IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR, TRIPURA, MIZORAM AND ARUNACHAL PRADESH)

1. MAC App. No. 26 of 2001

Claimant-Petitioner-Appellants:

Smt. Basu Mati Debbarma, W/o. Late Birendra Debbarma and two others.

By Advocate:
Mr. S. K. Datta, Adv.

Respondents :

Smt. Anita Debbarma (Owner of TRT 5023 JEEP) Village-Manab Killa, Lal Singha Mura, P.S-Bishalgarh, District-West Tripura and three others.

By Advocate:
Mr. P. K. Biswas, Adv.

2. MAC App. No. 52 of 2001

Claimant-Petitioner-Appellants:

Smt. Jyotsna Chakma, W/o. Late Amal Bikash Chakma and two others.

By Advocate:
Mr. S. K. Datta, Adv.

Respondents :

The State of Tripura, Represented by the Secretary, Home Department, Govt. of Tripura, Agrtala and three others.

By Advocate:
Mr. P. Datta, Adv.

3. MAC App. No. 26 of 2002

Claimant-Petitioner-Appellant:

Smt. Laxmi Roy (Saha), W/o. Late Haripada Roy of Village Office-Tilla, P.S. Bishalgarh, Dist. West Tripura.

By Advocate:
Mr. S. K. Datta, Adv.

Respondents :

Shri Nani Gopal Banik, S/o. Dhananjoy Banik, Agartala Municipality Road, P.S. East Agartala, District- West Tripura. (Owner of the Vehicle No.

TR-01 2561) (THV-407 Commander Jeep) and another.

By Advocate:

Mr. S. M. Ali, Adv.

4. MAC App. No. 92 of 2002

Claimant-Petitioner-Appellants:

Smt. Kabita Bhowmik-wife, W/o. Late Narayan Bhowmik and two others.

By Advocate:

Mr. S. K. Datta, Adv.

Respondents :

The State of Tripura, Represented by the Secretary, Home Department, Government of Tripura, Agartala, West Tripura and two others.

By Advocate:

Mr. P. Datta, Adv.

5. MAC App. No. 70 of 2003

Claimant-Petitioner-Appellants:

Smt. Birmala Debbarma, W/o. Late Sukramani Debbarma and two others.

By Advocate:

Mr. S. K. Datta, Adv.

Respondents :

Smt. Tapati Modak, W/o. Mihir Lal Modak of Laxmi Narayan Bari Road, Near Ramthakur Ashram, Banamalipur, P.S. East Agartala, District-West Tripura. (Owner of the vehicle No. TRL 3841 Canter Truck) and four others.

By Advocates:

Mr. P. Datta, Adv.
Mr. S. Chakraborty, Adv.
Mr. P. Gautam, Adv.

6. MAC App. No. 76 of 2003

Claimant-Petitioner-Appellant:

Smt. Shanta Rani Das Purkayastha, W/o. Late Nirmal Das P urkayastha, Village-Bilthai, P.S. Panisagar, District-North Tripura.

By Advocate:

Mr. S. K. Datta, Adv.

Respondents :

Smt. Tapati Modak, W/o. Mihir Lal Modak of Laxmi Narayan Bari Road, Near Ramthakur Ashram, Banamalipur, P.S. East Agartala, District-West Tripura. (Owner of the vehicle No. TRL 3841 Canter Truck) and four others

By Advocates:

Mr. S. Chakraborty, Adv.
Mr. P. Datta, Adv.
Mr. P. Gautam, Adv.

7. MAC App. No. 78 of 2003

Claimant-Petitioner-Appellants:

Smt. Babi Deb(Datta), W/o. Late Pramathanath Datta and two others.

By Advocate:
Mr. S. K. Datta, Adv.

Respondents :

The State of Tripura, Represented by the Secretary, Home Department, Government of Tripura, Agartala and another.

By Advocate:

Mr. S. Chakraborty, Adv.

8. MAC App. No. 81 of 2003

Claimant-Petitioner-Appellants:

Smt. Kalpana Dutta (Dey), W/o. Late Hrishi Kesh Dutta and three others.

By Advocate:
Mr. S. K. Datta, Adv.

Respondents :

Smt. Tapati Modak, W/o. Mihir Lal Modak of Laxmi Narayan Bari Road, Near Ramthakur Ashram, Banamalipur, P.S. East Agartala, District-West Tripura. (Owner of the vehicle No. TRL 3841 Canter Truck) and four others.

By Advocates:

Mr. S. Chakraborty, Adv.

Mr. P. Datta, Adv.
Mr. K. Bhattachrjee, Adv.

9. MAC App. No. 87 of 2003

Claimant-Petitioner-Appellant:

Sri Pancham Sharma, S/o. Late Iswar Sharma, Village-Dhaka Bari, P.S. Bishalgar, District-West Tripura.

By Advocate:
Mr. S. K. Datta, Adv.

Respondents :

Smt. Tapati Modak, W/o. Mihir Lal Modak of Laxmi Narayan Bari Road, Near Ramthakur Ashram, Banamalipur, P.S. East Agartala, District-West Tripura. (Owner of the vehicle No. TRL 3841 Canter Truck) and four others.

By Advocates:

Mr. S. Chakraborty, Adv.
Mr. P. Datta, Adv.
Mr. K. Bhattachrjee, Adv.

10. MAC App. No. 89 of 2003

Claimant-Petitioner-Appellants:

Smt. Mayari Kanya Jamatia, W/o. Late Prem Mohan Jamatia and two others.

By Advocate:
Mr. S. K. Datta, Adv.

Respondents :

The State of Tripura, Represented by the Secretary, Home Department, Government of Tripura, Agartala and three others.

By Advocate:

Mr. S. Chakraborty, Adv.

11. MAC App. No. 84 of 2003

Claimant-Petitioner-Appellants:

Smt. Jyoti Rani Das (Choudhury), W/o. Late Narayan Choudhury and three others.

By Advocate:

Mr. S. K. Datta, Adv.

Respondents :

Sri Parashmani Jamatia of Bairagi Dokan, P.S-Nutan Bazar, Amarpur, South Tripura. (Owner of Vehicle No. TRS-1511, Bus) and another.

By Advocate:

Mr. P. Gautam, Adv.

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

Dates of hearing : **04.07.2012 (MAC App. No. 70 of 2003).**
04.07.2012 (MAC App. No. 76 of 2003).
04.07.2012 (MAC App. No. 81 of 2003).
04.07.2012 (MAC App. No. 87 of 2003).
05.07.2012 (MAC App. No. 52 of 2001).
05.07.2012 (MAC App. No. 26 of 2001).
09.07.2012 (MAC App. No. 78 of 2003).
09.07.2012 (MAC App. No. 26 of 2002).
09.07.2012 (MAC App. No. 92 of 2002).
09.07.2012 (MAC App. No. 89 of 2003).
09.07.2012 (MAC App. No. 84 of 2003).

Date of Judgment : **19.03.2013**

J U D G M E N T AND O R D E R

All these appeals are tagged together as the common question of law that threads through all these appeals namely, (1) MAC App. No. 26 of 2001, (2) MAC App. No. 52 of 2001, (3) MAC App. No. 26 of 2002, (4) MAC App. No. 92 of 2002, (5) MAC App. No. 70 of 2003, (6) MAC App. No. 76 of 2003, (7) MAC App. No. 78 of 2003, (8) MAC App. No. 81 of 2003, (9) MAC App. No. 87 of 2003, (10) MAC App. No. 89 of 2003 and (11) MAC App. No. 84 of 2003 is whether the death or bodily injury as received from indiscriminate firing by the outlawed armed outfits while borne in the motor vehicle would include within the category of accident victims from the use of the motor

vehicle as provided under Sections 163/165 of the M.V. Act for compensation in terms of Section 168 of the M.V Act.

[2] By the impugned judgments and orders the claims of the appellants were rejected by the tribunal holding that the bodily injury or death that occurred had not arisen out of an accident from the use of the motor vehicle as prescribed in Sections 163/165 of the M.V. Act.

[3] It would be further essential to take brief note of the factual back drop of those appeals to underline the distinguishable fact, if any.

[4] **MAC Appeal No. 26 of 2001 arising out of T.S(MAC) No. 40 of 1999:**

One Birendra Debbarma while going from Golaghati to Takarjala in a vehicle bearing registration No. TRT-5023 (Jeep) for escorting the Additional District Magistrate, West Tripura, the unidentified persons fired indiscriminately on the escort vehicle. As a result, Birendra Debbarma, a Sub-Inspector of Police received grievous injuries and ultimately he succumbed to those injuries. The said incident is undisputed. It further appears that for the said occurrence Takarjala P.S. Case No. 53 of 1998 under Section 148/149/302/307/326 IPC with Section 27 of the Arms Act was registered. The appellants filed the claim petition under Section 166 of the M.V. Act stating that the deceased and the other police officers expressed their dissatisfaction about the combat capability of the said escort despite that they were directed to take the journey through the extremist infested area having previous history of the such attacks. Therefore, it was contended that there was negligence on the part of the employer and as a result, the appellants are entitled to adequate compensation for death of Birendra Debbarma. It is also stated that the deceased was 42 years of age and was receiving salary of Rs. 6,000/- as a Inspector of Police at the relevant point of time and further he was under the

pension establishment. It is also stated that the vehicle was actually hired by the Central M.T. Pool under disposal of the Commandant Provisioning, Tripura. The incident took place on 30.10.1998, prior to that the insurance policy expired but on that date, the vehicle was not covered by the insurance as the policy expired on 19.02.1997. Since the vehicle was hired by the state government, the liability to pay the said compensation would be saddled on them. The PW.2 categorically stated that Birendra Debbarma demanded sufficient police force (CRPF & TSR) but the Officer-in-Charge told that adequate force was not available, so Birendra Debbarma should proceed with staff. Birendra Debbarma fell to the ambush as laid by the extremist with sophisticated arms whereas for combat the deceased and the accompanying other police personnel had unsophisticated fire arms. The respondent-State adduced one witness namely, Manik Debnath who stated that:

> **" ****In total we were 10 police personnel in the convoy. We thought that it was sufficient force running the convoy. While we left the police station O/C was present in the police station at that time and there was no question of any threat by the O/C to Birendra Bebbarma to move with minimum force.****".**

[5] **MAC Appeal No. 52 of 2001 arising out of T.S(MAC) No. 615 of 1999 :**

The facts are not in dispute that the appellants filed the claim under Section 163A of the M.V. Act for death of one Amal Bikash Chamka, husband of the appellant No. 1 and father of the appellant Nos. 2 and 3. The deceased was the In-Charge Sub-Divisional Police Officer, Longtharai Vally while proceeding towards Nepal Tilla by vehicle No. TR-01-1009(Maruti Gypsy) they fell to the indiscriminate firing of the armed extremist at Karaticherra on 20.12.1996. As a result of such extremist attack, said Amal Bikash Chamka received severe bullet injuries and he died on the spot. The incident led to the registration of Manu P.S Case No. 66 of 1996 under Section

396/400/120B/353/307/427/435 read with Section 27/28 of the Arms Act. The appellant at the time of occurrence was aged about 45 years and used to draw salary of Rs. 8,000/- per month approximately. The appellants claimed a sum of Rs. 27,10,000/- as compensation on various components. It has been contended in the claim petition that the incident caused due to the negligent and carelessness of the driver. However, that part of the assertion was squarely denied by the respondents. To prove the statements as made in the claim petition, the appellant No. 1 deposed as the PW.1 and for the other side one Rajendra Dutta, Inspector of Police deposed as the DW-1, who stated that:

> **"On 20.12.1996 Shri Amal Bikash Chamka was the SDPO of Longtharai Vally and on that day at about 8.30 a.m we received an information secretly through secret source that an extremist attack held on Nepaltilla-Dhumacherra road and NLFT extremists abducted two persons and beaten up several others who were passengers of a private bus. On receipt of that information myself with staff along with SDPO and his staff left for Karaticherra where the incident occurred. About a K.M ahead of Karaticherra the extremists in a planned manner ambushed in the road side jungle and as soon as the police party arrived in the spot, the miscreants spread bullet from sophisticated fire arms on the vehicle of Amal Bikash Chamka which was in front of the police party and as a result Amal Bikash Chamka and his companion police constables were all injured and the miscreants also threw explosives on the vehicle of chakma and vehicle was also damaged completely. As soon as we could realize the extremist ambush we jumped down of our vehicle and returned fire and after some time the miscreants fled in the jungle. The arms and ammunitions which was in the vehicle of SDPO with the Security persons were all burnt. There was no vehicular accident in true term. It was purely an extremist attack that SDPO and other police personnels died."**

[6] **MAC Appeal No. 26 of 2002 arising out of T.S(MAC) No. 331 of 1999 :**

The appellant filed a claim petition under Section 163A read with Section 166 of the M.V. Act for granting compensation for the death of one Haripada Roy, the husband of the appellant No. 1 and son of the appellant No. 1. While said Haripada Roy, a constable of Tripura Police along with other constables were on their way to the ONGC Drilling site No. 10 at Baramura to

escort the employees and were travelling by the vehicle No. TR-01-2561, a Commander Jeep, the driver of the said vehicle was driving the vehicle with extreme speed. As a result the rear escort vehicle fell far behind and the extremists who laid ambush in the road side fired on the vehicle and said Haripada Roy hereinafter referred to as the deceased died out of the bullet injury. The deceased was aged 42 years and his monthly income was Rs. 2,500/-. The incident led to registration of Jirania P.S Case No. 155 of 1994. There is no dispute regarding the incident or the other factual aspect. The appellant No. 1 supported the claim deposing as the PW-1 in the tribunal. However, the O.P No. 1 namely, Ram Banik stated that they had also received the compensation for damage of their vehicle from the Oriental Insurance Company Ltd., the respondent No. 2 herein. He further submitted that the vehicle was being driven with valid licence by the driver. The deceased was aged about 42 years earning Rs. 2,500/- per month.

[7] **MAC Appeal No. 92 of 2002 arising out of T.S(MAC) No. 493 of 1999 :**

The appellants filed the claim for compensation to the extent of Rs. 16,30,000/- for the death of Narayan Bhowmik, husband of the appellant No. 1 and father of the appellant Nos. 2 and 3. In the "accident" occurred on 22.03.1998 near Mangal Choudhury para on Ampura- Ramchandraghat Road within Kalyanpur police station while the deceased aged about 50 years earning Rs. 4000/- per month as a Habilder of TSR, 2nd BN was boarded in TR-01-1049 (Truck) which was on duty at Ampura area. In exchange of fire with the extremist, the deceased died. It is in the evidence that he was re-employed as Habilder of TSR 2nd BN. The appellant No. 1 corroborated his statement in the claim petition in the Tribunal, whereas one Sajal Bhowmik, a constable was along with the deceased deposed as DW-1 stating that:

" *** On 22.3.1998 at about 8-30 hours a TSR force wa shifting from Ampura to Khowai Office Tilla and on way at Pandit Ram Para the extremists-miscreants ambushed the TSR party from road side jungle and fired on TSR force and as a result Narayan Bhowmik received bullet injury and died on the spot. So far I can recollect 7 TSR personnel died and many other injured in the attack. There was not motor accident at all and he died due to extremist attack on receipt of gunshot.*****."**

[8] **MAC Appeal No. 70 of 2003 arising out of T.S(MAC) No. 145 of 2000 :**

The appellants filed the claim petition under Section 163A of the M.V. Act for death of one Sukramani Debbarma, husband of the appellant No. 1 and father of the other two appellants claiming compensation to the extent of Rs. 21,90,000/-. While said Sukramani Debbarma, a constable of the police department along with other police constable were proceeding towards Manu by vehicle No. TRL-3841(canter truck) being deployed in the escort duty for TRTC buses and other private vehicles. The vehicle fell into the ambush. Before the journey commenced the said constable, the deceased requested both the driver and their authority not to force them to proceed to the extremist infested area with such inadequate police personnel and arms. Thus, the appellants claimed, for the negligent attitude, the said incident could occur. At the time of death, the deceased was aged about 37 years earning Rs. 3,000/- per month. It has been further contended that since the vehicle was under the control and custody of the Police Department and duly insured with the respondent No. 3, the respondent No. 3 if it is found that the death has arisen out of the accident within the meaning under Sections 163/165 of the M.V. Act would be held liable for payment. Whereas the respondent No. 3 categorically denied that they have any liability as they did not enter into any policy contract covering the risk of any extremist attack. Initially, the appellants filed one claim under Section 3 and 4 of the Workmen's Compensation Act being TS (W.C) No. 06 of 1997 which was rejected by the Commissioner, Workmen's Compensation, West

Tripura, Agartala. While deposing the tribunal the appellant No. 1 did not disclose when they carried out an appeal against the order of dismissal dated 23.07.1998 as passed in TS (W.C) No. 6 of 1997. However, she stated that:

> **"My husband along with other police personnel were proceeding with inadequate police force and while on way they demanded adequate police force but adequate police force was not provided and for that reason the accident had occurred. All the police personnel died for the extremist attack."**

[9] **MAC Appeal No. 76 of 2003 arising out of T.S(MAC) No. 148 of 2000 :**

The appellant filed the appeal for death of Nirmal Das Purkayastha who was killed by the unknown extremists at Hejacherra on Manu-Chaomanu Road under Chaomanu police station. While the deceased along with other police constable were going towards Manu by a vehicle No. TRL-3841 (Canter truck) on 13.07.1995 for escorting the TRTC bus and other vehicles, the unknown extremists indiscriminately fired at the escort and other persons died on the spot for the gunshot injuries received by them. The incident led to registration of Chaomanu P.S Case No. 22 of 1995 under Section 396/397/399/304 IPC read with Section 25(i)(3)(a) of the Arms Act. The appellant No. 1 is the wife of the deceased and she claimed compensation of Rs. 23,16,000/- under Section 163A of the M.V. Act. The deceased was aged about 28 years and earning Rs. 2,500/- per month as his salary. Initially, one claim under the Workmen's Compensation Act being TS (W.C) No. 19 of 1996 was filed which was later on withdrawn by the appellant. It was further contended that since the vehicle was under the control and custody of the appellant being hired on rental basis the liability of making payment of compensation shall be with the police department.

[10] **MAC Appeal No. 78 of 2003 arising out of T.S(MAC) No. 550 of 2000 :**

The appellants filed the claim petition for death of Pramatha Nath Dutta, the father of the appellant Nos. 2 and 3 and the husband of the appellant No. 1. Pramatha Nath Dutta, a armed constable in the Tripura Police, while proceeding towards Baijalbari with other constable from Khowai by Vehicle No. TR-01-0926 fell to the extremist's ambush. The area was infested by the extremist and such occurrences were rampant. As requested to avoid that road was not heeded to by the driver. The contingent was not having the adequate force, arms and ammunitions and having ensnared in the ambush, Pramatha Nath Dutta received bullet injuries and succumbed to his injuries. The said incident led to the registration of Khowai P.S Case No. 58 of 1995 under Section 148/149/324/302 IPC read with Section 27 of the Arms Act. The deceased was aged about 33 years having a monthly emoluments of Rs. 3197/-. On such basis compensation for Rs. 25,30,000/- was claimed. The appellant No. 1 deposed as PW-1 in the tribunal. From the other side, no evidence whatsoever has been adduced.

[11] **MAC Appeal No. 81 of 2003 arising out of T.S(MAC) No. 147 of 2000 :**

The appellants filed the claim petition under Section 163A of the M.V. Act for death of one Hrishikesh Datta, husband of the appellant No. 1 and father of the other three appellants claiming compensation to the extent of Rs. 17,70,000/-. While said Hrishikesh Datta, a constable of the police department along with other police constable were proceeding towards Manu by vehicle No. TRL-3841(canter truck) being deployed for the escort duty for TRTC buses and other private vehicles. The vehicle fell into the ambush. Before the journey commenced the said constable, the deceased requested both the driver and their authority not to force them to proceed to the extremist infested area with such inadequate police personnel and arms. Thus, the appellants claimed, for

the negligent attitude the said incident could take place. At the time of death, the deceased was aged about 44 years earning Rs. 4,500/- per month as the salary. It has been further contended that since the vehicle was under the control and custody of the Police Department and duly insured with the respondent No. 3, the respondent No. 3 if it is found that the death has arisen out of the accident within the meaning under Sections 163/165 of the M.V. Act would be held liable for payment. Whereas the respondent No. 3 categorically denied that they have any liability as they did not enter into any policy covering the risk of any extremist attack. Initially, the appellants filed one claim under Section 3 and 4 of the Workmen's Compensation Act being TS (W.C) No. 45 of 1996 which was later on withdrawn by them. There is no dispute regarding the statement as tp the fact and the appellant No. 1 proved the statement as PW-1 in the Tribunal. Whereas one Ashit Kr. Das was examined as DW-1 who however stated elaborately that how the occurrence took place. His statement was hardly different from the statement of PW-1. He stated that the family of the deceased had been given a special compensation in the form of ex-gratia of Rs. 1,00,000/- and premature Group Insurance of Rs. 30,000/-. In the cross-examination he stated that:

> **" In my assessment the intention of the extremists was killing the police personnel and lotting the arms and ammunitions. The bus vehicles might not be attacked by the extremists as there was no arms and police personnel in that vehicle."**

[12] **MAC Appeal No. 87 of 2003 arising out of T.S(MAC) No. 536 of 2000 :**

The appellant filed the claim petition under Section 163A of the M.V. Act for death of one Bhabendra Sharma, brother of the appellant claiming compensation to the extent of Rs. 10,74,000/-. While said Bhabendra Sharma, a constable of the police department along with other police constable were proceeding towards Manu by vehicle No. TRL-3841(canter truck) being

deployed in the escort duty for TRTC buses and other private vehicles. The vehicle fell into the ambush. Before the journey commenced the said constable, the deceased requested both the driver and their authority not to force them to proceed to the extremist infested area with such inadequate police personnel and arms. Thus, the appellant claimed, for the negligent attitude the said incident could occur. At the time of death, the deceased was aged about 28 years earning Rs. 2,200/- per month. It has been further contended that since the vehicle was under the control and custody of the Police Department and duly insured with the respondent No. 3, the respondent No. 3 if it is found that the death has arisen out of the accident within the meaning under Sections 163/165 of the M.V. Act would be held liable for payment. Whereas the respondent No. 3 categorically denied that they have any liability as they did not enter into any policy contract covering the risk of any extremist attack. Initially, the appellant filed one claim under Section 3 and 4 of the Workmen's Compensation Act being TS (W.C) No. 05 of 1997 which was later on withdrawn by the appellant. To prove the statements in the claim petition the appellant deposed in the tribunal. There is no remarkable dispute regarding the fact.

[13] **MAC Appeal No. 89 of 2003 arising out of T.S(MAC) No. 618 of 1999 :**

The facts are not in dispute that on 20.12.1996 while the vehicle bearing registration No. TR-01-1009 (Maruti Gypsy) was in the fleet of the other police vehicles fell to the extremist ambush. Prem Mohan Jamatia a driver constable of Tripura Police was gunned down by the extremist. For the death of said Prem Mohan Jamatia, the appellants claimed compensation of Rs. 16,78,000/-. It has been also stated in the claim petition that the deceased was about 32 years, earning Rs. 3000/- per month. For the said fateful incident Manu P.S Case No. 66 of 1996 under Section 396/400/120B/353/307/427/435

of the IPC read with Section 27/28 of the Arms Act was registered. It has been stated in the claim petition that vehicle proceeded without sufficient security personnel and without sophisticated arms and ammunitions through the said extremists infested area. It is to be pointed out here that the appellant No. 1 file a claim under Workman's Compensation Act being TS(W.C) No. 1 of 1997 and the said application filed under Section 3 and 4 of the Workmen's Compensation Act being TS(W.C) No. 44 of 1997 was rejected by the Commissioner, Workman's Compensation, West Tripura. Thus the option so exercised falls within the ambit of Section 167 of the M. V. Act. Hence, a fresh claim petition from the same accidents by the dependants of the deceased driver-constable shall not lie. The remedy lies in the appeal under Section 30 of the Workmen's Compensation Act, 1923.

[14] **MAC Appeal No. 84 of 2003 arising out of T.S(MAC) No. 105 of 2000 :**

The fact are not in dispute that on 12.01.2000 when Narayan Coudhury and some other passengers were travelling by vehicle No. TRS-1511(Bus) some unknown extremist with sophisticated weapon held the vehicle in ransom and thereafter indiscriminately fired at the passengers. Said Narayan Choudhury died leaving the appellants as the dependents. For death of said Narayan Choudhury, hereinafter referred to as the deceased, the appellants raised the claim under Section 166 of the M.V.Act for Rs. 11,70,000/-. It has been contended in the claim petition that the driver of the bus was warned by the adequate passengers not to drive through the extremist infested road without the adequate police escort. Despite such caution having sounded, the vehicle was plied through such areas namely Ghorakappa and met with said fateful incident. Even it has been contended that the vehicle was being driven in a very high speed and as a result, it got outlined and fell into a lunga. As a

result the extremist got the scope to fire resulting death of the deceased for negligence of the driver of the vehicle. The deceased at the time of accident was 35 years and was earning Rs. 8,000/- per month from his medical profession. Nutanbazar P.S Case No. 1 of 2000 was registered in respect of the said incident under Section 396/364(A) of the IPC read with Section 27 of the Arms Act. The owner and the driver of the vehicle denied of any negligence as alleged. They categorically denied there was any caution not to drive the vehicle through the extremist infested areas by the passenger as claimed subsequently. The appellant No. 1 placed her testimony as PW-1 in support of her claim made in the petition as well as adduced certain documents in respect of the death and the dependency etc. Another co-passenger namely, Arindom Chanda was examined by the appellant as PW-2 who stated that:

> **" as the driver started without police escort we requested him not to move without police escort but he did not care and deliberately moved the vehicle. When the vehicle reached at Alutala we heard sound of gun firing at which the driver drove the vehicle at high speed. After proceeding a short distance the vehicle outlined on the left side of the road. Narayan Chowdhury with his son alighted from the vehicle when there was a commotion among the passengers. Within a while I heard a sound of firing. After some time when the situation was quiet I alighted from the vehicle and saw the body of Narayan Chowdhuryk to be lying at a distance of about 50 cubits from the vehicle with injuries."**

From the other side one Indra Manik Jamatia, another co-passenger deposed as DW-1 and stated that:

> **"The unknown extremists entered into the vehicle and looted valuables from the passengers. They have also adducted two persons, one of whom was subsequently known Narayan Choudhury. After some time the extremists allowed the vehicle to move with the remaining passengers. The extremists dragged the two abducted persons towards the jungle. After proceeding for about 5/6 minutes we heard sound of firing from the fire arm."**

DW-1 filed the ejahar in the police station. DW-2 namely, Arati Chanda is another co passenger who supported the narrative of DW-1.

[15] From the factual narratives as briefly noted it would be apparent that all the appeals save MAC Appeal No. 84 of 2003 are attended by a common question whether the deaths of the security personals on escort duty can be treated as died in an accident from use of the motor vehicle.

[16] The counsel appearing for the appellants while questioning the legality of the judgment and order of the tribunal rejecting the claims strongly contended that, their dependants or themselves are entitled to the compensation under Sections 163A/166 of the M.V.Act in as much as the dominant intention of such extremists violence was to terrorise the State, those were not to settle any individual score with security personals. Therefore, the principles as laid down by the Apex Court in ***Rita Devi and Others Vrs. New India Assurance Co. Ltd. and another,*** reported in ***2000 ACJ 801*** would definitely be applicable and those claims are liable to be considered as arising from use of the motor vehicle.

[17] In ***Rita Devi(supra)*** one auto rickshaw was hired from the auto stand at Dimapur and later on the auto rickshaw was reported stolen and on the next day the police recovered the dead body of the driver of the said auto rickshaw. The dependants lodged a claim for death of the said driver under Section 163A of the Motor Vehicle Act claiming damages for death of the said driver during the course of his employment.

[18] The question that surfaced before the Apex Court that whether such incident of murder in the course of employment can be termed as the accident within the meaning of the Motor Vehicle Act, 1998 (the Act in short). The word "accident" however has not been defined in the Act but sub-section 1 of Section 163 of the Act provides that notwithstanding anything contained in

this Act or any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorized 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. Sub-section (2) of the said section also provides that in any claim for compensation under that sub-section, 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 an wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

[19] In ***Rita Devi(supra)*** it has been held as under :

> **"9. A conjoint reading of the above two Sub-clauses of Section 163A shows that a victim or his heirs are entitled to claim from the owner/Insurance Company a compensation for death or permanent disablement suffered due to accident arising out of use of the motor vehicle, without having to prove wrongful act or neglect or default of any one. Thus it is clear, if it is established by the claimants that the death or disablement was caused due to an accident arising out of the use of motor vehicle then they will be entitled for payment of compensation. In the present case, the contention of the Insurance Company which was accepted by the High Court is that the death of the deceased (Dasarath Singh) was not caused by an accident arising out of the use of motor vehicle. Therefore, we will have to examine the actual legal import of the words 'death due to accident arising out of the use of motor vehicle'.**
>
> **10. The question, therefore, is can a murder be an accident in any given case ? There is no doubt that 'murder', as it is understood, in the common parlance is a felonious act where death is caused with intent and the perpetrators of that act normally have a motive against the victim for such killing. But, there are also instances where murder can be by accident on a given set of facts. The differences between a 'murder' which is not an accident and a 'murder' which is an accident, depends on the proximity of the cause of such murder. In our opinion, if the dominent intention of the Act of felony is to kill any particular person then such killings is not an accidental murder but is a murder simplicitor, 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."**

[20] In ***Rita Devi(supra)*** the Apex Court also considered the decision rendered in ***Challis V. London and South Western Railway Company,*** reported in ***(1905) 2 KB 154,*** the Court of Appeal where it has been held:

> **"where an engine driver while driving a train under a bridge was killed by a stone willfully dropped on the train by a boy from the bridge, that his injuries were caused by an accident. In the said case, the Court rejecting an argument that the said incident cannot be treated as an accident held:**
>
> > **The accident which befell the deceased was, as it appears to me, one which was incidental to his employment as an engine driver, in other words it arose out of his employment. The argument for the respondents really involves the reading into the Act of a proviso to the effect that an accident shall not be deemed to be within the Act, if it arose from the mischievous act of a person not in the service of the employer. I see no reason to suppose that the Legislature intended so to limit the operation of the Act. The result is the same to the engine driver, from whatever cause the accident happened, and it does not appear to me to be any answer to the claim for indemnification under the Act to say that the accident was caused by some person who acted mischievously."**

[21] The Apex Court also considered ***Nisbet V. Rayne and Burn***, as reported in ***(1910) 1 KB 689*** where a cashier, while travelling by rail to a colliery with a large sum of money for the payment of his employer's workmen, was robbed and murdered. The Court of Appeal held:

> **"That the murder was an "accident" from the standpoint of the person who suffered from it and that it arose "out of an employment which involved more than the ordinary risk, and consequently that the window was entitled to compensation under the Workmen's Compensation Act 1906. In this case the Court followed its earlier judgment in the case of Challis (supra). In the case of Nisbet, the Court also observed that "it is contended by the employer that this was not an "accident" within the meaning of the Act, because it was an intentional felonious act which caused the death, and that the word "accident" negatives the idea of intention. In any**

> **opinion, this contention ought not to prevail. I think it was an accident from the point of view of Nisbet, and that it makes no difference whether the pistol shot was deliberately fired at Nisbet or whether it was intended for somebody else and not for Nisbet."**

[22] In ***Rita Devi(supra)*** while considering ***Shivaji Dayanu patil V. Vatschala Uttam More,*** reported in ***1991 ACJ 777 (SC)*** the Apex Court held as regards the interpretation of Section 92-A of the Motor Vehicles Act, 1939 as under:

> **"Section 92-A was in the nature of a beneficial legislation enacted with a view to confer the benefit of expeditious payment of a limited amount by way of compensation to the victims of an accident arising out of the use of a motor vehicle on the basis of no fault liability. In the matter of interpretation of a beneficial legislation the approach of the courts is to adopt a construction which advances the beneficent purpose underlying the enactment in preference to a construction which tends to defeat that purpose."**

[23] In ***Shivaji Dayanu patil(supra)*** The Apex Court enunciated:

> **"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 casual 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 enlarge the field of protection made available to the victims of an accident and is in consonance with the beneficial object underlying the enactment."**

[24] The Apex Court in ***Rita Devi(supra)*** held that the Tribunal holding that the murder of the deceased was due to accident arising out of the use of the motor vehicle did not commit any illegality.

> **" **** the trial court rightly came to the conclusion that the claimants were entitled for compensation as claimed by them and the High Court was wrong in**

> **coming to the conclusion that the death of Dasarath Singh was not caused by an accident involving the use of motor vehicle."**

The law has been culled out in ***Rita Devi(supra)*** **:**

> **"***** <u>if the dominant intention of the act or 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 indented and the same was caused in furtherance of any other felonious act then such murder is an accidental murder".</u>**

[25] In these cases this court is to consider whether the murder is the accidental murder or the murder simpliciter or the injuries as received were from the accidental felony.

[26] Mr. S. K. Datta, learned counsel appearing for the appellants referred a decision of this Court in ***Smt. Laxmi Rani Biswas and another Vrs. Sri Nani Gopal Banik and another*** in ***MAC App. No. 72 of 2000.*** In that case however, it was pleaded that:

> **"the accident could take place for the high speed and negligence arising out of use of the said vehicle".**

When the vehicle was deputed for the escort duty, the driver of the said vehicle in disobedience to the instructions of the police personnel plied the same with extreme speed and negligently keeping the rear escort party much behind them. As a result, a group of extremists got opportunity to strike at them by showering bullets indiscriminately. Consequence of that, the deceased along with other constables died inside the vehicle on the spot. Considering such negligence, this Court directed payment of compensation.

[27] In ***Bipal Bashi Das Vrs. Oriental Insurance Company Ltd. and Anr.*** reported in ***2005 (3) GLT 407*** where a civilian passenger died while the vehicle plied through a threatened route of the extremist infested areas ignoring the caution sounded by the passengers and the extremists opened fire

on them and Bipal Bashi's husband died on this spot. This Court on considering the various decision of the Apex Court such as ***Samir Chanda Vs. Managing Director, Assam State Transport Corporation,*** reported in ***1998 ACJ 342(SC), Shivaji Dayanu patil(supra), Union of India Vrs. United India Insurance Company Ltd.,*** reported in ***1998 ACJ 342(SC)*** held that:

> **"17. In the light of the aw clearly laid down in Samir Chanda, (supra), when we consider the case at hand, as pleaded by the claimant, we notice that there was absolutely no dispute that Amarpur-Teliamura road at Pathar Quarry was, at the relevant point of time, infested by extremists and possibility of attack by them on public vehicles very high. Placed in such situation, the passengers of the vehicle, in question, including the claimant's husband, Kartik Das, had requested the driver to proceed towards Udaipur from Taidubazar via Amarpur and from Amarpur to Teliamura via Agartala, for, the road to Teliamura from Amarpur via Agartala was free from extremists' attack. As the route, so suggested by the passengers, was a longer one the driver of the said vehicle, opted to follow Amarpur-Teliamura road merely because the same was a shorter road. Driving the vehicle with his mind affected by consideration of distance alone and ignoring the care, which he as a driver, ought to have taken in the situation prevailing in the area aforementioned, when the driver was taking his vehicle through Patthar Quarry, the vehicle was attacked by the extremists, which led to the causing of injuries to the passengers and death of the claimant's husband. Omission to take requisite care in the use of the vehicle by its driver, thus, amounted to rash and negligent driving of the said vehicle and the death of the claimant's husband must be held to have been caused in the accident arising out of rash and negligent driving of the said vehicle by its driver.**
>
> **18. It is also extremely important to note that in the case at hand, the dominant intention, in the light of the pleadings on record, was not to kill any of the passengers, in particular, but to attack the vehicle. When the dominant intention was not to cause death of any particular individual, but was art attack on the use of the vehicle, the death arising of such an occurrence would be treated as an accidental, death. In this regard, a reference may be made to the case of Rita Devi and Ors. v. New India Assurance Co. Ltd. and Anr. reported in (2000)ILLJ1656SC , wherein an auto-rickshaw, which was a public carrier, was hired by some unknown passengers from the auto rickshaw stand at Dimapur, the said auto rickshaw was subsequently reported by the owner to the police as having been stolen away and on the next day, the dead body of the said auto rickshaw's driver, Darshan Singh, was recovered by the police and since the whereabouts of the auto rickshaw could not be traced out, the insurance company**

compensated, the owner for the loss of the auto rickshaw suffered by him. When Darshan Singh's widow, Rita Devi, made a claim application for compensation under Section 63A of the M.V. Act claiming damages for the death caused to her husband Darshan Singh, during the course of his employment in the accident arising out of use of the vehicle, the Tribunal held the owner of the vehicle liable to pay compensation to the widow. The insurance company preferred an appeal against the award in this High Court and the High Court, having come to the conclusion that there was no motor accident as contemplated under the M.V. Act allowed the appeal and set aside the award holding that the case was a murder and not an accident. Considering the decision in Nisbet v. Rayne and Burn reported in (1910) 1 K.B. 689, which has been followed by the House of Lords in the Board of Management of Trim Joint District School v. Kelly 1914 ACJ 667, the Apex Court in Rita Devi (supra) observed 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 as the abject 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. 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 the theft of the auto rickshaw.**

19. From the case of Rita Devi (supra), what one gathers is that a Tribunal may, in an appropriate case, be required to determine as to what the dominant intention for causing injury to, or death of, a passenger in a vehicle was If the dominant intention was to cause the death of a particular individual, then it will amount, to murder but if the dominant object was connected with the use of the vehicle at a public place, then, the death would be described to have been caused as a result of accident."

[28] This Court also held in ***Bipal Bashi (supra)*** that:

> **"23. Though it has been agitated, on behalf of the respondent No. 2, that under Section 166 of the M.V. Act, no liability for payment of compensation can be imposed until the accident arises out of use of the motor vehicle and that in the case at hand, the death was not caused because of use of the vehicle and no claim for compensation could have been entertained, what needs to be pointed out is that under Section 166 of the M.V. Act, the question of compensation would, undoubtedly, arise only when the death or injury is caused as a result of an accident arising out of rash and negligent use of the vehicle but, at the same time, it also needs to be borne in mind that the use of the vehicle does not necessarily mean that the vehicle has to be in motion. Far from this, the use of the vehicle may be inferred even when it is stationary. Similarly, when care, on account of a given situation, is required to be taken in driving a vehicle in a particular area and such a care is not taken, such a driving will amount to rash and negligent driving of the vehicle. The answer, therefore, to the question whether the death or injury, in a given case, has been caused as a result of the use of a vehicle or not will really depend on the facts of the given case. In the case at hand, in the face of the pleadings on record, there can be no escape from the conclusion that the claimant's husband's death was accidental arising out of rash and negligent driving of the said vehicle by its driver at a public place."**

[29] Delhi High Court in ***Oriental Insurance Co. Ltd. Vrs. Phulo Devi and others,*** as reported in ***2012 ACJ 2591*** has observed in terms of ***Rita Devi(supra)*** as under:

> **"6. ***** The question for consideration in this regard would be as to whether this could be said to be a murder simplicitor or the death of the deceased having been caused within the definition of motor vehicle accident. The learned Tribunal relying upon the judgment of Rita Devi (supra) held that the prime motive of the culprits was to commit the offence of property. It was held that if the intention of the offenders was only to commit murder of the deceased on account of personal enmity, there was no reason for taking away the vehicle and also money of the deceased. On this premise, the Tribunal held that the deceased died while using the motor vehicle during his course of employment."**

Ultimately, on such discussions, the appeal filed by Oriental Insurance Co. Ltd. was dismissed.

[30] In ***Oriental Insurance Co. Ltd. Vrs. Dongkholam and others,*** reported in ***2007 ACJ 1973,*** this Court almost in a similar situation held that:

> **"22. In the instant cases from the aforesaid discussion of evidence on record it is amply clear that no care was taken by the driver for safety of the passengers travelling in the vehicle and the driver in fact did not pay any heed to the warning given by some persons and also to the demand of the passengers not to proceed further. Because the driver had proceeded further, the passengers travelling in the said bus were killed arising out of the use of the motor vehicle. Had the driver not proceeded further and paid heed to such warning and demand the said accident could have been avoided. Therefore, negligence of the driver was duly proved. From the evidences as discussed above it is also clear that it was an unintended and unforeseen injurious occurrence and the same was not caused in furtherance of any other felonious act and, therefore, it is an accident within the meaning of Motor Vehicles Act, 1988. The claimants are, therefore, entitled to compensation under the provisions of the said Act."**

[31] While deciding ***Dongkholam(supra)*** this Court also considered ***Rita Devi(supra), Challis V. London and South Western Railway Company(supra), Nisbet V. Rayne and Burn (supra)*** and ***Board of Management of Trim Joint District School Vrs. Kelly,*** reported in ***(1914) AC 667*** and thereafter it has been held that:

> **"19. ***** The question, therefore, is can a murder be an accident in any given case ? There is no doubt that 'murder', as it is understood, in the common parlance is a felonious act where death is caused with intent and the perpetrators of that act normally have a motive against the victim for such killing. But.there are also instances where murder can be by accident on a given set of facts. The differences between a 'murder' which is not an accident and a 'murder' which is an accident, depends on the proximity of the cause of such murder. In our opinion, if the dominent intention of the Act of felony is to kill any particular person then such killings is not an accidental murder but is a murder simplicitor, 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."**

[32] In ***Samir Chanda Vrs. Managing Director, Assam State Transport Corporation,*** reported in ***1998 ACJ 1351*** the Apex Court held that:

> **"**** the conductor and driver of the bus are required to take care of the passengers travelling in it and if such care is not taken it amounts to negligence and, therefore, the compensation is payable under the Motor Vehicles Act for the death or bodily injury to the passengers. <u>In the said case, Supreme Court has held that an abnormal situation was prevailing during the period when the bomb blasted inside the vehicle, the owner and driver are to take extra care by carrying a police escort, having not done so, they are liable for compensation under the Act."</u>**

[33] A Division Bench of this Court in ***National Insurance Co. Ltd. Vrs. Kasheni,*** reported in ***2007 ACJ 43(Gauhati)*** held that:

> **"***** in a given case the proximity between the use of the motor vehicle and the death or injury suffered by a person may not be direct and immediate; yet compensation may be awarded under the provisions of the Motor Vehicles Act. In other words, that even in a situation where the death or bodily injury is not directly caused by the use of the motor vehicle, yet if such death or injury has some relationship with the use of the motor vehicle, compensation can still be awarded under the Act. Motor Vehicles Act being a beneficial legislation must necessarily receive a liberal interpretation insofar as a claim of compensation is concerned. It has further been held that the burden that the act of killing of the driver or the passenger of a vehicle amounts to accident within the meaning of Motor Vehicles Act, is on the claimants and they by adducing cogent evidence have to prove that such act was an accident within a meaning of that Act. In the said decision the Division Bench of this Court after discussing the evidences on record has found that the said burden could not be discharged by the claimant to prove that death was caused by or arising out of the use of the motor vehicle so as to confer power and jurisdiction on learned Tribunal to award compensation."**

[34] In ***Oriental Insurance Co. Ltd. Vrs. Archana Rajan and others ,*** reported in ***2001 ACJ 801*** the Apex Court approved the principles of ***Rita Devi(supra)*** and held that:

> **" ***** the insurance company is liable to pay compensation to the heirs of a person murdered with**

> **intent of causing violence upon the occupants, as this is an accident. In the circumstances the court cannot accept the narrow interpretation put forward that the liability of the insurance company is limited and does not entail a situation like an incident in the present case. Clearly, the scope of indemnity clause stands enlarged after the judgment of the Apex Court"**

[35] In another celebrated decision ***Kaushnuma Begum and others Vrs. New India Assurance Co. Ltd. and Others,*** reported in ***2001 ACJ 428*** buttressing that the rule of the strict liability propounded in ***Rylands Vrs. Fletcher*** is applicable in claims for compensation made in respect of the motor accidents in the following terms:

> **"18. Like any other common law principle, which is acceptable to our jurisprudence, the Rule in Rylands vs. Fletcher, 1861-73 All ER 1, can be followed at least until any other new principle which excels the former can be evolved, or until legislation provides differently. Hence, we are disposed to adopt the Rule in claims for compensation made in respect of motor accidents."**

[36] Even though in ***Kaushnuma Begum(supra)*** the ***Rylands Vrs. Fletcher*** has been considered from a different view point. It appears to this Court that a relevant part of Rylands (supra) as authored by Lord Cairns, L.C is required to be reproduced:

> **"As an illustration of that principle, I may refer to a case which was cited in the argument before your Lordhips, Smith v. Kenrick(9) in the Court of common Pleas. On the other hand, if the defendants, not stopping at the natural use of their close, had desired to use it for any purpose which I may term a non-natural use, for the purpose of introducing into the close that which, in its natural condition, was not in or upon it for the purpose of introducing water, either above or below ground, in quantities and in a manner not the result of any work or operation on or under the land, and if in consequence of their doing so, or in consequence of any imperfection in the mode of t heir doing so, the water came to escape and to pass off into the close of the plaintiff, then it appears to me that that which the defendants were doing they were doing at their own peril; and if in the course of their doing it the evil arose to which I have referred- the evil, namely, of the escape of the water, and its passing away to the close of the plaintiff and injuring the plaintiff-then for the**

> **consequence of that, in my opinion, the defendants would be liable. As Smith V. Kenrick (9) is an illustration of the first principle to which I have referred, so also the second principle to which I have referred is well illustrated by another case in the same court, Baird V. Williamson (10), which was also cited in the argument at the Bar."**

[37] Mr. P. Gautam, learned counsel appearing for the insurer in MAC Appl. No. 84 of 2003 contended that the claim as raised by the dependants of the deceased police personnel is founded on the fact that they were detailed by the State for providing security to the movement of the vehicle, the passenger etc. It is thus obligation of the State to compensate for loss but cannot come within the province of the road traffic accident, from use of the motor vehicle. He further submitted that Sections 163/165 of the Act categorically provide the ambit and scope of expression of 'the accident'. The security personnel who succumbed to the fatal injuries received in the exchange of fire with the extremist cannot be treated as the victim of an accidental murder.

[38] Mr. Gautam, learned counsel, referred a decision of the Apex Court in ***Muralidhar Sarangi Vrs. The New India Assurance Co. Ltd*** reported in ***2000 AIR SCW 694*** to contend that the policy did not cover the risk arising out of the terrorist activities. Hence, the insurer cannot be fastened with liability, as the contract of the insurance does not incorporate any such obligation. In that case, the trucks were destroyed by acts of terrorism and a driver of the truck was also shot dead. The insurance company was not held liable for the loss suffered by the insured at the hands of the Bodo activities who completely destroyed his trucks by setting them on fire and killed one of the drivers.

[39] Mr. P. Datta, learned counsel appearing for the respondents in MAC Appl. Nos. 52 of 2001, 92 of 2002, 70 of 2003, 76 of 2003, 81of 2003, 87 of 2003 and 52 of 2001, Mr. K. Bhattacharjee, learned counsel for the respondents in MAC Appl. Nos. 76 of 2003, 81 of 2003, 87 of 2003, 89 of 2003 and 78 of 2003 and Mr. S. Chakraborty, learned Additional Govt. Advocate for the state respondent contended that no claim can be sustained for death of the security personnel in the extremist's firing in as much as the security personnel are engaged for perilous duty. Such risk and peril are inalienable and foreseeable parts of their duties. They are to protect life and property of the citizens with such peril. Those death as occurred cannot be brought within the accidental death. These cases are distinguishable from ***Bipal Bashi Das (supra)*** and ***Laxmi Rani Biswas(supra).*** Therefore, he contended that all the appeals bereft of merit, be dismissed.

[40] It would be evident from the narrative of the fact as led that save MAC Appeal No. 84 of 2003, in all other appeals the deceased were the security personnel, engaged in the escort duty. In MAC Appeal No. 84 of 2003 the deceased was a passenger who died when the extremists open fired when the driver of the vehicle neglecting the caution sounded by the passenger plied and sped the vehicle through the extremist infested areas, it got outlined and fell into a lunga and thereafter the extremists made them the soft targets. It has been proved in the evidence that for negligence of the driver, and the driver alone the deceased namely Narayan Choudhury fell prey to the accidental murder, as categorized by ***Rita Devi (supra).***

[41] In this batch of the appeals, two pertinent questions that surfaced can be formulated as under:

(1) Whether deaths of the security personnel who were engaged on escort duty for protecting the movement of the vehicle and the passengers through the extremist infested areas if killed in the encounter or in the unilateral discriminate firing by the extremist would come within the ambit 'from the use of the motor vehicle' for purpose of jurisdiction of the tribunal for determination of compensation under Section 163A or 166 of the motor vehicle act and ,

(2) whether the passenger who received bullet injury in the discriminate firing for plying the vehicle without giving hid to the caution and alert sounded by the passenger would be treated as the victim of the accident arising from the use of motor vehicle or the victim of the accidental murder.

On due appreciation to the fact as unfolded and submissions as advanced by the counsel for the parties a brief discourse appears highly essential.

[42] In ***Chairman, Grid Corporation or Orissa Ltd. (Gridco) and others Vrs. Sukamani Das (Smt) And Another,*** reported in ***(1999) 7 SCC 298*** the Apex Court held that:

> **"The high court failed to appreciate that all these cases were actions in tort and negligence was required to be established firstly by the claimants. The mere fact that the wire of the electric transmission line belonging to Appellant 1 had snapped and the deceased had come in contact with it and had died was not by itself sufficient for awarding compensation. <u>It also required to be examined whether the wire had snapped as a result of any negligence of the appellants and under which circumstances the deceased had come in contact with the wire. In view of the specific defences raised by the appellants in each of these cases they deserved an opportunity to prove that proper care and precautions were taken in maintaining the transmission lines and yet the unauthorized intervention of third parties or that the deceased had not died in the manner stated by the petitioners."</u>**

Negligence has to be pleaded and proved in the record. It is found that the security personnel whose dependants or the legal heirs are the claimants died when they were engaged on escort duty for giving security cover to the movement of the vehicle and the passenger carried in the designated vehicles. Either in the exchange of fire or for ambush laid down by the extremists or from indiscriminate fire they received fatal injuries. In some of the cases, it has been pleaded that the adequate security persons and arms and ammunition were not deployed or supplied to give rebuff the extremist if they attacked suddenly. Even if there is negligence in providing adequate number of security personnel for escort duty in the extremist invested areas that cannot be a negligence from the use of the motor vehicle. The security personnel's duty is inextricably found with such foreseeable peril and risk to life. It is part of a perilous process.

[43] In this regard a decision of the House of Lords, U.K in ***Chief Adjudication Officer V. Faulds,*** reported in ***[2000] 2 All ER 961*** addressed by Lord Hutton would be illuminating:

> **"Counsel for the appellant described the findings of the tribunal on questions of fact material to be decisions as being inadequate. He also pointed out that, although the commissioner had in para 1 of his decision, signaled his intention to add to the findings of fact, he had not done so. The real issue of law for this court to decide was whether or not there was any basis in fact for holding that the claimant's personal injury was caused by accident……. Counsel expressly stated that, despite the emphasis placed on this feature of the argument both before the tribunal and before the commissioner, the distinction between a series of accidents on the one hand and "process" on the other, was " a side issue". What was important, it was submitted, was to recognize that in this type of case the true starting point for ascertaining and evaluating the facts was to look first to determine what the accident was, or the accidents were, and then to see if the personal injuries could be said to be caused by accident. <u>It was not enough ot find it established that personal injury arose from the employment and simply to infer from that circumstance that it must have been caused by accident. Both the commissioner, and the</u>**

appeal tribunal – though it was rather difficult to tell because the tribunal's reasoning process was not disclosed – appeared to have started with the claimant's personal injury and inferred that it must have been caused by accident in the course of the employment.' (Lord McCluskey's emphasis.)

****** the appellant's submissions and the issue which it had to determine, the Extra Division then summarized the principal argument which the chief adjudication officer advanced to it. This argument was that it was part of the normal employment experience of a senior fireman with special training to see and deal with the tragic human consequences of a fire or crash; such circumstances fell within the normal and expected range of circumstances for a person employed as a senitor for officer and therefore could not be termed an accident or accidents.**

As this was the principal argument addressed to it by the Chief adjudication officer it was appropriate for the Extra Division to devote a considerable part of its judgment to consider this argument. It rejected the argument stating:

'An argument that an occurrence was not an accident because it was foreseeable was rejected by the commissioner in CI/15589/1996, where the claimant and other prison officers were sent to deal with the transfer of a prisoner who was known to be difficult, violent and immensely powerful; the whole reason for their being there was that some violent behaviour was foreseeable. In that context the commissioner who decided that case quoted with approval a passage from Ogus, Barendt and Wikeley's Law of Social Security (4th ed), at p. 303, including: " An event need not be unforeseeable or exceptional to constitute an 'accident' [Clover, Clayton & Co. Ltd. V. Hughes [1910] AC 242, [1908-10] All ER Rep 220]. To take a frequently encountered example, claimants who incapacitate themselves by heavy exeretions do not have to prove that the strain was violent or exceptional for their job." In these circumstances, we are not persuaded that there is no room for the concept of accident just because the happening or event that causes injury (and even manifests itself only in the injury) is one that may be foreseeable or (and in this regard disagreeing with certain of the later observations made by the commissioner in CI/15589/1996) one that may be expected to be encountered by a person carrying out normal hazardous duties.'

In my opinion the court was entitled so to hold because the authorities establish that an accident may happen in the ordinary course of the employee's work (see in addition to Clover, Chayton & Co. Ltd. V. Hughes, Fenton v. J. Thorley & Co. Ltd [1903] AC 443 and Ismay, Imrie & co V. Williamson [1908] AC 437). The court concluded its judgment by stating:

In a case like the present (just as in R(1)22/59, CI/15589/1996. And R(1)43/55, also quoted to us)

the accidental cause is found in the exposure of the employee on one or several – or even many – occasions to shocking sights or other such phenomena, resulting in his suffering a severe – and unintended -- nervous reaction. We do not consider that the wording of the Act requires that there be found a separable "accident" in the form of a distinct event separate from the injury and preceding it in point of time. In circumstances in which the horror of the exposure triggers a response which takes the form of nervous trauma, the injury and its cause may merge undistinguishably, but the injury may still be properly said to be caused by accident. If a fellow employee faces exactly the same exposure but suffers no such injurious response it would be equally right to say that he had not suffered injury by accident. We find nothing in the authorities to prevent us from concluding that the commissioner (following the tribunal in this respect) was entitled to infer that the claimant's personal injury was caused by accident in the course of his employment.'

I consider that the court was entitled to reach this conclusion because the authorities establish that although the accident and the injury are separate concepts they may overlap and the accident need not constitute an event separate and distinct from the injury (see per Lord Hodson in Minister of Social Security v. Amalgamated Engineering Union [1967] 1 ALL ER 210 at 219, [1967] 1 AC 725 at 750, and Lord Simon of Glaisdale in Jones v. Secretary of State for Social Services, Hudson v. Secretary of State for Social Services [1972] 1 All ER 145 at 192-193, [1972] AC 944 at 1019.

In his written case on the appeal to this House the claimant submitted.
'If there be any deficiency in the findings of fact it is submitted that t his is the product of the particular manner in which the appellant has presented his case, which has been on the basis of interpretation of agreed or undisputed facts.'

***** ****** ****** ******* ******* ********

It would have been better if the tribunal's findings of fact and reasoning had been more clearly and fully set out, and <u>I appreciate that the chief adjudication officer is concerned that those who suffer from stress disorder in the course of their work should not be entitled to recover industrial injury benefit without establishing (the onus being on them) that they sustained accidents in the course of their employment which caused them injury. But in my opinion the judgment on Extra Division did not hold to the contrary, and I consider that its decision does not provide a ground for an appeal to this House to obtain a ruling to emphasise the principle which the chief adjudication officer wishes to uphold."</u>

The House of Lords maintained the Chief Adjudication Officer's finding as regards 'the accident' that the Chief Adjudication Officer was entitled

to hold that, that was not accident not only because that was foreseeable but there was no room for contemplating the possibility of such event, in as much as the employees on work deputed for doing the hazardous work, where risk and peril visit oftentimes. The same principle may be applied in these appeals as well. The security persons who were deputed for escort duty for providing security of the movement of the vehicles and passengers in the extremist infested areas could foresee that their such deployment may invite the peril. This being the part of their engagement that cannot be termed as an accident not merely for that the peril is foreseeable and considering such peril and risk to their life they were given engagement of protecting life of the ordinary civilian, but such suddenness in the turn of events cannot be brought with the construct of accident arising from the use of the motor vehicle. But the State should set-up scheme for adequate compensation and rehabilitation of their dependents. This Court, therefore, is constraint to hold that the appeals filed by the dependants/legal heirs of the deceased security personnel who died in the extremist violence must fail. As such, the impugned judgment and order as passed by the Tribunal has to be maintained. However, the MAC Appeal No. 84 of 2003 is allowed.

[44] Without remitting back the matter to the Tribunal, this Court thinks it apposite to ascertain the damage for purpose of awarding the compensation as the appellants have proved that the deceased was abducted from bus by the extremist without any motive to kill him but to frighten by their ferocity. As such, the said death has to be inferred as death occurring from the use of the motor vehicle. As it has been further established that the driver of the bus was warned not to drive the vehicle through the extremist infested areas without the police escort and despite such caution having sounded, the

vehicle was plied which ultimately met the fateful accident. Even the appellants contended that the vehicle was being driven in the high speed and as a result got outlined and for that reason the extremists got scope to fire on the bus resulting death of the deceased for negligence of the driver of the vehicle. Even the DW-1 and DW-2 supported some part of the claimants' pleadings in the petition for compensation. However, the owner and the driver of the vehicle categorically denied that episode that there was a caution by the passengers.

[45] The deceased at the time of accident was aged 35 years and earning Rs. 8,000/- per month from his medical profession. Since no sound evidence has been laid to establish the income at Rs. 8,000/- per month, considering the dependency on the deceased, this Court considers that the income should be calculated at Rs. 5,000/- per month. Thus, the annual income of the deceased be calculated at Rs. 60,000/-. In terms of the decision in ***Santosh Devi Vs. National Insurance Company Ltd. and Ors.***, as reported in ***2012 (6) SCC 421,*** 30% of the income has to be added to the said income as the loss of future prospect as it has been enunciated in ***Santosh Devi(supra)*** as under:

> **"18. Therefore, we do not think that while making the observations in the last three lines of paragraph 24 of Sarla Verma's judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30% increase in his total income over a period of time and if he / she becomes the victim of accident then the same formula deserves to be applied for calculating the amount of compensation."**

Thus the sum of income inclusive of the future prospect comes at Rs. 78,000/-. Considering the numbers of the dependents 1/4th should be deducted as the personal expenses of the deceased. As such the loss of

annual income comes to Rs. 58,500/-. Loss of dependency therefore would come at Rs. 9,36,000.00 (Rs. 58,500/- x 16, the multiplier). With this amount, Rs. 5000/- for funeral expenses and Rs. 10,000/- for loss of consortium should be added to pay the appellant No. 1. Thus, the total compensation comes to Rs. 9, 51, 000/-. The said amount shall carry interest at the rate of 7% per annum from the date of filing application till the payment is made. It is made clear that the amount shall be divided into four shares after deducting Rs. 10,000/- which would be later on added to the share of the appellant No. 1. The share of the appellants who are minor as yet shall be invested in the fixed deposit in any of the nationalized banks for a period till the minors attained their majority.

The respondent No. 2, National Insurance Co. Ltd. shall pay the entire amount to the appellants within a period of two months from today without fail and the deposit shall be in the tribunal. The tribunal shall allow the claimants to withdraw the deposited sum on proper identification and invest the share of the minors as per the direction as contained herein.

[46] Accordingly, these appeal stands allowed, but there shall be no order as to costs.

Send down the LCRs forthwith.

S/d
JUDGE