

HIGH COURT OF TRIPURA

_A_G_A_R_T_A_L_A_

MAC. App. No.86 of 2022

Smti. Rumi Das (Namo) & Another

.....Claimant-petitioner-appellants

V_E_R_S_U_S

Sri Chandan Das & Another

.....Opposite parties-respondents

CO(FA) No.16 of 2022

The Oriental Insurance Company Limited

.....Cross-objector-appellant

V_E_R_S_U_S

Smti. Rumi Das (Namo) & 2 Others

.....Claimant-respondents

CO(FA) No.01 of 2023

Sri Chandan Das

.....Respondent-petitioner-cross-objector

V_E_R_S_U_S

Smti. Rumi Das (Namo) & 2 Others

.....Claimant-petitioner-respondents

For Appellant(s)	:	Mr. B. Debnath, Advocate.
For Respondent(s)	:	Mr. B. Majumder, Advocate. Mr. D. Debnath, Advocate.
Date of hearing and delivery	:	
Of judgment and order	:	20.07.2023
Whether fit for reporting	:	YES/NO

HON'BLE MR. JUSTICE T. AMARNATH GOUD

_F_I_N_A_L_O_R_D_E_R_

Heard B. Debnath, learned counsel appearing for the appellants also heard Mr. B. Majumder, learned counsel and Mr. D. Debnath, learned counsel appearing for the respondents.

[2] The present appeal has been filed under Section-173 of the Motor Vehicles Act, 1988 against the judgment and order dated 21.07.2022 passed by the learned Member, Motor Accident Claims Tribunal, Tribunal No.2, West Tripura Agartala in connection with case No. TS (MAC) 09 of 2021 for enhancement of the meager awarded amount to the claimant-petitioners due to

death of their mother, in a vehicular accident. The cross-objection [CO (FA) 16 of 2022] has been filed under Order-41 Rule-22 of the Code of Civil Procedure read with Section-173 of the M.V. Act, along with its up to date amendments by the Oriental Insurance Co. Ltd. against the impugned award dated 21.07.2022 passed by the learned Member, Motor Accident Claims Tribunal, Court No.2, West Tripura Agartala in connection with case No. TS (MAC) 09 of 2021. Further, another cross-objection [CO (FA) 01 of 2023] has been filed by the respondent-O.P. No.1 against the MAC. App. No.86 of 2022 filed by the claimant-petitioner-appellants under Order-XLI, Rule-22 of the Civil Procedure Code for absolving the respondent O.P. No.1 from the liability of payment of the award of compensation to the O.P. insurance company as would be paid by the O.P. insurance company to the claimant-appellants as per judgment and order dated 21.07.2022 passed by the learned Member, Motor Accident Claims West Tripura Agartala in connection with case No. TS (MAC) 09 of 2021.

[3] Brief facts, leading to this case is that on 16.11.2020 at about 3-30 p.m. Jyotsna Rani Nath along with two other ladies was waiting at water supply point for taking water at Khasiabari area on Khasiabari-Tilthai Road at that time one SML Canter Truck bearing registration No.TR-01-AA-1761(herein-after called the offending vehicle) which was coming from the Chamtilla direction towards Tilthai Hospital hit the deceased and two other ladies going on the wrong side of the road as a result of which Jyotsna Rani Nath sustained severe injuries on her persons and died on the spot. Local people brought her in the Dharmanagar District Hospital where doctor declared her as dead. Post Mortem examination was also done over the body of deceased. In this connection Panisagar PS Case No. 2020 PNS 048 dated 16.11.2020 u/s 279/338/304(A) of IPC was also registered. Claimant petitioners further stated in their claim petition that the accident occurred due to rash and negligent driving on the part of the driver of the offending vehicle.

[4] Claimant petitioners also stated that at the time of death deceased was aged about 44 years and she was a Anganwari Worker under Panisagar ICDS Project, North Tripura and used to earn Rs. 4,202/- per month. The OP No.1, owner of the offending vehicle despite of receiving notice did not turn up. Hence , the case proceeds ex parte against the OP No.1.

[5] After hearing the learned counsel appearing for the parties and having gone through the material evidence on record, the learned Court below has observed as under:

“In the result, claim is awarded in following terms :-

(i) Claimant petitioners are entitled to get the award of Rs.12,38,000/- (rupees twelve lacs thirty eight thousand) only along with 9% simple interest per annum from the date of registration of claim i.e, w.e.f. 12.01.2021 till the date of realization thereof.

The Noticee, Oriental Insurance Company Ltd. shall, deposit the awarded amount along with interest thereon within one month to this Tribunal.

Noticee, shall be at liberty to recover the amount from the OP in accordance with law.

Supply a copy of this award free of cost to the parties by not later than 15 days from the date of the award.”

[6] Mr. B. Debnath, learned counsel appearing for the appellant has submitted that the learned tribunal has failed to appreciate the subject matter on record and has failed to assess the actual income of the profession of a cloth shop owner and wrongly hold that the monthly income of the deceased Rs.2,000/- per month. Actually, the landlady as PW-2 deposed that the deceased paid Rs.2,000/- per month as rent for the shop but the learned tribunal wrongly held it as her income.

[7] The learned tribunal committed serious error both on point of law and facts and did not consider the fact as well as submission made in the examination in chief and claim petition. In the year 2021 a cloth shop owner would not earn less than Rs.10,000/- per month from the cloth shop. The land lady of the shop owner of the deceased who examined as PW-2 during trial deposed that the deceased used to pay her Rs.2,000/- per month as rent for the cloth shop. From which it can be presumed that the deceased from her business of cloth shop easily earn more than Rs.10,000/- per month which she contributed to her family. Moreover, as an Anganwari Worker the deceased used to get Rs.4,202/- per month as salary. So total monthly income of the deceased was near about Rs.15,000/- per month. But the learned tribunal wrongly held that the deceased used to earn Rs.2,000/- per month from the cloth shop and held that total monthly income of the deceased was Rs.6,202/- per month.

[8] He has further contended that the learned tribunal ought not to have awarded a very meager sum and it should have been awarded as claimed by the claimant. The finding of the learned tribunal resulting in the impugned award of very meager amount of compensation is grossly erroneous, perverse and the same has to be set aside. The learned tribunal has erred in passing the judgment and making meager amount of award to the claimant. The Hon'ble Apex Court in a judgment reported in (2014) 2 SCC (Cri) 379 opined to determine the proof of income of self employed labour in unorganized sector.

[9] There is no dispute between the parties as to the death of deceased. According to the claimant petitioners on the relevant date and time deceased along with two others was waiting for taking water near the water supply point on Khasiabari-Tilthai Road where she was dashed due to rash and negligent driving of the driver of the offending vehicle resulting which they met with an accident and on the same day deceased succumbed to her injuries. From the Charge sheet [Ext.2(i) to 2(iii)] it reveals that the accident occurred due to rash and negligent driving of the driver namely, Rupak Sarkar of the offending vehicle. Therefore, this Court finds it appropriate to hold that the death of deceased was caused due to rash and negligent driving of the driver of the offending vehicle.

[10] It has been established beyond any shadow of doubt that the death of deceased was caused due to rash and negligent driving of the driver of offending vehicle. Therefore, the claimant petitioners being the daughter, and son of the deceased are entitled to have the compensation under the beneficial legislation, namely the M.V. Act. Now the question arises is what should be the quantum of compensation and who is liable to pay the same. In order to decide and calculate the amount of compensation we find it apposite to have a reference to a recent judgment of the Honble Supreme Court reported in **AIR 2017 SC 5157 (National Insurance Company Limited Vs Pranay Sethi and others)** wherein In Para-61 of that Judgment it was observed:

“61. In view of the aforesaid analysis, we proceed to record our conclusions:

(i) The two Judge Bench in Santosh Devi (AIR 2012 SC 2185) should have been well advised to refer the matter to a larger bench as it was taking a different view then what has been stated in Sarla Varma (AIR 2009 SC 3104) a Judgment by a coordinate Bench. It is because a co-ordinate bench of the

same strength cannot take a contrary view then what has been held by another co-ordinate bench.

(ii) As Rajesh has not taken note of the decision in Reshma Kumari (AIR) 2013 SC (Supp) 474), which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.

(iii) While determining the income and addition of 50 percent of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30 percent, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15 percent. Actual salary should be read as actual salary less tax .

(iv) In case that deceased was self -employed or on a fixed salary, an addition of 40 percent of the establish income should be the warrant where the deceased was below the age of 40 years. An addition of 25 percent where the deceased was between the age of 40 to 50 years and 10 percent where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and court shall be guided by paragraphs 30 to 32 of Sarla Varma which we have reproduced herein before.

(vi) The selection of multiplier shall be as indicated in the table of Sarla Varma read with paragraph -42 of that Judgment.

(vii) The age of the deceased should be the basis for applying the multiplier .

(viii) The reasonable figures on conventional heads, namely loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10 percent in every 3 years.”

[11] The claimant petitioners have claimed that at the time of death the deceased was at her age of 44 years. Such claim remained unshaken even not disputed by the Noticee. Therefore, the age of the deceased at the time of death can be taken to have been admitted. The claimant petitioners have also proved the Salary certificate (Ext.3) of the deceased showing that the monthly income of the deceased was Rs. 4,202/- per month being an Anwanwadi worker under Panisagar ICDS Project. The deceased used to perform her duties from 8 a.m. to 12 p.m. In addition the deceased used to run a cloth shop from 1 p.m. to 8 p.m. at Khasiabari market taking a room on rent from the PW-2(Smt Anima Das) and thereby used to pay rent @ Rs. 2,000/- per month to the land lady.

[12] In this count, learned tribunal has erred in appreciating the fact that the deceased used to pay Rs.2,000/- as rent and it is not her income the amount is for paying rent. But, the learned tribunal has taken the same amount as her income from the cloth shop. In this regard PW-2, the landlady of the cloth has deposed that the deceased during her life time engaged as an Anganwari Worker under Panisagar ICDS Project, North Tripura. Duty hour of the said work from 8am to 12 pm. She used to run a cloth shop from 1pm to 8 pm at her local Khasiabari market situated at Khasiabari on Tilthai Road, 08 N.H. Under Panisagar P.S. North Tripura taking rent a room from her and she used to pay her Rs.2,000/- per month as rent.

[13] In view of above and having gone through the deposition of PW-2, this Court is of the view that the learned tribunal has wrongly assessed the monthly income of the deceased and which needs to be corrected. The Salary certificate (Ext.3) of the deceased shows that the monthly income of the deceased was Rs. 4,202/- per month being an Anwanwari worker and in addition to that, the deceased used to run a cloth shop and in the year 2021 a cloth shop owner would not earn less than Rs.6,000/- per month from the cloth shop. Thus, her total income would be $\text{Rs.}4,202 + 6,000 = \text{Rs.}10,202/-$ per month rounded off to Rs.10,000/-. The deceased was being at her age group of 41 to 45 years there should be 25% addition in her income and the calculation would be as follows:

(I) Income per month = Rs.,10,000/- only.

(II) 25% of above to be added as future prospect: - Rs.2500/- only.

(III) Total of Sl. Nos. I and II above comes to Rs.10,000/- + Rs. 2,500/-=Rs. 12,500/- only.

(IV) one third (1/3) of above to be deducted as personal and living expenses of deceased: - Rs.12,500/- minus Rs.4,166/- = Rs.8,334/- only.

(V) Compensation after applying multiplier of 14:- Rs. 8,334 x 12 x 14 = 14,00,112/-only.

(VI) Loss of Estate = Rs.15,000/-only.

(VII) Funeral expenses = Rs.15,000/- only.

VIII) Loss of love and affection=Rs. 2,00,000/- only

Thus, total compensation stands at $\text{Rs.}14,00,112 + 15,000 + 15,000 + 2,00,000/- = \text{Rs.}16,30,112/-$ only.

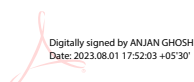
[14] Now coming to the question of liability, it appears that admittedly, the vehicle was insured and the same was taken on record. The accident was occurred on 16.11.2020 and the vehicle was insured up to midnight of 18.08.2021 thus, the insurance company is liable to pay the amount to the claimant. But the learned tribunal has fastened the liability to pay the compensation upon the owner of the vehicle wherein, the tribunal has utterly failed in deciding the same. Thus, this Court finds fault with the observation of the learned tribunal and accordingly, fastening the liability upon the insurance company to the amount as stated above. The rate of interest as assessed by the tribunal below seems to be higher in side accordingly; the same is reduced to 7.5% instead of 9%. Thus, the claimant is entitled to get the award of Rs.16,30,112/- only along with 7.5% interest from the date of registration of claim i.e, w.e.f. 12.01.2021 till the date of realization thereof. Thus, the cross-objection being CO (FA) No.01 of 2023, stands allowed.

[15] In view of above modification, the present appeal and the cross objection being CO (FA) 16 of 2022 stands partly allowed and disposed of. The insurance company shall deposit the awarded amount as assessed by this Court and the modified amount as discussed above, within a period of one month, from the date of receipt of the copy of this order, if not already deposited. Consequently, the claimant is at liberty to withdraw the same as per procedure. As a sequel, miscellaneous applications pending, if any, shall stand closed. Draw the award accordingly and thereafter, send down the LCRs forthwith.

JUDGE

A. Ghosh

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