

**HIGH COURT OF TRIPURA
AGARTALA**

MAC.APP. No.97/2022

1. The United India Insurance Company Limited, Represented by the Branch Manager, Branch Office at-1st Floor, Jayram Building, Pamohi Road, P.O.-Gorchuk, District-Kamrup, Assam, 781035. (Insurer of NL-01-G-4365, Truck)

2. The Manager, The United India Insurance Company Limited, Agartala Branch, RMS Chowmuhani, P.O.-Agartala, P.S.-West Agartala, District-West Tripura. (Insurer of NL-01-G-4365, Truck)

..... O.P. Nos.2 and 3-Appellant(s)

V E R S U S

1. Smt. Jamuna Debbarma (Malakar), W/O. Late Kajal Malakar,

2. Master Sanjoy Malakar, S/O. Late Kajal Malakar (represented by his mother being natural guardian, Petitioner No.1);

3. Smt. Sefali Malakar, W/O. Sri Sankar Malakar;

4. Sri Sankar Malakar, S/O. Lt. Birendra Malakar;

All are residents of Vill-Aralia, P.O.-Jogendranagar, Sub-P.O.-Aralia, Champamura School Para, P.S.-East Agartala, District-West Tripura, 799010.

.....Claimant-Respondent(s)

5. Sri Krishna Narayan Podder, S/O. Late Radha Kanta Podder, Near-NST Station, Nagaland, Kohima, 797001 (vehicle registration address), Present Address (Notice to be served through) House No.11, A.K. Azad Road, Gopinath Nagar, Opposite Arya Vidyapith College, P.O.-Birubari, Guwahati, Assam, PIN-781016 (Owner of NL-01-G-4365, Truck).

.....O.P.-Respondent(s)

6. Sri Shib Das, S/O. Sri Binod Das, East Aralia, P.S.-East Agartala, P.O.-Jogendranagar, Sub-P.O.-Aralia, District-West Tripura, 799010 (owner of the Motor Bike bearing No.TR-01-L-8393, Pulsar Bike).

.....Proforma O.P.-Respondent(s)

For Appellant(s)	: Ms. R. Purkayastha, Advocate.
For Respondent(s)	: Mr. P.K. Pal, Advocate, Mr. S. Datta, Advocate, Ms. M. Majumder, Advocate.

Along with

CO(FA) No.02/2023

1. Smt. Jamuna Debbarma (Malakar), W/O. Late Kajal Malakar,
 2. Master Sanjoy Malakar, S/O. Late Kajal Malakar Represented by his mother, being natural guardian, claimant-respondent No.1.
 3. Smt. Sefali Malakar, W/O. Shri Sankar Malakar;
 4. Shri Sankar Malakar, S/O. Late Birendra Malakar;
- All are residents of Vill-Aralia, P.O.-Jogendranagar, P.S.-East Agartala, District-West Tripura, Pin-799004.
- Claimant-Respondent/Cross Objectors(s)

V E R S U S

1. The Manager, United India Insurance Company Limited, Agartala Branch, RMS Chowmuhani, P.O.-Agartala, P.S.-West Agartala, District-West Tripura, Pin-799001. (Insurer of Vehicle No.NL-01-G-4365,Truck)
- O.P.-Appellant/Respondent(s)
2. Sri Krishna Narayan Podder, S/O. Late Radha Kanta Podder, Resident of-House No.11, A.K. Azad Road, Gopinath Nagar, Opposite Arya Vidyapith College, P.O.-Birubari, Guwahati, Assam, PIN-781016 (Owner of the Vehicle No.NL-01-G-4365,Truck).
 3. Shri Shib Das, S/O. Shri Binode Das, Resident of: East Aralia, P.O.-Jogendranagar, P.S.-East Agartala, District-West Tripura-799004 (Owner of Motor Bike bearing No.TR-01-L-8393, Pulsar Bike).
- Proforma O.P./Respondent(s)

For Appellant(s)	: Mr. P.K. Pal, Advocate, Mr. S. Datta, Advocate, Ms. M. Majumder, Advocate.
For Respondent(s)	: Ms. R. Purkayastha, Advocate.

HON'BLE THE CHIEF JUSTICE (ACTING)

Date of hearing and judgment : **30th March, 2023.**

Whether fit for reporting : **YES.**

JUDGMENT & ORDER (ORAL)

This appeal and cross objection are being disposed of by a common judgment since they arise out of the same award dated 10-02-2022 passed by the learned Motor Accident Claims Tribunal, Tribunal No.2, West Tripura, Agartala in case No. T.S.(MAC) 143 of 2016 whereby he awarded compensation of Rs.23,44,000/- to the claimant petitioners with 9% simple interest per annum from the date of filing of the claim petition till realization thereof.

2. Brief facts of the case are as under:

The claimant petitioners filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 (M.V. Act) before the Motor Accident Claims Tribunal for compensation due to the death of deceased Kajal Malakar in a road traffic accident. In this claim petition, it was alleged that

on 12.04.2015 at about 5 p.m. while the deceased Kajal Malakar was going towards market by riding one motorbike (Pulsar bike) bearing registration No.TR-01-L-8393 and took turn towards right side, suddenly one truck bearing registration No.NL-01-G-4365 being driven rashly and negligently dashed the motorbike resulting which he sustained grievous injuries and was taken to GBP Hospital where he was declared dead In this connection, a specific police case vide East Agartala PS Case No.2015EAG054 dated 12.04.2015 under sections 279/304-A of IPC read with Sections 184/187 of M.V. Act was registered. The claimants, therefore, approached the Claims Tribunal seeking compensation to the tune of Rs.23,44,000/- due to the death of deceased Kajal Malakar. The Claims Tribunal framed issues and after appreciating all evidence and documents produced on record awarded a compensation of Rs. 23,44,000/- in favour of the claimants with 9% simple interest from the date of filing of the claim petition. Being aggrieved by the award dated 10.02.2022, the insurance company has preferred the instant appeal being MAC.APP. No.97 of 2022 for reduction of compensation whereas the claimants have also preferred a cross appeal being CO(FA) No.02 of 2023 for enhancement of compensation. Hence, this case.

3. Heard Ms. R. Purkayastha, learned counsel appearing for the appellant-insurance company and Mr. P.K. Pal, learned counsel appearing for the respondent-claimants.

4. Ms. R. Purkayastha, learned counsel appearing for the appellant-insurance company, contends that from the charge-sheet it is apparent that the technical expert of the TSFSL opined that alcohol has been detected from the viscera of the deceased from which it can be concluded that the accident occurred due to contributory negligence of the deceased. Counsel also contends that the owner did not exhibit the driving license of the driver of the offending vehicle of which the appellant is the insurer and as such, the owner has violated the condition of the insurance policy for which the insurance company is not liable to indemnify the owner. Accordingly, she prays for setting aside the impugned award dated 10-02-2022 passed by the learned Motor Accident Claims Tribunal, Tribunal No.2, West Tripura, Agartala in case No. T.S.(MAC) 143 of 2016.

5. On the other hand, Mr. P.K. Pal, learned counsel appearing for the respondent-claimants, referring to paragraph-9(c) of the impugned award dated 10.02.2022 has contended that the learned Tribunal computed the total compensation at Rs.25,19,000/- but without any valid reason restricted it to

the tune of Rs.23,44,000/- as per claim of the claimant petitioners. Learned counsel also contends that due to miscalculation the claimants could not claim the entitled benefit as per Act for which they cannot be deprived of their legitimate compensation. In support of his contention, learned counsel relied on a decision of three Judge Bench of the Hon'ble Supreme Court in the case of *Nagappa vrs. Gurdayal Singh and others* reported in (2003) 2 SCC 274 wherein it was observed by the Apex Court that under the M.V. Act, there is no restriction that the Tribunal/Court cannot award compensation exceeding the amount so claimed. Accordingly, he prays for allowing his cross objection by enhancing the amount of compensation in accordance with law.

6. Having considered the submissions of learned counsel for the respective parties, this Court is of the considered view that it is seen from the award of the learned Tribunal that the enhancement has been computed to the tune of Rs.25,19,000/- and since the claim was made for Rs.23,44,000/-, the learned Tribunal has restricted the amount. It is settled principle of law that there cannot be any restriction in view of the beneficial legislation and the same is decided way back in the year 2003 in *Nagappa's* case (*supra*).

7. Accordingly, the cross objection [CO(FA) No.02 of 2023] filed by the claimants is allowed by awarding compensation of **Rs.25,19,000/-** as fixed by the learned Tribunal. The awarded amount shall be deposited within one month from today and on such deposit, the claimants are at liberty to withdraw the same unconditionally as per procedure. Consequently, the appeal being MAC. APP. No.97 of 2022 filed by the insurance company also stands dismissed.

8. Send down the lower court records forthwith.

Stay order, if any, stands vacated.

Pending application(s), if any, also stands disposed of.

CHIEF JUSTICE (ACTING)

Pulak