

(2017) 10 MEG CK 0007
In the Meghalaya High Court
Case No : 2 of 2015

Oriental Insurance Co. Ltd

APPELLANT

Vs

Wansalan Iakai and another

RESPONDENT

Date of Decision : 23-10-2017

Acts Referred:

[Indian Penal Code, 1860](#), [Section 364](#) -
Kidnapping or abducting in order to murder
[Motor Vehicles Act, 1939](#), [Section 95\(1\)\(B\)](#)
(i), [Section 95\(1\)\(B\)\(II\)](#)

Citation : 2017 0 AAC 2464

Hon'ble Judges : Dinesh Maheshwari

Bench : Single Bench

Advocate : G. Purkayastha, H Nongkhlaw, S Chakravarty, M Mahanta

Final Decision : Dismissed

Judgement

1. This appeal, under Section 173 of the Motor Vehicles Act, 1988 [hereinafter referred to as ""the Act"" or as ""the Act of 1988""] by the insurer, is

directed against the award dated 30.04.2015, as made by the Motor Accidents Claims Tribunal, Shillong in MAC Case No.101 of 2007.

2. Briefly put, the relevant background aspects of the matter are as follows: The respondent No.2 of this appeal Smti. Miatmon Suchiang preferred

the claim application aforesaid with the submissions that she was the wife of (late) Shri Barwon Langstang, who was about 40 years of age and

was a driver by occupation. The claimant-respondent No.2 asserted in the claim petition that her deceased husband was driving a Tourist Taxi of

Tata Indica make, bearing registration No.ML 05 D 2322, which was owned by the respondent No.1 of this appeal Shri Wansalan Iakai. The

claimant submitted that her husband went missing along with the said vehicle

since 06.10.2003 and then, the dead body of her husband was recovered in a decomposed condition on 10.10.2003 at Puriang Village near NH-44 in a jungle but the said vehicle was not found; and a case was registered at Madanriting Police Station as Case No.74 (10) 2003 under Section 364 IPC. It was also submitted that as per the post-mortem examination of the decomposed body of deceased, the cause of death was shock and asphyxia following strangulation by the neck.

3. The claimant further submitted that she was initially advised to make a claim under the Workmen's Compensation Act, 1929 but, due to irregular functioning of the Authority under the said Act, she was unable to do so and then, she was advised to file the present claim application under the Act of 1988. While pointing out that the present appellant was the insurer of the vehicle in question and while further stating that the deceased was earning Rs. 6,000/- (six thousand) per month, the claimant sought compensation to the tune of Rs.10,10,000/- (ten lakhs ten thousand) for herself and the family.

4. The present respondent No.1, who was arrayed as opposite party No.1 in the claim petition, admitted in his reply that he was the owner of the vehicle bearing registration No.ML 05 D 2322 and was having the permit to ply the vehicle in the States of Meghalaya, Assam and Mizoram. The respondent No.1, however, submitted that the driver was having control over the vehicle in question and was plying according to the choice of area as per his convenience; and used to inform telephonically about any stay/halt, depending on availability of communication. The respondent No.1 further submitted that there was no communication from the driver since 06.10.2003 and then, the decomposed body of the driver was recovered on 10.10.2003. While asserting and reiterating that he was not to be held responsible towards compensation, the respondent No.1 took multifarious pleadings to the effect that the deceased driver was fully responsible for the incident in question and the owner was not in any way responsible therefor and hence, there was no cause of action for claiming compensation against him. The respondent No.1 further submitted that when the vehicle in question and the driver went missing, the matter was reported to the police verbally and after the incident, the matter was reported to the creditor bank as also to the insurer for necessary action. The

respondent No.1 also maintained that he was holding a valid insurance policy, and hence, the insurance company was liable for compensation, if any.

5. The present appellant-insurer, in its reply, denied the maintainability of claim application as also the entitlement of the claimantrespondent No.2

to seek any compensation with the averments, inter alia, as under:-

2) That there is no cause of action against the answering opposite party in as much as there is nothing on the record to show that the

death occurs due to negligence or default of the drivers while using the vehicle in public place.

3) That the claimant has no right to institute the claim petition against the answering Opposite Party. The vehicle No.ML 05 2322

(Tata Indica) was not involved in any accident as such no claim petition for compensation under the M.V. Act is maintainable. If the

person is deliberately killed or injured in a public place, the claim for compensation, arising out of such wrongful act, will not lie on the

Motor Accident Claims Tribunal, constituted under the M.V. Act of 1988. So claim of the claimant is liable to be rejected against the

answering Opposite Party No.2.

4) That the Answering Opposite Party has no personal knowledge about the statement made in paragraph No.1, 2, 3, 4, 5, and 7 of

the claim petition and this unable to admit the same. The statement so far relates to the age, occupation of the deceased are vital and

are required to be proved by substantial evidence and by calling the witnesses, the answering Opposite Party denies that the

deceased was earning Rs.6,000/- (six thousand) only per month.

6. It is noticed that the Tribunal, at the first, heard the counsel for parties on the question of maintainability of the claim application under the Act of

1988 and decided this question in favour of the claimant on 12.08.2008 with reference to the decision of the Hon""ble Supreme Court in the case

of Rita Devi and others Vs. The New India Assurance Company Limited and another: AIR 2000 SC 1930. The order so passed by the Tribunal

on 12.08.2008 reads as under:-

12.08.2008 Claimant is present. OP/Insurance also present through their respective Counsels.

Heard the Learned Counsels for the OP/Insurance, Smti G. Purkayastha who has submitted that this claim application is not

maintainable in as much as there was no motor vehicle accident involving the deceased husband of the claimant herein. It was

submitted that the admitted fact is that the deceased was found missing and his body was found on 10.10.2003 at Puriang Village and

accordingly, since he was found dead, he is nowhere connected with the use of the vehicle said to be driven by him therefore, the

claimant has no cause of action to come before this Court with this instant petition, the same is liable to be dismissed.

In support of her contention, Smti Purkayastha has cited the case of ""Smti Maya Rani Ghosh - Vrs - State of Meghalaya and others

reported in AIR 2007, Gauhati - 76 wherein, the Division Bench of the Gauhati High Court has held that a ""person deliberately killed

or injured in public place in a Motor Accident, the claim for compensation arising out of such wrongful act will not lie with the Motor

Accident Claims Tribunal constituted under the Motor Vehicle Act, 1988. The remedy lies in the ordinary Civil Court"".

Shri S, Chakravarty, Learned Counsel for the Claimant on the other hand has submitted that this instant claim case under the Motor

Vehicle Act, 1988 is maintainable under the facts and circumstances of the case.

In this regard, Shri Chakaravarty has relied in the case of ""Smti Rita Devi and others - Vrs - New India Assurance Co. Ltd and

another"" reported in AIR 2007 (sic) Supreme Court, 1930 wherein, in a similar situated case the Supreme Court has held that the

driver of an Auto rickshaw who was employed by the owner for driving the said Auto rickshaw for carrying passengers on hire had

done so and in the course of performing his duty, his Auto rickshaw was stolen and he was found murdered. The death of the said

Auto rickshaw driver is said to be incidental to the committal of the theft of the said Auto rickshaw. The murder of the deceased Auto

rickshaw driver was due to the accident arising out the use of Motor Vehicle and as such, the legal heirs of the deceased driver are

entitled for compensation under the Motor Vehicle Act.

In this instant case, Shri Chakaravarty has submitted that the deceased husband

of the claimant was also a driver of vehicle No.ML-

05-D-2322 which was found missing since 06.10.2003 and his body was eventually recovered on 10.10.2003 therefore, the death

having occurred in course of employment, the same is said to be arising out of the use of motor vehicle and as such, the claimant is

entitled to come before this Court with this instant claim, the same being maintainable. Upon hearing the Learned Counsel for the

party and in view of the authority cited by the Learned Counsel for the claimant, the facts and circumstances being similar, I am

inclined to accept the contention of the claimant to hold that this claim application is indeed maintainable. The authority cited by the

Learned Counsel for the OP/Insurance would not supersede decision of the Supreme Court and as such, could not be applied to the

facts and circumstances of this case. Accordingly, I find that this petition is maintainable. The same shall proceed.

The Op.1 is absent and without steps. However, let the parties file their suggested issues and documents and list of witnesses within

the next date fixed.

Fix 11.9.08 for suggested issues, documents and list of witnesses.

7. Thereafter, the Tribunal proceeded to frame the issues on 11.09.2008 as follows:-

(1) Whether the deceased husband of the claimant died in a motor accident arising out of the use of Motor vehicle No.ML 05 D

2322

(2) What was the cause and fault for the death of the deceased husband of the claimant

(3) Whether the Op.No.2 is liable to pay compensation to indemnify the Op/owner of Tourist Taxi No.ML05 D 2322

(4) To what relief/reliefs the claimant is entitled.

8. It is noticed from the record that the respondent No.1, owner of the vehicle, remained absent during the course of trial whereupon, the Tribunal

permitted the appellant-insurer to take up the defence under Section 170 of the Act by the order dated 10.03.2009. Thereafter, appearance was

put on behalf of the respondent No.1 on 22.09.2009 and on his application, ex-parte order dated 10.03.2009 was set aside and he was allowed

to contest the case. However, the respondent No.1 again chose to remain absent from 22.12.2009 and hence, the order dated 22.09.2009 was

recalled and the insurer was again allowed to take up the defence under Section 170 of the Act.

9. In oral evidence, the claimant examined as many as six witnesses; and a few material documents were also exhibited in documentary evidence.

Having regard to the questions involved, some of the relevant aspects of the evidence may be taken note of at this juncture itself. The claimant

examined herself as CW-1 and was duly cross-examined on behalf of the owner as also the insurer of the vehicle in question. The entire of her

testimony reads as under:

(Through Shri S. Chakravarty, Adv) Interpreted by Shri Trelang Suchiang S/o J Sungoh.

My husband's name was Barwon Langtang who was a R/o Shangpung, Khlieh Mochut, P.O. Khliehriat, Jaintia Hills Dist,

Meghalaya. He was driver by profession.

Ext. 1 is the Motor D/L of my husband. As I do not know how to read or write so, I cannot read the validity period of Ext. 1.

Now my husband is no more. During his life time, my husband used to drive the vehicle of Mr. Wansalan lakai which was a Tata

Indica.

The said vehicle was being used as a Tourist Taxi. I do not remember No. of the Car. I am not in possession of the documents of the said car.

On the 5th October 2003, my husband along with the said vehicle was kidnapped and taken away by some unknown persons. Few

days later, the dead body of my husband was recovered by the police at Puriang, East Khasi Hills, Meghalaya. I cannot say how the death was caused.

I have got three children. The eldest being the son now aged 10 yrs, the second also being a son now aged about 8 yrs and the third

being a daughter now aged about 6 yrs. I do not know whether there was any police investigation in the incident of my husband's

death.

My husband used to get a salary of Rs.6000/- p.m. Our family did not have any other source of income and we depended wholly on our husband's income for survival.

After the demise of my husband my family has been surviving on the monetary help being given by my brothers.

On being shown in the Court I recognized the claim petition in this case and identify my signatures appearing thereon.

Ext.2 is the claim petition and Ex.2/1,2/2 & 2/3 are my signatures on Ext.2 and the supporting affidavit.

I have filed this instant case for obtaining monetary help and compensation to which I may be found entitled. xxx By OP owner

(through Shri R Debnath, Adv)

There are no other dependents upon the deceased except me and my children.

I have reported to the police informing about the missing of my husband. I did not make any claim before any court except this instant claim petition.

It is a fact that my husband was responsible for maintenance of the vehicle.

It is a fact that Shri Wansalan Iakai, the OP No.1 was not responsible for death of my husband. It is not a fact that my husband was responsible for his own death.

I cannot say whether the owner of the vehicle driven by my deceased husband is liable or not for compensation.

I do not know whether the death of my husband was due to an incident or an accident.

xxx By OP/Insurance Co. Ltd. (through Smti. G. Purkayastha, Adv)

It is a fact that I have collected the original D/L from the owner of the vehicle. I cannot say whether the police has seized the D/L or not.

I cannot say whether the police has recovered or seized any other vehicular documents in respect of vehicle No. ML-05-D-2322.

10. CW-2 Shri Holgi Lytep, said to be a tourist vehicle driver hailing from the village of the deceased, essentially deposed regarding the income of

a driver. He was also cross-examined on the requirement of the driver carrying the documents in the vehicle. His testimony reads as under:

Through Shri S. Chakravarty, Adv. Interpreted by Shri J. Trelang Suchiang.

I am a driver of a Tata Sumo Tourist Vehicle. I have been in this line of occupation for the last 10 to 12 years.

I used to know late Barwon Langstang as we hail from the same village. Late Barwon is also a driver by profession. At the time of his

demise he used to drive a Tata Indica Tourist Vehicle. My income is around Rs. 6000/- rupees per month. As far as my knowledge

goes, the income of late Barwon Langstang was also around Rs. 6,000/-

This income of late Barwon would be inclusive of the fixed salary of around Rs. 4000/- per Month plus daily allowances of Rs. 100/-

at least per day. I know how late Barwon had met his death but do not know anything more about this case.

xxx by OP/Insurance

Through Smti. G. Purkayastha, Adv interpreted by Shri J. Trelang Suchiang.

It is a fact, that at the time of driving the vehicle on the road, we the driver should carry the original vehicular documents along with

us.

I have met with the deceased on 4.10.03.

It is a fact that there is a difference in earning out of driving Sumo and Indica.

It is not a fact that I do not know the earning of the deceased.

11. CW-3 Shri Chiangmon Suchiang, elder brother of the claimant corroborated that the deceased was the husband of the claimant and used to

drive the vehicle of the respondent No.1. He further deposed that the deceased left for usual business on 06.10.2003 but did not return; and on

10.10.2003, after receiving information of the recovery of a dead body resembling the deceased at Puriang, which had been taken to Shillong Civil

Hospital, this witness went to the hospital along with the respondent No. 1 and found the body of the deceased lying in the morgue after post-

mortem examination. The witness further deposed that the cause of death was murder by strangulation which took place while the deceased was

driving the said vehicle. This witness re-asserted in his cross-examination that the income of the deceased was Rs. 6,000/- per month. However, a

part of the sentence occurring in his crossexamination has been referred during the course of submissions in this matter. His cross-examination

reads as under:

The deceased died on 10.10.2003 but the duplicate D/L was obtained on 21.10.2003. I do not know who obtained the said

duplicate D/L. I cannot say if the Claimant's husband who has since deceased was having a D/L at the time of the incident

.

I know that the deceased income during his life time was Rs. 6000/- per month. It is not a fact that I do not know his income. I do

not agree to the suggestion that the Claimant herself killed the deceased. It is not a fact that the deceased at the time of his death was

driving Vehicle No. ML-05-D-2322.

12. CW-4, Inspector J. Koch, who was the In-charge of Mawryngkneng Outpost, deposed that on 10.10.2003, Madanriting P.S. Case No.

74(10) of 2003 was registered under Section 364 IPC based on the information received from the Sordar of Puriang Village about a dead body

having been found in the jungle. This witness further asserted that the culprits could never be apprehended and as such, the case ended in filing of

Final Report No. 42 dated 11.07.2004. During the statement of this witness, the Case Diary and the Final Report in the said Madanriting P.S.

Case No. 74(10) of 2003 were requisitioned by the Tribunal and the same were produced by the Officer-in-Charge of the Madanriting Police

Station and the Prosecuting Inspector of the Shillong Court respectively. Subsequently, the examination-in-chief of the CW-4 was completed

where he exhibited the Inquest Report as Exhibit-3, the Post-mortem Examination Report as Exhibit-4 and the Final Report in the said Madanriting

P.S. Case No. 74(10) of 2003 as Exhibit-5.

13. It is noticed that in the said Final Report No. 42 dated 11.07.2004 (Exhibit-5), which was accepted by the Court concerned on 20.07.2004,

the Investigating Officer had, inter alia, pointed out as under:-

During the course of investigation it was ascertained that the vehicle along with the driver was seen last in the evening at 6:45 pm on

6/10/2003 at Jowai boarded by unknown 4 (four) boys and left for Shillong. On reaching at Puriang the driver was killed and threw

in a nearby jungle and taken away the vehicle No. ML-05-D-2322 (Tata Indica) to a unknown destination.

14. During cross-examination by the counsel for insurer, CW-4 stated that the Registration Certificate, Fitness certificate, Insurance Certificate and

the Road Permit of the said Tourist Taxi driven by the deceased had been seized by him on being produced by the vehicle owner and were later

handed over on Zimma. While producing the seizure list as Exhibit A, this witness further stated that he did not seize any driving license; and despite

search, nothing was found on the dead body of the deceased. This witness denied the suggestion that the deceased was not driving the said vehicle

on the day it went missing. He also exhibited the FIR lodged by the vehicle owner on 13.10.2003 as Exhibit-B and stated that before this FIR, he

had proceeded with the investigation of the case on the basis of the General Diary Entry No. 133 dated 10.10.2003. This witness, inter alia, stated

in the cross-examination as under:

.....I have conducted a search on the dead body of the deceased, but nothing was found on his person. I agree to the suggestion that

on the date of the incident all the documents pertaining to the vehicle in this case were with the Owner of the vehicle. According to the

Owner of the vehicle as his vehicle was on that day being hired to go out of station only the attested photocopies of the vehicular

documents were kept in the vehicle and not the originals. It is not a fact that the deceased Barwon Langtang was not driving the

vehicle Tourist Indica on that day that it went missing on 06.10.2003.

The FIR in this case was lodged by the Owner of the vehicle and Ext. B is the said FIR. The FIR in this case was lodged on

13.10.2003. Prior to the lodging of the FIR, I have proceeded with the investigation of the case based on the G.D. Entry No. 133

dated 10.10.2003, which was entered by me based on the information received from Mawryngkneng Police outpost.

15. CW-5 Shri Bikram Rai Rynghlem, the Motor Vehicles Inspector of Jaintia Hills District, exhibited the relevant part of the issue register of

driving licenses pertaining to the years 1997 to 2000 as Exhibit-6, wherein the driving license issued to the deceased was also reflected. This

witness also testified to the fact that a duplicate license (in regard to the deceased) was issued with effect from 21.10.2003.

16. CW-6 Dr. P. Kharnary of the Shillong Civil Hospital had conducted the post-

mortem examination of the dead body of the deceased. He proved the Post-mortem Examination Report (Exhibit-4); and after pointing out various injuries noticed on the dead body including ligature marks around the neck, stated that the cause of death was due to shock and asphyxia following strangulation by the neck. This witness also exhibited the Death Certificate as Exhibit-7. The cross-examination of this witness was reserved but subsequently, the opposite party declined to cross-examine him and also declined to lead any evidence.

17. After having heard the parties, the Tribunal proceeded to determine the basic question involved in the matter i.e., as to whether the husband of the claimant died in a motor accident arising out of the use of motor vehicle and answered in the affirmative with the following considerations and reasons:-

19. Issue No. 1: Whether the deceased husband of the claimant died in a Motor Accident arising out of the use of the motor vehicle No. ML05-D-2322

The Claimant CW 1 has stated that the deceased used to drive a Tata Indica vehicle of the opposite party No 1 and he had been kidnapped alongwith the vehicle and further that his dead body had been found a few days later by the Police at Puriang. She has also exhibited the claim

petition and so the averments made therein stand established in evidence. CW2 also stated that the deceased used to drive a Tata Indica Tourist

vehicle. CW 3 stated that the deceased was a professional motor vehicle driver who used to drive the Tourist Taxi bearing registration No. ML05

D 2322 belonging to the opposite party No 1 and on 06.10.2003 he left for his usual business of plying that taxi but thereafter he did not return

home nor any information about him was received till 10.10.2003 on that day his dead body was recovered at Puriang and taken to the Shillong

Civil Hospital. After postmortem examination the body had been handed over to the CW 3 and the opposite party No 1. The postmortem

examination established the cause of death as strangulation by the neck leading to shock and asphyxia which has been corroborated by the CW 6

the doctor who conducted the examination. The CW 4 who is the Police Officer who conducted the investigation also corroborated on the

recovery of the dead body and the cause of death. He denied the suggestion that

at the time of the death of the deceased he was not driving the said vehicle ML05 D 2322. He also stated that the vehicle had never been found nor the culprits apprehended.

20. Hence, it is evident that the deceased had left home on 06.10.2003 for his usual work of driving the said Tourist Taxi No. ML05-D-2322 and

thereafter went missing and subsequently his dead body was discovered at Puriang Village on the Jowai-Shillong Highway and that the cause of

death was shock and asphyxia due to strangulation. This leads to the conclusion that the deceased was at his usual business of driving the said

Tourist Taxi ML05 D 2322 for hire on 06.10.2003 when certain ill motivated persons boarded the taxi posing as passengers. On the way they

must have murdered the deceased and stolen the taxi. As no other motive for murdering the deceased has come to light so the only conclusion is

that the motive of the said culprits was to steal the taxi and for so doing they murdered the deceased. In other words the death of the deceased was

incidental to the use of the said vehicle and to the event of the same being stolen.

In the said decision of the Hon''ble Supreme Court namely ""Rita Devi - Vs. - New India Assurance Company Limited"" reported in AIR 2000 SC

1930, in an identical case involving an auto rickshaw and its driver, the Hon''ble Supreme Court held, in the paragraph numbered 14, as follows:-

Applying the principles laid down in the above cases to the facts of the case in hand, we find that the deceased, a driver of the auto rickshaw, was

duty bound to have accepted the demand of fare paying passengers to transport them to the place of their destination. During the course of this

duty, if the passengers had decided to commit an act of felony of stealing the auto rickshaw and in the course of achieving the said object of

stealing the auto rickshaw, they had to eliminate the driver of the auto rickshaw then it cannot but be said that the death so caused to the driver of

the auto rickshaw was an accidental murder. The stealing of the auto rickshaw was the object of the felony and the murder that was caused in the

said process of stealing the auto rickshaw is only incidental to the act of stealing of the auto rickshaw.

Thereafter, it has to be said that on the facts and circumstances of this case the death of the deceased (Dasarath Singh) was caused accidentally in

the process of committing the theft of the auto rickshaw.

The said decision of the Honorable Supreme Court is also applicable in this instant case as it is evident that Late Barwon Langstang the deceased

husband of the claimant died in a motor accident arising out of the use of the motor vehicle number ML05-D-2322. Accordingly, this Issue No. 1

is decided on the affirmative in favour of the claimant.

18. In view of the above findings, the Tribunal proceeded to decide issue No.2 also in the affirmative and in favour of the claimant. Issue No.3 was

also decided in favour of the claimant, while holding that the appellant-insurer was liable towards the claim for compensation.

19. As regards the issue relating to relief, the Tribunal referred to the ratio of the decisions of the Honorable Supreme Court in Sarla Verma and

others Vs. Delhi Transport Co-operation and another: (2009) 6 SCC 121 and Santosh Devi Vs. National Insurance Company Limited and others:

(2012) 6 SCC 421; and while taking the age of the deceased at 40 years and his income at Rs. 6,000/- per month, provided for enhancement of

30% towards future prospects and then, after deducting one-fourth on the personal expenditure of the deceased, took his annual contribution to

the family at Rs. 70,200/-; and after applying the multiplier of 15, assessed the pecuniary loss at Rs.10, 53,000/- for the claimant and her three

children. The Tribunal further provided for Rs. 5,000/- towards funeral expenses, another Rs. 5,000/- towards loss of love and affection and

further Rs. 10,000/- towards loss of consortium and in this manner, awarded a sum of Rs. 10,73,000/- (rupees ten lakhs seventy three thousand)

towards compensation together with interest @ 6% per annum from the date of filing of the claim application. Aggrieved by the award so made,

the insurer has preferred this appeal.

20. Before proceeding further, it may be pointed out that during the course of consideration of this appeal, it was noticed that though the deceased

(husband of the claimant) had allegedly left behind three children in the family apart from the claimant-wife but, the children of the deceased were

not joined as parties to the claim application. Upon this Court expressing reservations that the claim application was required to be filed by and on

behalf of all the legal representatives of the deceased, particularly his dependents, learned counsel for the claimant moved an application [MC (FA)

No. 2 of 2017] on behalf of the son of the claimant seeking impleadment of the children of the claimant as parties to this appeal. For a just and effectual determination of the matter, presence of the children of the claimant was considered necessary and hence, by the order dated 24.04.2017, the application so moved by the son of the claimant was allowed and the children were ordered to be joined as respondents in this appeal; and the minor daughters of the claimant were impleaded through their natural guardian/mother.

RIVAL CONTENTIONS

21. Assailing the award aforesaid, learned counsel for the appellantinsurer has strenuously argued that the incident as alleged in the present case was clearly that of homicide and was not that of vehicular accident and, therefore, the Tribunal has fundamentally erred in entertaining the claim application under Section 166 of the Act of 1988 filed by the wife of the deceased. Learned counsel has further argued that the Tribunal has gravely erred in law as also on facts in relying on the decision of the Hon""ble Supreme Court in Rita Devi's case (supra) without considering the crucial distinctive features that in the present case, there was no evidence on record to establish that the deceased husband of the claimant was driving the vehicle in question at the time of his death. The learned counsel has elaborated on these contentions and submitted that there is no evidence that the deceased was carrying out the obligation of transporting the passengers on hire at the time of his death and, therefore, the claimant has failed to establish the causal connection between the death of the deceased and the use of the vehicle in question. According to the learned counsel, the fact of the deceased at all driving the vehicle is seriously in doubt where the claimant suggested his going with the vehicle on 05.10.2003 whereas, another witness stated this date as 04.10.2003 and on the other hand, the owner asserted this date as 06.10.2003. Learned counsel has also referred to the statement of CW-3, brother of the claimant, who purportedly stated at one place that the deceased was not driving the vehicle in question. Thus, according to the learned counsel, the claimant having failed to establish the basic corelation between the death of her husband and use of the vehicle in question, the claim application ought to have been rejected. Learned counsel has referred to yet another factor as

a material one in the present case that the original driving license was not found with the driver and in fact, the same was with the owner of the vehicle alongwith other documents relating to the vehicle in question. This material circumstance, according to the learned counsel, clearly goes to show that the deceased was not driving the vehicle in question at the time of his death and hence, the claim for compensation under the Motor Vehicle Act, 1988 was not maintainable.

22. In the other limb of arguments, learned counsel for the appellantinsurer has contended that the Tribunal has grossly erred in making an exorbitant award in this matter while taking the income of the deceased at Rs. 6,000/- per month and providing for 30% enhancement towards future prospects and then, applying the multiplier of 15 after deducting one-fourth on personal expenditure. According to the learned counsel, there being no proof of income of the deceased at Rs. 6,000/- per month and further, there being no proof of his age at 40 years, the quantum of compensation as awarded in the present case remains too high and excessive.

23. Per contra, learned counsel for the claimant has vehemently argued that the basic facts are clearly proved in this case that the deceased was a driver of the vehicle of respondent No.1 and had been driving the vehicle on 06.10.2003 but thereafter, was not found and ultimately, his dead body was found in a decomposed state on 10.10.2003 in a jungle; and the vehicle in question was never found. Learned counsel has contended that these basic facts clearly establish that some unknown persons committed the act of felony, of stealing the vehicle, and in the process, murdered the driver, and therefore, the facts of this case are, for all practical purposes, similar and akin to those of the case of Rita Devi (supra) where the Hon^{ble} Supreme Court has held such a claim application maintainable and compensation being available to the dependents of the deceased driver, for his demise being the result of "accidental murder" i.e. murder caused for stealing the vehicle and hence, such a murder being due to "an accident arising out of the use of motor vehicle".

24. The learned counsel for the claimant has also argued that the minor inconsistencies as referred by the learned counsel for the appellant-insurer are of no bearing on the merits of the case because as per the claimant, the deceased left home on 05.10.2003 and the owner has pointed out that

on 06.10.2003, the deceased was travelling along with the passengers. Learned counsel has further submitted that even according to the investigation, husband of the claimant was driving the vehicle in question and in the given circumstances, merely for production of original papers by the owner, it cannot be assumed that the vehicle was not in use. According to the learned counsel, the denial of driving by the deceased, as occurring in the last sentence in the cross-examination of CW-3, had been clearly a matter of misunderstanding and misinterpretation because the same witness had clearly stated in his examination-in-chief that the deceased was driving the vehicle.

25. Learned counsel for the claimant would submit that when the basic facts established in the case, i.e., that the vehicle in question was with the driver at the time when he was last seen alive and later on, his dead body was found in the jungle and the vehicle was never traced out, are put together, preponderance of probabilities leads only and only to the conclusion that the deceased was murdered for the purpose of stealing the vehicle and hence, the Tribunal has rightly entertained the claim application and has rightly awarded compensation to the family of the deceased.

26. As regards the quantum of compensation, learned counsel has argued that the income and age of the deceased were never put to dispute by way of evidence and in any case, his income has been clearly proved in the testimony of the claimant and her witnesses and such a minimum earning of a driver cannot be doubted. Learned counsel has further pointed out that the age of the deceased at 40 years is also established on record in the Post-mortem Examination Report as also in the Driving Licence and hence, application of multiplier of 15 is justified. Thus, according to the learned counsel for the claimant, the Tribunal has awarded just and reasonable compensation in this case.

27. Having given thoughtful consideration to the rival submissions and having examined the record, this Court is clearly of the view that no case for interference is made out and this appeal deserves to be dismissed. Maintainability of the claim application and co-relation between the death of the victim and use of the vehicle

28. After taking into comprehension the relevant facts, it is at once evident that the instant matter is one of those peculiar cases of claim for

compensation under the Act of 1988 where the deceased, said to be the driver of a vehicle, was allegedly murdered by some unknown persons

while stealing the vehicle in question and hence, the death of the deceased is alleged to be the result of "an accident arising out of the use of motor vehicle".

29. The claim for compensation in the present case was initially filed under Section 163-A of the Act but was later on, proceeded under Section

166 of the Act. Section 166 of the Act prescribes the procedure for filing an application for compensation "arising out of an accident of the nature

specified in sub-section (1) of Section 165"; and such an application could be maintained by the person who has sustained injury or by the owner

of the property or in case of death, by one or any of the legal representatives of the deceased or by an agent duly authorised by the victim or legal

representatives. Thus, the accident for which an application for compensation could be maintained ought to be of the nature specified in sub-

section (1) of Section 165, which reads as under:-

165. Claims Tribunals.- (1) A State Government may, by notification in the Official Gazette, constitute one or more Motor

Accidents Claims Tribunals (hereafter in this Chapter referred to as Claims Tribunal) for such area as may be specified in the

notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily

injury to, persons arising out of the use of motor vehicles or damages to any property of a third party so arising, or both.

Explanation.- For the removal of doubts, it is hereby declared that the expression "claims for compensation in respect of accidents

involving the death of or bodily injury to persons arising out of the use of motor vehicles" includes claims for compensation under

Section 140 and Section 163A.

30. It is thus clear that for maintaining a claim for compensation under Section 166 of the Act in a death case, the death ought to have been the

result of an "accident" which ought to have arisen "out of the use of motor vehicle". The same phraseology and expressions have been used in

Section 163-A of the Act for maintaining a claim for compensation without proof of any wrongful act or default of the owner of the vehicle or of

any other person. Thereunder, the owner of the vehicle or the authorised insurer is liable to pay compensation as indicated in the Second Schedule

to the Act, in case of death or permanent disablement ""due to accident arising out of the use of motor vehicle"". Section 163-A reads as under:-

163A. Special provisions as to payment of compensation on structured formula basis.- (1) Notwithstanding anything contained in

this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the

authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor

vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation.-For the purposes of this sub-section, ""permanent disability"" shall have the same meaning and extent as in the

Workmen's Compensation Act, 1923.

(2) In any claim for compensation under sub-section (1) the claimant shall not be required to plead or establish that the death or

permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of

the vehicle or vehicles concerned or of other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the

Second Schedule.

31. Thus, the basis of maintaining a claim application, whether under Section 163-A or under Section 166 of the Act is an ""accident arising out of

the use of motor vehicle"".

32. After having taken note of the requirements of law for maintaining a claim of compensation under the Act of 1988, now for the purpose of the

present case, straightaway a reference deserves to be made to the decision of the Hon""ble Supreme Court in Rita Devi's case (supra). In Rita

Devi's case, the deceased was the driver of an autorickshaw owned by another person. The autorickshaw was registered as a public carrier and

was insured with the respondents. Some unknown persons hired the said autorickshaw but subsequently, stole away the same and killed the driver.

The legal representatives of the deceased preferred the claim application under

Section 163-A of the Act of 1988. The Tribunal entertained and allowed the claim application but, on appeal by the insurer, High Court overturned the award on the ground that the case was of murder and not that of accident. It was contended before the Supreme Court in further appeal by the claimant that murder of the deceased squarely fell within the phrase "death due to accident arising out of the use of motor vehicle". Having regard to the issues raised, the Hon^{ble} Supreme Court proceeded to examine the legal import of the phrase "death due to accident arising out of the use of motor vehicle". The Supreme Court pointed out that in common parlance, murder is a felonious act, where death is caused with intent and the perpetrators of the act normally had the motive against the victim for such killing; however, on the other hand, there could also be other instances where murder was not originally intended and the same was caused in furtherance of other felonious act. The Supreme Court pointed out the distinction between "murder simpliciter" and "accidental murder" in the following:-

..... In our opinion, if the dominant intention of the Act of felony is to kill any particular person then such killing is not an accidental murder but is a murder simpliciter, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder.

33. The Hon^{ble} Supreme Court referred to the case of *Challis v. London and South Western Rly.Co:* (1905) 2 KB 154 where an engine driver, while driving a train under a bridge was killed by a stone wilfully dropped on the train by a boy from the bridge. In the said case, it was held that the accident which befell the deceased was one that "arose out of his employment". The Supreme Court also referred to the decision of the Court of Appeal in *Nisbet v. Rayne & Burn:* (1910) 2 KB 689 where the murder of a cashier, who was travelling to a colliery with money for payment to the workmen, was held to be an accident from the stand point of the victim who suffered such an accident that "arose out of his employment", which involved more than the ordinary risk. Applying such principles to the facts of the case, the Hon^{ble} Supreme Court observed that stealing of the autorickshaw was the object of felony and murder of the driver of

autorickshaw was only incidental to such felonious act; and hence, held that the death of the deceased was caused accidentally in the process of committing theft of the autorickshaw. The Hon^{ble} Supreme Court held,-

14. Applying the principles laid down in the above cases to the facts of the case in hand, we find that the deceased, a driver of the

autorickshaw, was dutybound to have accepted the demand of fare-paying passengers to transport them to the place of their

destination. During the course of this duty, if the passengers had decided to commit an act of felony of stealing the autorickshaw and

in the course of achieving the said object of stealing the autorickshaw, they had to eliminate the driver of the autorickshaw then it

cannot but be said that the death so caused to the driver of the autorickshaw was an accidental murder. The stealing of the

autorickshaw was the object of the felony and the murder that was caused in the said process of stealing the autorickshaw is only

incidental to the act of stealing of the autorickshaw. Therefore, it has to be said that on the facts and circumstances of this case the

death of the deceased (Dasarath Singh) was caused accidentally in the process of committing theft of the autorickshaw.

(underlining supplied for emphasis)

34. The wide connotation of the expression "arising out of" was also pointed out by the Hon^{ble} Supreme Court with reference to the decision in

Shivaji Dayanu Patel v. Vatschala Uttam More: (1991) 3 SCC 530 wherein, subtle distinction between the expression "caused by" as used in

Sections 95(1)(b)(i) & (ii) and 96(2)(b)(ii) of the Motor Vehicle Act, 1939 and the expression "arising out of", as used in the later inserted Section

92-A of the Act of 1939, was indicated in the following:-

36. This would show that as compared to the expression "caused by", the expression "arising out of" has a wider connotation. The

expression "caused by" was used in Sections 95(1)(b)(i) and (ii) and 96(2)(b)(ii) of the Act. In Section 92-A, Parliament, however,

chose to use the expression "arising out of" which indicates that for the purpose of awarding compensation under Section 92-A, the

causal relationship between the use of the motor vehicle and the accident resulting in death or permanent disablement is not required

to be direct and proximate and it can be less immediate. This would imply that accident should be connected with the use of the

motor vehicle but the said connection need not be direct and immediate. This construction of the expression "arising out of the use of

a motor vehicle" in Section 92-A enlarges the field of protection made available to the victims of an accident and is in consonance

with the beneficial object underlying the enactment.

35. The aforesaid principles in Rita Devi's case formed the basis of the decision of the Gauhati High Court at its Agartala Bench in the case of Rita

Das and others. v. Oriental Insurance Company Ltd. and others: 2013 (1) GLT 346 wherein, the deceased was travelling in a vehicle when a

group of extremists suddenly attacked the vehicle and spread bullets aiming the vehicle and the victim succumbed to the bullet injuries. In the given

set of facts and circumstances, the Hon'ble Gauhati High Court applied the principles of Rita Devi's case (supra) and held that when the intention

of the extremists was not to kill a particular passenger but was to attack the vehicle and to let loose a reign of terror in the travelling passengers and

in the neighbourhoods, the death of victim was an accidental murder and not a murder simpliciter.

36. With reference to the principles aforesaid, the question could now be considered in the present case as to whether the deceased (husband of

the claimant) died in "an accident arising out of the use of a motor vehicle" The basic fact that the death of the husband of the claimant was

homicidal and in fact, he died due to shock and asphyxia following strangulation by the neck is clearly established in the Post-mortem Examination

Report (Exhibit 4) where, inter alia, fracture of neck bone and ligature marks around the neck with multiple injuries around the head have been

specified. The fact that the deceased was engaged as driver on the vehicle bearing registration number ML 05 D 2322 has not been disputed by

the owner of the vehicle and has also been established in the testimony of CW-1 as also other witnesses i.e., CW-2 and CW-3 and even the

Investigating Officer CW-4. The deceased was having a valid driving license, as established by the Motor Vehicle Inspector CW-5. The dead

body of the deceased was found on 10.10.2003 whereupon, Madanriting PS Case No.74 (10) 2003 was registered. During the course of

investigation, neither the vehicle in question could be recovered nor the culprits could be apprehended and the case ended in the Final Report

No.42 dated 11.07.2004. The question is as to whether in the cumulative effect of all these facts, it could be held that the vehicle in question was in

use and its stealing or taking away was the cause of killing the deceased

37. The claimant averred in her claim application that the deceased was driving the vehicle in question from Shanpung to Shillong; that he went

missing since 06.10.2003; and that his dead body was found on 10.10.2003. She stated while deposing as CW-1 that her husband used to drive

the vehicle of the respondent No.1, which was being plied as a tourist taxi. She also made the statement that on 05.10.2003, her husband was

kidnapped with the said vehicle by some unknown persons and few days later, his dead body was recovered at Puriang. In fact, she was not an

eye-witness to any such act of kidnapping and her statement could only be read for the fact that her husband had left the house in the said vehicle

on 05.10.2003. The owner of the vehicle (respondent No.1) admitted in his reply that the husband of the claimant was the driver of the vehicle in

question and was plying according to his convenience. However, he submitted that there was no communication from the driver since 06.10.2003.

The witness CW-2 Shri Holgi Lytep stated that the deceased was driving Tata Indica tourist vehicle and that he last met the deceased on

04.10.2003. CW-3 Shri Chiangmon Suchiang, brother of the claimant, stated that on 06.10.2003, the deceased left for usual business of plying his

tourist taxi and thereafter, he did not return and only his dead body was found. According to this witness, the cause of death of the deceased was

murder by strangulation, which took place while he was doing his duty of driving the vehicle. This witness was given a rather strange suggestion,

which had otherwise not formed the part of pleadings, that ""the claimant herself killed the deceased."" Interestingly, such a suggestion was neither

given to the claimant herself nor even to the Investigating Officer, who appeared as CW-4 in this matter. It is difficult to appreciate that on behalf of

the appellant-insurer, such a suggestion was at all given to a witness though not having any basis whatsoever on record. This aspect is per force

required to be commented upon because after such a baseless suggestion, it appears that another suggestion was made to the witness CW-3 about

the deceased not driving the vehicle to which, reply from the witness got recorded as if the deceased was not driving the vehicle at the time of his death. Learned counsel for the insurer has relied upon this part of the statement of CW-3 but, after perusing the affidavit in examination-in-chief and the cross-examination of the said witness as a whole, this Court has no hesitation in ignoring such part of the testimony as being only the result of misunderstanding of the witness. Needless to add that the said witness was not an eye-witness to the killing of the deceased and had only indicated the fact that the deceased had left on 06.10.2003 for the usual business of plying the tourist taxi and thereafter, his dead body was recovered on 10.10.2003.

38. The Investigating Officer CW-4 was, of course, given the suggestion that the deceased was not driving the vehicle in question on the day it went missing but he categorically denied this suggestion. He also pointed out that in the course of investigation, the culprits could never be apprehended nor any clue was available with regard to them. As noticed, this witness produced Final Report No.42 dated 11.07.2004 wherein the relevant factual aspects ascertained during investigation were stated to the effect that "the vehicle along with the driver was seen last in the evening at 6:45 pm on 6/10/2003 at Jowai boarded by unknown 4 (four) boys and left for Shillong"; and that "on reaching Puriang, the driver was killed and thrown in a nearby jungle"; and further that the vehicle in question was taken away to an "unknown destination".

39. Learned counsel for the appellant has relied on a factor that the original papers relating to the vehicle and the driver were found with the owner, though they ought to have been in the vehicle on being plied by the deceased. This aspect of the matter has been clarified by CW-4 in his cross-examination while pointing out that according to the owner, as the vehicle on the day was hired to go out of station, only the attested copies of documents were kept in the vehicle and not the originals. Though admittedly, the original papers ought to have been in the vehicle but such an omission on the part of the owner of the vehicle cannot nullify and negate the entire case of the claimant and this circumstance, by itself, does not lead to the conclusion that the vehicle was not being driven by the deceased at the time of his killing. Similarly, the suggestion about discrepancies

in dates are of no relevance and in fact, there are no such discrepancies so as to discard the whole case of the claimant.

40. Taking a holistic view of the evidence on record, this Court has no hesitation in coming to the conclusion that the husband of the claimant left

home on 05.10.2003 on his usual work of plying the tourist taxi bearing registration number ML 05 D 2322 and he was last seen in the evening of

06.10.2003 at 6:45 pm along with four persons who boarded the vehicle at Jowai and then, he left for Shillong and on the way, he was killed near

Puriang by some unknown persons for the purpose of stealing the vehicle; and the dead body was thrown in the jungle. In the given set of facts and

circumstances, this Court is inclined to accept the submissions of the learned counsel for the respondent-claimant that preponderance of

probabilities in the present case only lead to the conclusion that the deceased driver was killed by unknown persons during the felonious act of

stealing the vehicle; and hence, killing of the deceased was incidental to the use of the vehicle in question.

41. Thus, the facts of the present case are, on all material aspects, akin to the case of Rita Devi (supra) and, on the principles enunciated by the

Hon^{ble} Supreme Court, the Tribunal cannot be faulted in entertaining and allowing the claim application. Of course, it is true that in Rita Devi's

case the claim application was under Section 163-A of the Act whereas, in the present case it has been maintained under Section 166 thereof.

However, as noticed, the relevant phraseology in the two provisions as regards basis for maintaining a claim for compensation being the same, i.e.,

accident arising out of the use of motor vehicle", the decision in Rita Devi's case applies directly and squarely to the present case. Hence, after

taking an overall view of the matter, findings of the Tribunal in issue No.1 are affirmed.

Quantum of compensation

42. The question of quantum of compensation need not detain the conclusion of this matter much longer except that a few aspects need to be

clarified and the award in question needs to be modified accordingly. The deceased-husband of the claimant was the bread-winner of the family

comprising of five persons i.e., the deceased himself, the claimant (wife) and their three children. The claimant though indicated in the claim

application that she was claiming compensation on behalf of the family, but neither joined the other members of the family as parties to the claim

application nor specified their particulars. However, it has been clarified during the course of submissions that she had three children; and the

composition and extent of the family has not been disputed by anyone. As noticed, during the course of consideration of this appeal, upon this

Court expressing reservations on want of other dependents of the deceased on record, an application was moved by the elder son of the claimant

with the prayer that himself and his siblings be joined as parties in this appeal. The said application was allowed by this Court on 24.04.2017.

Thus, the claim for compensation is to be considered with such composition of the family. In fact, the Tribunal itself has proceeded for

quantification on that basis only, while taking four dependents of the deceased.

43. It remains indisputable that the deceased was a driver by occupation and was driving a tourist taxi vehicle. The claimant and her brother have

testified to the fact that the deceased was earning Rs. 6,000/- (six thousand) per month. The other witness CW-2, who was also engaged as a

driver has testified to the same facts. There had not been any evidence to the contrary and there appears no reason to disbelieve such an assertion

on the earning of the deceased. Thus, the Tribunal cannot be faulted in accepting the income of the deceased at Rs. 6,000/- per month; and, after

making provision for future prospects and after deducting one-fourth towards personal expenditure of the deceased, assessing the loss of

contribution at Rs. 70,200/- (seventy thousand two hundred) per annum. In the copy of the driving license of the deceased placed on record, his

year of birth is stated as 1972. The Post-mortem Examination Report has also indicated the age of the deceased at about 38 to 40 years. In the

given set of circumstances, the Tribunal cannot be faulted in taking his age as 40 years and after applying the multiplier of 15, assessing the

pecuniary loss at Rs. 10,53,000/- (ten lakhs fifty three thousand). The Tribunal has allowed only a sum of Rs. 20,000/- (twenty thousand) towards

general damages and interest at the rate of 6% per annum from the date of filing of the claim application. In an overall analysis, the compensation as

awarded in this matter cannot be said to be too high or exorbitant so as to call for interference.

44. Having regard to the other facts and circumstances on record, where insurance coverage of the vehicle in question remains indisputable and there being no ground to exonerate the insurer, the Tribunal has not committed any error in mulcting the liability on the appellant. Hence, the award impugned calls for no interference.

Apportionment

45. Even when this Court finds that the appellant has rightly been held liable for compensation in this case and there is no ground to interfere with the quantum of compensation also, yet it appears rather necessary that the award in question be modified so as to appropriately apportion the amount of compensation amongst the dependents of the deceased.

46. It is noticed that by the order dated 24.08.2015, this Court admitted this appeal subject to payment of 50% of the award amount and permitted the respondent-claimant to withdraw the same after furnishing the bond of surety. In the circumstances of the case, it appears just and proper that while such 50% of the award amount be allowed to the claimant (wife of the deceased), the remaining 50% be allowed in equal proportions to the three children of the claimant.

Conclusion

47. Accordingly, and in view of the discussion foregoing, this appeal filed by the insurer stands dismissed but subject to the requirements that the remaining award amount together with interest until the date of payment shall be deposited by the appellant with the Tribunal within 30 days from today. After deposit, the Tribunal shall apportion 50% of the total award amount together with interest thereupon amongst the three children of the claimant in equal proportions; and shall place the same in fixed deposit in a Scheduled Bank for a period of three years. In the circumstances of the case, there shall be no order as to costs.

48. The record of MAC Case No.101 of 2007 be returned to the Motor Accidents Claims Tribunal, Shillong forthwith for necessary compliance.