the parents of one Tushar Khaitan[3] who met his sad demise due to an accident on November 05, 2021. On the fateful day, the deceased was travelling to Ethelbari from Siliguri on a Mahindra Thar vehicle which was being driven by a third person (driver).

b. The vehicle was being driven with high speed and when the vehicle reached Panijhora More near Murti Bridge, the driver lost control. Resultantly, the vehicle hit a road side tree and rolled over. The deceased as well as the other two passengers in the vehicle died on the spot.

c. Alleging that the accident took place due to rash and negligent driving of the vehicle, the claimants approached the Tribunal by way of an application under Section 166 of the 1988 Act, claiming compensation from the owner as well as the insurer of the offending vehicle, holding them to be jointly or severally liable.

d. The claimants asserted that the deceased used to work as a Store Manager and was earning a sum of Rs. 20,000/- per month.

4. The evidence on record reveals that the police had registered a case being Nagrakata P.S. Case No. 141/21 dated November 05, 2021 under Section 279/338/304A of the Indian Penal code against the driver of the offending vehicle. The police also filed a charge sheet holding the driver responsible for the accident.

5. The owner of the offending vehicle initially appeared but he did not turn up subsequently and ultimately the case was set *ex parte* against him. The insurance

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[1]Hereafter 'the 1988 Act'
[2] Hereafter 'the Tribunal'
[3]Hereafter the deceased

company, however contested the claim by filing its written statement denying the claim case and praying for dismissal thereof.

6. The learned Tribunal framed the following issues:

1. *Is the case maintainable in its present form and law?*

2. Was there vehicular accident on the alleged date and time involving the offending vehicle?

3. Did the deceased die in the said vehicular accident due to rash and negligent driving of the driver of the offending vehicle?

4. Was the offending vehicle under coverage of a valid insurance policy at the relevant time?

5. Are the claimants entitled to get any compensation, as prayed for?

6. To what other relief, are the claimants entitled?

7. The Tribunal ultimately held that the claimant no. 1 being the mother of the deceased was entitled to compensation to the tune of Rs. 23,52,000/-

8. Feeling aggrieved thereby the insurance company has come up in appeal under section 173 of the 1988 Act.

9. As aforesaid, the claimants have also approached this Court by way of a cross objection in this appeal, praying for enhancement of the compensation awarded.

SUBMISSIONS ON BEHALF OF THE INSURANCE COMPANY:

10. A brief summary of the submissions made by Mr. Hirak Barman, learned Advocate appearing for the insurance company, is as follows:-

a. The judgment and award impugned in the appeal suffers from serious infirmities. It was submitted that the mother of the victim was not an eye witness and as such, her evidence could not have been taken note of.

b. The learned Tribunal has relied on the deposition of PW 2 who has been stated to be an eye witness to the accident. The charge-sheet filed by the police names, as many as, twelve witnesses but the name of PW 2, who happens to be the main witness on the basis of whose evidence, the learned Tribunal has decided the case does not figure in the said charge-sheet. In such view of the matter, the evidentiary value of to deposition of PW 2 gets fatally diminished.

c. None of the persons named in the charge-sheet by the police as witnesses has turned up to adduce evidence on behalf of the claimants or in support of the claimants' case. These facts itself prove the falsity of the claim case.

d. The claimants have not been able to prove to any degree of satisfaction, that the deceased was gainfully employed or was earning the sum of Rs. 20,000/- per

month. The learned Tribunal could not have reached any conclusion as regards income either merely on the basis of the pay slip of the deceased or surmises.

e. Proof of rash and negligent driving is a must in claims under Section 166 of the 1988 Act. Rash and negligent driving has not been proved and there is no evidence to prove that the claimants' son died due to the said accident.

f. A judgment of the Hon'ble Supreme Court in the case of ***Usha Devi & Ors. vs. New India Insurance Company Ltd.***[4]was relied on to contend that the claimants were required to establish that the accident was caused by the rash and negligent driving of the offending vehicle only and by not anything else.

SUBMISSIONS ON BEHALF OF THE CLAIMANTS:

11. A brief summary of the submissions made by Mr. Bikash Singha, learned Advocate, appearing for the claimants, is as follows:-

a. The quality of negligence required to be proved and the extent of proof required are not that high as would have been in criminal cases.

b. Once a charge-sheet is filed by the police the same is sufficient to establish negligence on the part of the person charged for the purpose of a claim under Section 166 of the 1988 Act. A judgment of the Hon'ble Kerala High Court in the case of ***New India Assurance Co. Ltd. vs. Pazhaniammal***[5] was cited in support of the aforesaid contention.

c. A judgment of the Hon'ble Supreme Court in the case of ***Jyotsna Roy & Anr. Vs. National Insurance Co. Ltd.***[6] was cited to contend that the 1988 Act in general and the provisions dealing with compensation to be paid to the victim of accident are inherently beneficial in nature and the same do not require strict standard of proof.

d. Another judgment of the Hon'ble Supreme court in the case of ***Ranjeet & Anr. Vs. Abdul Kayam Neb & Anr.***[7]was cited for the proposition that "*once a charge-sheet has been filed and the driver has been held negligent, no further evidence is required to prove that the vehicle was being negligently driven and that if the eye witnesses are not examined, that will not be fatal to prove the death of the deceased due to negligence of the driver.*"

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[4] 2019 OnLine SC 2425
[5]2012 (1) T.A.C. 816 (Ker.)
[6]2026 ACJ 778= 2026 SCC OnLine SC 1284
[7]2025 SCC OnLine SC 497

e. A judgment of a Co-ordinate Bench of this Court in the case of ***Reliance General Insurance Co. Ltd. vs. Kalipada Mukherjee & Ors.***[8] was cited for the proposition that in motor accident claim cases approach of the Court should be only to analyse the material placed on record by the parties to ascertain whether the claimants' version is more likely than not true and that the standard of proof beyond reasonable doubt is not applicable to claim cases.

f. The claimants had already adduced evidence evincing that the claimants' son was earning a sum of Rs. 20,000/- per month and that being so, there was no reason for the Tribunal to hold that the monthly income of the deceased was not proved to be Rs. 20,000/-.

g. The learned Tribunal has committed an error in holding that the claimants have not been able prove the fact that the claimants son was earning a sum of Rs.20,000/- when the certificate and salary statements were produced and oral evidence in support thereof was adduced by the employer of the deceased.

REJOINDER SUBMISSIONS ON BEHALF OF THE INSURANCE COMPANY:

12. Mr. Burman, rejoined by submitting that the claimants' cross objection was wholly unmeritorious inasmuch as there was no acceptable evidence on record to hold that the deceased was earning any sum at all, all the more so, when the learned Tribunal has itself not been satisfied with the evidence adduced on such score.

13. Since the income itself was not proved, there is no question of enhancement thereof as prayed for by the claimants.

ANALYSIS & DECISION:

14. It is now well settled that the 1988 Act and especially the provisions dealing with compensation to be awarded to a victim of accident are inherently beneficial in nature eschewing strict standard of proof. Such aspect has been reiterated by the Hon'ble Supreme Court in the case of ***Jyotsna Roy*** (supra) as well.

15. There is clinching evidence on record to establish that there has been an accident and the claimants' son has lost his life in such accident.

16. It is also undisputed that the charge-sheet filed by the police implicates the driver of the vehicle which was carrying the claimants' son for rash and negligent driving

[8] **FMA 511 of 2018 decided on 27.07.2023**

of the offending vehicle. The relevant portion of the charge-sheet (Exhibit -4) filed by the police which deserve notice in such regard is quoted hereunder:

> *"**Brief facts of the case**: is that on 05.11.2021 at 10.05 hrs PSI Addil Limbu of Nagrakata PS Dist-Jalpaiguri lodged a written complaint against vehicle bearing no. WB 74BF 6917 to effect that in course of his mobile van duty at about 05.35 hrs received information that an accident occurred at Panjhora More on NH-31 C under Nagrakata PS Jurisdiction. After receiving this information he along with force immediately reached there and found one Mahindra Thar vehicle Bearing Registration No. WB 74 BF 6917 was capsized beside the road and totally damaged **due to rough & negligent driving of driver**. As a result three persons have been died on the spot and the driver of the vehicle received grievous injury on his person and immediately injured persons were shifted to Mal SD Hospital from where referred to NBMC Hospital. The complainant seized the offending vehicle noted above.*
>
> *On the basis of the written complaint Nagrakata PS case No. 141/21 dated 05.11.2021 U/S 279/338/304A IPC, was started and endorsed to SI Raja Saha for its investigation. Accordingly, he took up its investigation and after his transferred the case I/C Nagrakata re-endorse to me for its investigation and I took up its investigation on 25.01.2022."*

17. Moving a little backwards, the written complaint (Exhibit 2))lodged by the P.S Nagrakata, Dist: Jalpaiguri on November 05, 2021 may also be noted :

> *"To,DT. 05.11.2021*
> *TheInspector-In-charge*
> *Nagrakata Police Station*
> *Jalpaiguri,*
>
> *Sub: FIR.*
>
> *Sir,*
>
> *In producing herewith the seized vehicle bearing registration No. WB 74 BF 6917 (Chocklet Brown in colour Mahindra Thar 4x4) and I do hereby lodge a written complaint against the driver of offending vehicle bearing registration No. WB 74 BF 6917 to the effect that today on 05.11.2021 at 05.35 hrs in course of my mobile van duty received information that an accident occurred at Panijhora more on NH 31 C under Nagrakata PS jurisdiction. After receiving this information I along with force immediately reached there and found one Mahindra Thar vehicle Bearing Registration No. WB 74 BF 6917 was capsized beside the road and totally damaged. During spot enquiry it could be learnt from the local witnesses that today (05.11.2021) early in the morning around 05:20 hrs. **the said vehicle was coming from Chalsa side heading towards Nagrakata in excessive speed** and hit road side trees at Panijhora More near Murti Bridge, beside NH31 C. As a result (03) three persons, travelling in the vehicle appeared to be died on the spot and the driver of the vehicle received grievous injury on his person who was immediately shifted to Mal SS Hospital. Three unidentified male appeared dead have been sent to the Sulkapara hospital for doctor opinion where the attending doctor's declared them brought dead.*

So, I therefore request you, that a specific case may kindly be started against the accused driver of offending vehicle bearing registration No. WB 74 BF 6917 and arrange for its investigation."

18. The said two documents clearly evince that the driver of the vehicle (which carried the deceased) had rashly and negligently driven such vehicle and the same resulted in the accident and untimely death of the claimants' son.

19. Mr. Burman's assertion that there is no evidence that the claimant's son died due to the accident of the Mahindra Thar vehicle is belied by the findings of the police in the charge sheet. The same are extracted hereinbelow:

"During investigation. I physically visited the PO examined witnesses and recorded statement u/s 161 CrPC. I collect PM Report of deceased 1) Tushar Khaitan (22 yrs) S/O Sunil Khaitan of Panjabi Para Chowk, PS-Bhaktinagar, Dist-Jalpaiguri, 2) Ganesh Pradhan (27) S/O Lt. Kamal Bdr. Pradhan of chhota Machia Busty, PS- Jaigoan, Dist – Alipurduar 3) Raju Kumar (21) S/O Shibji Sah Panchanan Colony Siliguri PS – Pradhan nagar, Dist- Darjeeling from E.O of the U/D Case ASI – Bapi Rahaman of nagrakata PS, Jalpaiguri, Dr. Amitabha Basu Pathologist Sadar Hospital jalpaiguri,, PM No. 1384/21, 1385/21, & 1386/21 dated 10.5.11.2021 and Nagrakata PS U/D Case No 47/21 (A), (B) & (C) dated 05.11.2021 and the Dr. opined that deceased as noted above Death was due to Road Traffic accident."

20. It thus stands established that the claimants' son died due the accident involving the offending vehicle itslef and the cause of death was rash and negligent driving.

21. The judgment of the Hon'ble Supreme Court in the case of ***Usha Devi & Ors.*** (supra) relied on by the insurance company cannot come to the aid of the insurance company inasmuch as in the said case the FIR had two versions. As per the initial version of the FIR the accident had occurred due to the rash and negligent driving of the driver of a jeep, bearing registration no. RJ-25-C-1052, however later, the Jeep bearing registration no. RJ-01-E-0214 was found to be involved. Under such circumstances that the Hon'ble High Court of Rajasthan found it necessary for the claimants to examine the witness who had given the incorrect Jeep number at the time of lodging of the FIR. It was in such circumstances that the Hon'ble Supreme Court upheld such observation of the High Court. Such aspect is evidently absent in the facts of the present case.

22. The judgment of the Hon'ble Supreme Court in the case of ***Ranjeet & Anr.*** (supra) squarely applies to the facts of the present inasmuch as in this case too charge-

sheet has been filed and the driver has been charged with negligence in the charge-sheet.

23. The argument of the insurance company that none of the eye witnesses named in the charge-sheet has turned up in support of the claimants' case, does not impress the Court.

24. It is not the law that the same witness who has been named in the charge sheet must depose in the case under Section 166 of the 1988 Act and none other can. Dilip Sharma (PW 2) is an eye witness. He has in his examination in chief clearly deposed that the offending vehicle was proceeding towards Ethelbari with a very high speed and that it overturned due to negligent driving. He has been cross-examined by the insurance company and he has remained unshaken in the cross-examination. To be precise in his cross-examination he has stated thus :

> "***Cross examination by the OP no. 2/insurance company*** –
> *At the time of accident I was going to Birpara from Malbazar by my own goods car. I left Malbazar at 05:00 am. It takes 10/15 minutes to reach PO from Malbazar by car. WB-74bf-6917 is the offending vehicle. I saw the offending vehicle going rashly and negligently before us and it hit on the road side tree and capsized. I saw the accident at a distance of 15/20 met. I have turned up in the case being asked by the claimants. As I telephoned the claimants, they came to know that I saw the accident. From the PO I informed the accident to the claimant no. 2 over telephone. Not a fact I did not witness the accident, or that I depose falsely.*

25. Nothing to the contrary has been brought on record by the insurance company. Thus, the fact that claimants' son suffered death due to the rash and negligent driving of the driver of the offending vehicle cannot be said to the unproved particularly for the purpose of a claim under Section166 of the 1988 Act, where proof beyond reasonable doubt is not required and the test of preponderance of probabilities applies.

26. Insofar as the insurance company's assertion that the claimants' have not been able to prove the monthly income of the deceased is concerned, the same also fails to appeal. On the contrary, this Court is of the opinion that the learned Tribunal has committed a serious error in disbelieving the claimants' case and ignoring the documentary as well as the oral evidence on record which established the income of the deceased.

27. The letter of appointment of the claimants' son and certificate of salary issued by the employer of the claimants' son were exhibited and marked as Exhibits 10 and

11. Salary statements for the months of September 2021 and October 2021 issued by the said employer were also exhibited and collectively marked as Exhibit 12. The employer of the claimants' son proved the aforesaid documents and remained firm in cross-examination while stating that the deceased used to *"draw salary of Rs. 20,000/- per mensem till the date of his demise"*.

28. In terms of the law laid down by the Hon'ble Supreme Court in the case of ***Rajwati v. United India Insurance Co. Ltd.***[9] salary certificate and pay slip would form clinching evidence in cases under the 1988 Act. In such context the following observations of the Hon'ble Supreme Court in paragraph 21 of the said judgment may be noted:

> ***21.*** *In view of the above, we do not agree with the view taken by the High Court while rejecting the salary certificate (Exhibit 19) and pay slip (Exhibit 20) of the deceased merely on the ground that the person issuing the two aforementioned documents was not examined before the Learned Tribunal. The said documents are conclusive proof of the income of the deceased and were also corroborated by the statements of the deceased's wife (Appellant No. 1 herein) and his co-workers. As such, the High Court was not justified in assessing the income of the deceased at Rs. 4,836/- per month on the basis of minimum wages fixed by the State at the relevant time. Resultantly, we affirm the findings of the Learned Tribunal so far as they relate to assessing the deceased's income at Rs. 11,225/- per month on the basis of aforementioned two documents. Annual income of the deceased, therefore, amounts to, Rs. 11,225/- × 12 = Rs. 1,34,700/-.*

29. In the present case, the learned Tribunal has disbelieved the evidence as regards the income of the deceased on the following specious grounds

> *".....When acquittance roll for the salary of the employees is maintained by the PW3, non production of pay slip or salary certificate or acquittance roll causes a fatal to the claimants to substantiate the fact that the deceased used to draw salary of Rs.20,000/- per mensem as claimed by them. Exbt.10, 11 and 12 are simply the documents in the nature of declaration. They are not approving the fact that Rs.20,000/- per mensem had in fact been credited to the deceased as salary. In other words they are not documents of salary of the deceased."*

30. The learned Tribunal has taken an erroneous view in law by treating the duly exhibited documents as mere "declarations". In placing undue weightage upon the acquittance roll despite other corroborative oral and documentary evidence on record, the learned Tribunal adopted a hyper-technical approach and applied an impermissible standard of strict proof, which is contrary to the settled principles governing claim petitions under Section 166 of the 1988 Act, where claimants are only required to establish the deceased's income on the touchstone of

[9] **2022 SCC OnLine SC 1699**

preponderance of probabilities. The learned Tribunal should have appreciated that the claimants' son was employed in an unincorporated private establishment, and not a company registered under the Companies Act, 2013. That being so, the letter of appointment, salary certificate, and salary statements for September 2021 and October 2021 constituted sufficient evidence to prove his income, especially in the absence of any rebuttal evidence on record.

31. In such context the observations of the coordinate Bench in ***Reliance General Insurance Co. Ltd.*** (supra) at page 7 of the order also deserve notice:

> *".....It is trite law that the approach and role of the Courts while examining the evidence in accident claim cases ought not to be find fault with non-examination of some best eyewitness, as may happen in a criminal trial, but instead should be only to analyze the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true. The standard of proof beyond reasonable doubt as in the criminal trial cannot be applied in claim cases and that claimants are merely to establish their case on the touchstone of preponderance of probabilities....."*

32. That being so, the Tribunal's finding that the claimants' son was earning a sum of Rs. 15,000/- per month, based on the Tribunal's own assumption that *"earning of at least of Rs.15,000/- per mensem as a store manager at the relevant time cannot be said to be wholly indigestible"* clearly deserves interference. Since the income of the claimant' son has been proved to be Rs.20,000/- per month it must be held to be so. However, the other portion of the judgment and award impugned herein shall remain undisturbed.

33. As the income of the deceased has been established to be Rs.20,000/- per month the ultimate compensation calculated and awarded to the claimant no.1 will stand modified in the following manner, while keeping the other parameters of multiplier, future prospect, funeral expenses, loss of estate, loss of filial consortium etc. that have been rightly considered by the learned Tribunal, intact :

CALCULATION OF COMPENSATION

Actual Monthly Income	Rs.20,000/
40% of monthly income to be added as future prospect	Rs.8000/-
Total Monthly Income with future prospect	Rs.28,000/-
Personal Expenses (1/2 of the income)	Rs.14,000/-
Multiplier of 18 considering the age of the deceased (i.e. 21 years) (Rs.14,000x12x18)	Rs.30,24,000/-

Add: Funeral Expenses	Rs.18,000/-
Add; Loss of Estate	Rs.18,000/-
Add: Loss of filial consortium	Rs.48,000/-
Total compensation	Rs.31,08,000/-

34. Thus the claimant no.1 is entitled to compensation of Rs.31,08,000/- (Rupees Thirty One Lakh Eight Thousand) together with interest @ 6% per annum (as already directed by the learned Tribunal) from the date of filing of the claim application till the date of payment thereof.

35. All the amounts already deposited by the insurance company in connection with the present appeal together with accrued interest thereon (including the statutory deposit of Rs.25,000/-) shall be adjusted against the total compensation awarded hereinabove.

36. The insurance company is directed to deposit the balance amount of compensation together with interest as directed hereinabove, with the learned Registrar, High Court at Calcutta, Jalpaiguri Circuit Bench by way of a demand draft within a period of four weeks from date.

37. Upon deposit of the balance amount with the interest as above, learned Registrar, High Court at Calcutta, Jalpaiguri Circuit Bench shall release the aforesaid amount of compensation and interest in favour of the claimant no.1, upon being satisfied with her identity.

38. The impugned judgement and award stands modified to the above extent.

39. FMAT (MV) 23 of 2025 thus stands dismissed and COT 1 of 2026 stands allowed. Since the appeal itself has been dismissed, the connected application will not survive and the same stands closed. No costs.

40. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on urgent basis after completion of necessary formalities.

(Om Narayan Rai, J.)