

**HIGH COURT OF TRIPURA
AGARTALA
MAC APP NO.07 OF 2023**

The National Insurance Company Ltd.,
(To be represented by Senior Divisional Manager),
Agartala Divisional Office, 42, Akaura Road,
P.O.- Agartala, District- West Tripura, Pin-799001.

..... **Insurer Appellant(s)**

Vs.

1. Smt. Sadhana Debnath,
W/o. Late Rabindra Kumar Debnath.

2. Smti. Gita Debnath,
W/o. Late Manoranjan Debnath,
D/o- Late Rabindra Kumar Debnath.

3. Sri Haripada Debnath,
S/o. Late Manoranjan Debnath.

Sl. Nos. 1 to 3 are Residents of- Krishnanagar,
Majalispur, Ranirbazar, P.S.- Ranirbazar,
District – West Tripura.

4. Smt. Usha Rani Debnath,
W/o. Late Dilip Debnath,
Resident of Briddanagar, Majalispur, Ranirbazar,
P.S.- Ranirbazar, District- West Tripura.

5. Smti Bhabani Debnath,
W/o Gopal Debnath,
D/o- Late Rabindra Kumar Debnath,
Resident of Old Agartala, Champamura,
P.S.- Jirania, District- West Tripura.

..... **Claimant Respondent(s).**

6. Sri Prettyrose Debbarma,
S/o. Sri Ranjit Debbama,
Resident of Kumar Sadha Para, Champamura,
P.S.- Jirania, District- West Tripura,
Owner of Motor Bike No.TR.01-AH-6460.

.....**Owner Respondent(s)**

For the Appellant(s) : Mr. A.K. Deb, Advocate.

For the Respondent(s) : Mr. D. Debnath, Advocate.

CO(FA) NO.6 OF 2023

1. **Smt. Sadhana Debnath,**
W/o. Late Rabindra Kumar Debnath.

2. **Smti. Gita Debnath,**
W/o. Late Manoranjan Debnath,
D/o- Late Rabindra Kumar Debnath.

3. **Sri Haripada Debnath,**
S/o, Late Manoranjan Debnath.

Sl. Nos. 1 to 3 are Residents of- Krishna Nagar,
Majalispur, Ranirbazar, P.S.- Ranirbazar,
District – West Tripura.

4. **Smt. Usha Rani Debnath,**
W/o. Late Dilip Debnath,
D/o Lt. Rabindra Kumar Debnath.

5. **Smti Bhabani Debnath,**
W/o Gopal Debnath,
D/o- Late Rabindra Kumar Debnath,

..... **Claimant Respondent/Cross Objector(s)**
Vs.

1. **The National Insurance Company Ltd.,**
Represented by Senior Divisional Manager,
Agartala Divisional Office, 42, Akaura Road,
P.O.- Agartala, District- West Tripura, Pin-799001.

..... **Insurer-Appellant-Respondent(s)**

2. **Sri Prettyrose Debbarma,**
S/o. Sri Ranjit Debbama,
Resident of Kumar Sadha Para, Champamura,
P.S.- Jirania, District- West Tripura,
Owner of Motor Bike No.TR.01-AH-6460.

.....**Owner Respondent(s)**

For the Appellant(s) : Mr. D. Debnath, Advocate.

For the Respondent(s) : Mr. A.K. Deb, Advocate.

Date of hearing and delivery of
Judgment & Order : 05.10.2023.

Whether fit for reporting : YES.

HON'BLE MR JUSTICE T. AMARNATH GOUD

JUDGMENT AND ORDER(ORAL)

The present appeal has been filed under Section 173 of the M.V. Act against Award dated 14.09.2022 passed in T.S.(MAC)75 of 2019 by Member, Motor Accident Claims Tribunal, Court No.1, Agartala, West Tripura for modifying the impugned Award towards just and proper compensation and the instant cross-objection has been filed by the claimant-respondents No.1 to 5 against the appeal herein filed by the Insurer Appellant for modification and enhancement of the award dated 14.09.2022.

Both the instant appeal and cross objection are heard together and taken up for final disposal by this common Judgment and Order.

2. The brief fact of this case is that on 12.03.2019 one Rabindra Kumar Debnath, since deceased, was coming to his house from Old Agartala on foot keeping left side of the road. At about 13.45 hrs., when he reached near Khayerpur Bazar Tri-junction, a motorbike bearing registration No.TR-01-AH-6460 being driven rashly and negligently suddenly dashed him. As a result, he fell on the road and sustained grievous injuries on his

person. After the accident, he was shifted to AGMC & GBP Hospital, and got him admitted there. But during treatment, he succumbed to his injuries.

Concerning the said accident, a police case was registered with the Bodhjunnagar Police Station vide Bodhjunnagar P.S. Case No.15 of 2019 under Sections 279/304-A of I.P.C. It is also stated that the deceased was a pensioner having a monthly pension of Rs.15,000/- and at the time of the accident, he was aged 75 years. The claimants being the legal heirs of the deceased claimed compensation at Rs.39,70,000/- in total.

3. The owner-respondent of the motorbike by filing written statement categorically denied the accident and at the same time he stated that his motorbike was duly insured with the Noticee, National Insurance Company Ltd., during the period from 16.08.2018 to 15.08.2019 and as such, if any, compensation is awarded, that should be paid by the insurer of the motorbike.

4. O.P. No.2, National Insurance Company Ltd. in their written statement stated that the petition is not maintainable for non-joinder and mis-joinder of necessary and proper parties. The Insurance Company also denied and disputed all the averments made in the claim petition such as FIR, ejahar, charge sheet, age, income, documents relating to medical treatment, and other documents except whatever was specifically admitted by them.

The Insurance Company also denied and disputed the valid registration, fitness, route permit, and driving licence of the driver at the relevant date and time of the accident. It is also stated by them that the insurance is a contractual obligation between the insurer and the insured and if any breach of contract by the insured is there, the insured himself would be liable to indemnify the claimant if any award is given by the Tribunal.

5. Based on pleadings and documents of the parties, the following issues were framed:-

(1) Did deceased Rabindra Kr. Debnath die due to road traffic accident occurred on 12.03.2019 at about 13.45 hrs. Khayerpur market tri-junction under Bodhjungnagar P.S. out of use of vehicle bearing registration No.TR-01-AH-6460 (Motor-cycle) due to rash and negligent driving of its driver?

(2) Are the petitioners entitled to get compensation? If so, to what amount and who is/are liable to pay the same ?

(3) To what other reliefs are the parties entitled ?

6. During the hearing, claimant No.1 Smti. Sadhana Debnath examined herself as PW-1 and the following documents such as certified copy of FIR of Bodhjungnagar P.S. Case No.15/2019 in 2 sheets **(Exbt.1)**, certified copy of ejahar **(Exbt.2)**, two seizure lists **(Exbt.3 & 3/1)**, certified copy of the post mortem report of Rabindra Kr. Debnath in 4 sheets **(Exbt.4)**, certified copy of charge sheet in 7 sheets **(Exbt.5)**, photocopy of the pension payment order book of the deceased **(Exbt.6)** and vehicle screen reports in 2 sheets **(Exbt.7 & 7/1)** were taken into evidence on her behalf. The photocopy of the

Pension Payment Order book was marked exhibit on comparison with the original. She also examined another witness namely, Sri Dipankar Das as PW2. No oral or documentary evidence has been adduced either by the O.P. or the Noticee Insurance Co., in support of their case.

7. After hearing the parties and perusing the evidence on record, the learned Tribunal passed the impugned award dated 14.09.2022 in the following manner:-

"

ORDER

It is, therefore, held that the petitioners are entitled to get compensation of Rs.6,97,755/- (Rupees six lakh ninety seven thousand seven hundred fifty five) only with interest @ 6%, per annum, from 01.04.2019 i.e. from the date of filing of the claim petition till the date of actual payment. The Noticee, National Insurance Co. Ltd., Agartala Branch is directed to make payment of compensation with interest within 30 days from today.

In the claim petition it is found that there were 5 claimants and they are the wife, son and married daughters of the deceased. As such, out of the awarded amount of compensation inclusive of interest, the petitioner no.1 will get 40% and remaining petitioners i.e. petitioner nos.2, 3, 4 and 5 will get 15% each."

8. Being aggrieved and dissatisfied with the impugned Award, National Insurance Company Ltd.O.P. No.2 has preferred this present appeal to modify the quantum of the award dated 14.09.2022 towards "*just and proper compensation*" after setting aside the impugned award passed in T.S. (MAC)75 of 2019. Vice versa the present cross objection has been filed by the claimant-respondents No.1 to 5 against the appeal herein filed by the Insurer Appellant for modification and enhancement of the award dated 14.09.2022.

9. Heard Mr. A.K. Deb, learned counsel appearing for the Insurance Company as well as Mr. D. Debnath, learned counsel appearing for the claimants.

10. Mr. A.K. Deb, learned counsel appearing for the appellant-Insurance Company submitted that as per the principle held by the Hon'ble Apex Court in **Sarla Verma(Smt.) and ors. Vs. Delhi Transport Corporation and anr.**, reported in **(2009) 6 SCC 121**, multiplier 5(five) is allowed up to the age schedule of 66 years to 70 years. The same has been reiterated by the Hon'ble Apex Court in the Judgment passed in **National Insurance Company Ltd. Vs. Pranay Sethi and ors.**, reported in **(2017) 16 SCC 680**. But the learned Tribunal wrongly allowed multiplier 5 in the present case where according to the Tribunal itself, the age of the deceased was 78 years at the time of the death. So the claimant-respondents are not entitled to get the benefit of multiplier with regard to the annual income of the deceased.

Mr. Deb, learned counsel also submits that except the claimant-respondent No.1, i.e., the wife of the deceased, other claimants i.e., the 3(three) daughters and 1(one) son of the deceased cannot be considered as dependent on the income of the deceased who was aged 78 years. Moreover, the son and daughters of the deceased are all major and married and not dependent on the income of the deceased. Further claimants have not made any prayer in the claim petition that son and daughters

herein are dependants. So, in the present case, the wife of the deceased i.e., the claimant-respondent No.1 being the only dependent, the deduction towards personal and living expenses of the deceased should be $1/3^{\text{rd}}$ instead of $1/4^{\text{th}}$.

Mr. Deb, learned counsel further submits that the income of the deceased has also been wrongly assessed at Rs.5,774/-, since from the Pension Payment Order, it is revealed that the net pension of the deceased was only Rs.2,555/-.

11. On the other hand, Mr. D. Debnath, learned counsel appearing for the claimant-respondents submits that in terms of column(4) of the tabular chart given in **Sarla Verma(supra)**, multiplier 5 is applicable for the age group above 65 years. According to the Hon'ble Apex Court, the table given in the said Judgment should be followed as the table is the schedule.

On the point of dependency, learned counsel further submits that all the claimants were dependent on the income of the deceased and from the pension amount, the deceased used to support all the claimants.

Further learned counsel appearing for the claimant-respondents submits that he has filed the cross objection because there are 5 numbers of Claimant Petitioners/Cross Objectors and each one of Cross Objectors were/are entitled to receive consortium, but the learned Tribunal did not determine the amount of consortium while passing the award. In terms of the Hon'ble

Apex Court Judgment passed in ***Magma General Insurance Company Ltd. Vs. Nanu Ram alias Chuhru Ram and ors.***, reported in ***(2018) 18 SCC 130***, the claimants herein are entitled to the amount of consortium.

12. Heard both sides and perused the evidence on record.

CONCLUSION

13. According to the Pension Payment Order book, on the date of the accident, the age of the deceased was 78 years. So, in terms of the multiplier as made applicable under the table decided at Column No.(4) in ***Sarla Verma(supra)***, multiplier 5 is to be applied for the age group of 65 years and above, the same is taken on record. Accordingly, the first point of argument of Mr. Deb, learned counsel appearing for the appellant-Insurance Company is answered in favour of the claimants. Here the argument of Mr. Deb, learned counsel that in ***Sarla Verma(supra)*** multiplier 5(five) is allowed up to the age schedule 66 years to 70 years does not stand because the same was said the by Hon'ble Apex Court in the said Judgment in the context of other cases. Therefore, the age of the deceased 78 years is considered as per table 65 years and above and considered the case of the claimants accordingly as there is no restriction up to 70 years. The lifespan as per table can be beyond 70 years. Thus, the argument of the Insurance-counsel is rejected.

14. Now on the point of deduction towards personal and living expenses, the claim has been filed by 5(five) claimants i.e., the widow of the deceased and the remaining 4(four) major married son and daughters of the deceased. So, accordingly, the $1/4^{\text{th}}$ deduction which is given by the Tribunal below needs to be modified to $1/3^{\text{rd}}$ as only the widow is entitled as dependent. The argument on this point advanced by Mr. Deb, learned counsel is taken on record, and the same is accordingly answered and the observation made by the Tribunal below to this effect is modified. Accordingly, the deduction towards personal and living expenses as per **Pranay Sethi(supra)** is reduced from $1/4^{\text{th}}$ to $1/3^{\text{rd}}$.

15. In so far as the income of the deceased is concerned, the deceased being a retired employee and as per his Pension Payment Order book, the amount he was drawing was Rs.2,555/- per month and the learned Tribunal below has considered Rs. 14,839/- per month by calculating his future DAs and other emoluments which are entitled as per law. The same is not disturbed and the said argument as advanced by Mr. Deb, learned counsel is rejected and the issue is decided favour of the claimants.

16. The present Cross objection has been filed by the claimants who are the widow, major, and married son and daughters of the deceased. According to this Court, all the cross

objectors are entitled to Rs.40,000/- each for loss of consortium following the law laid down by the Hon'ble Apex Court in **Magma (supra)**, and the same is awarded.

17. As quoted supra, the Tribunal below awarded a total compensation of Rs.6,97,755/- only with interest @ 6%, per annum, from 01.04.2019 i.e. from the date of filing of the claim petition till the date of actual payment. The break up of the said total compensation is as follows:-

"Rs.14,839/- X 12 X 5 = Rs.8,90,340/- for loss of dependency, after 1/4th deduction on account of personal and living expenses of the deceased, the amount comes to Rs.8,90,340/- - Rs.2,22,585 = Rs.6,67,755/- and after adding Rs.15,000/- each for loss of estate and on the count of funeral expenses, the total amount is assessed at Rs.6,67,755/- + Rs.15,000/- + Rs.15,000/- = total Rs.6,97,755/- only".

18. Now in terms of the present appeal and cross objection as stated herein supra, the total compensation to be awarded to the claimants herein stand as under:-

"i. Rs.8,90,340/- for loss of dependency.

ii. After the deduction of 1/3rd on account of personal and living expenses of the deceased, the net amount comes to Rs.8,90,340/- - Rs.2,96,780/- = Rs.5,93,560/-.

iii. After the addition of Rs. 40,000/- each for the claimants herein in terms of loss of consortium, the amount comes to $Rs.40,000 \times 5 = Rs.2,00,000/- + Rs.5,93,560/- = Rs.7,93,560/-$

iv. After the addition of Rs.15,000/- each for loss of estate and on the count of funeral expenses, the total amount is assessed at $Rs.7,93,560/- + Rs.15,000/- + Rs.15,000/- = Rs.8,23,560/-$ only".

19. So, accordingly in terms of the above modification the total award of compensation to the claimants herein is assessed at Rs.8,23,560/- (Rupees eight lakh twenty-three thousand five hundred sixty) only. Except for the said amount, other direction(s) as given by the learned Tribunal below shall remain intact.

20. Accordingly, with the above observation and direction, the present appeal and the cross objection are allowed to the extent indicated here-in-above. Draw the decree accordingly.

21. As a sequel, stay if any stands vacated. Pending application(s), if any also stands closed.

JUDGE

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