

**HIGH COURT OF TRIPURA
AGARTALA
MAC APP NO.22 OF 2023**

Smt. Pinki Majumder Das and anr.

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

Vs.

Sri Suchital Debbarma and ors.

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

For the Appellant(s) : Mr. T. Chakraborty, Advocate.

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

Date of hearing and delivery of
Judgment & Order : 09.10.2023.

Whether fit for reporting : NO.

HON'BLE MR JUSTICE T. AMARNATH GOUD

JUDGMENT AND ORDER(ORAL)

This present appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Award dated 28.11.2022 passed by the learned Member, Motor Accident Claims Tribunal, Court No.1, Agartala, West Tripura in Case No.T.S.(MAC)69 of 2020 for enhancement of the awarded compensation.

2. The brief fact of this case is that on 30.12.2019 in the evening at about 8.30 p.m. the victim went to Amtali market on his motorcycle bearing registration no. TR-01-E-7780 and after keeping his motorcycle in stationery condition by the side of the road, he went to the Pharmacy namely "*Adyasakti Medical Stores*" to purchase medicines. After the purchase of medicines, he was coming

back to his motorcycle and when he reached near his motorcycle, at that time, a Hyundai Car bearing registration no. TR-01-BH-0553 came from the side of Bishalgarh at high speed and dashed the victim Dibakar Das and he fell down on the road. Due to the said accident, the victim Dibakar Das sustained grievous injuries on his person. Immediately after the accident, the local people and shopkeepers rushed to the spot and the Police also arrived there forthwith and shifted the injured to the TMC Hospital, Hapania for treatment, wherein, after some time he was declared dead. Post mortem examination was done over the dead body and thereafter, the body was handed over to the near relatives for cremation.

3. Concerning the said accident a police case was registered with the Amtali Police Station vide Amtali P.S. Case No.235 of 2019 under Sections 279/304A I.P.C. read with Sections 184 and 187 of M.V. Act. The petitioners claimed compensation to the tune of Rs.51,00,000/- for the death of the said victim.

4. To substantiate the claim, the appellants submitted the FIR, Ejahar, seizure lists, MVI reports, accident information report, charge etc., in connection with Amtali P.S. case No.235 of 2019. Post mortem report, death certificate, driving license etc., of the deceased Dibakar Das etc., were marked and exhibited.

5. The respondents as the opposite party resisted the claim by filing separate written statements. The respondent O.P. No.1 i.e., the owner of the offending vehicle, in his written statement, has denied all the material averments made by the claimants in his

claim petition. However, it was admitted that at the time of the accident, he was the registered owner of the offending vehicle and it was duly insured with the Reliance General Insurance Company Ltd., with a valid policy of insurance covering the period of the accident.

6. The learned Tribunal after considering the materials, vide Judgment and Award dated 28.11.2022 disposed of the claim petition in the following manner:-

" ORDER

It is, therefore, held that the petitioners are entitled to get compensation of Rs.17,95,000/- (Rupees Seventeen Lakh Ninety five Thousand) only with interest @ 7% per annum from 22.05.2020 i.e. from the date of filing of the claim petition till the date of actual payment. The Noticee no.2 Reliance General Insurance Co. Ltd. is directed to make the payment of compensation with interest within 30 days from today.

Out of the awarded amount of compensation inclusive of interest, the petitioner no.1 will get 50%, minor petitioner no.2 will get 25% and petitioner no.3 will get 25%. Out of the share of the petitioner no.1 and 3, 50% of their respective share shall be kept in a fixed deposit scheme in their respective names in any Nationalized Bank for a period of five years each and rest 50% of their share will be paid to them through their respective Bank Account. However, the petitioner no.1 and 3 shall be at liberty to withdraw monthly interest therefrom for their day to day expenses. The entire share of minor petitioner no.2 will be kept in fixed deposit scheme in any nationalized bank in his name till he attains majority i.e. 21 years of age. The petitioner no.1 being the natural guardian and next friend mother of the minor petitioner no.2 shall be at liberty to withdraw monthly interest from his fixed deposit for his proper upbringing. No loan or withdrawal shall be permitted from any of the fixed deposits without prior permission of this Tribunal."

7. Being aggrieved by and dissatisfied with the said Judgment and Award dated 28.11.2022, the claimant-appellants have filed this appeal seeking to allow this appeal by setting aside the impugned Judgment and Award passed by the learned Member, Motor Accident Claims Tribunal, Agartala in T.S.(MAC) No.69 of 2020.

8. When the case is called on 06.10.2023, having notice that there was no representation for Reliance General Insurance Company Ltd., which is a necessary party, the same has been listed on 09.10.2023 date for printing the name of Reliance General Insurance Company Ltd., Agartala branch in the cause list. Accordingly, the matter is today under the caption of '*final hearing*' and the name of Reliance General Insurance Company Ltd., is also printed in the cause list. When the case is called, Mr. T. Chakraborty, learned counsel appearing for the appellants is present, and also Mr. A.K. Pal, learned counsel for the owner-respondent is present. But there is no representation on behalf of Reliance General Insurance Company Ltd. Since the matter is listed for final hearing, this Court feels that the same be heard.

9. Mr. T. Chakraborty, learned counsel appearing for the claimant-appellants submits that at the time of death, the deceased was a businessman by profession. He used to run a poultry farm in the name and style of "*Shiv Sankar Poultry Farm*" at his residence at Madhuban. By means of that business, he used to earn about Rs.30,000/- per month. However, the learned Tribunal assessed the monthly income of the deceased at Rs.9,000/- per month, which is on the lower side.

In support of his contention, he draw the attention of this Court to a xerox copy of a trade license certificate dated

27.02.2019, wherein, it is stated that '*The license is valid up to 26.02.2020*'. Stating thus he urged this Court to allow this appeal.

10. Heard and perused the evidence on record.

11. The learned Tribunal below while considering the monthly income of the deceased assessed the monthly personal income of the victim at the time of his death at Rs.12,000/- per month on the strength of the poultry farm. In support of the argument, the learned counsel appearing for the appellant has drawn the attention of this Court to a xerox copy of trade license certificate issued by the Office of Gram Panchayet in February, 2017 valid upto February, 2018 for running the poultry business by the deceased. The accident took place on 30.12.2019. As on the date of the accident, no such documentary proof was placed on record, either by way of original nor by xerox copy to say that the deceased person or the claimants were running poultry business. The oral evidence before the Tribunal below is also silent to establish the poultry business as relied herein.

12. However, taking into consideration regarding the notional income of a family with deceased , his wife, minor child, and the mother, and also keeping the mind the fact that the deceased also used to maintain a two-wheeler motor vehicle, some open land, and also a house, this Court considers that the deceased might be leading an average income life and accordingly, the notional income of the deceased is fixed at Rs.15,000/- per month.

13. In the course of argument, before this Court, the learned counsel appearing for the claimants has placed on record an original trade license issued by the Office of the gram panchayet for 2019 to 2020 to say that the deceased and the claimants were running a poultry business. However, this Court declines to accept the same since the said document is neither placed on record and the same cannot be accepted across the Bench. The said trade license certificate is returned since the same is not accepted and taken on record.

14. For the reasons stated above, Rs.15,000/- per month is fixed as the notional income of the deceased. The rest of the award and direction(s) as passed by the learned Tribunal below stands undisturbed

15. Accordingly, as relied by the learned Tribunal below, in terms of **National Insurance Company Ltd. Vs. Pranay Sethi and ors.,** reported in **(2017) 16 SCC 680** further 25% is added to the said amount as future income. Thus, the monthly income comes to Rs.15,000/- plus Rs.3,750= Rs.18,750/- . Thus, loss of dependency is assessed at Rs.18,750/- X 12 X 14= Rs.31,50,000/-. After deduction of 1/3rd therefrom on account of personal expenditure, the net amount comes to Rs.31,50,000/- - Rs.10,50,000/- = Rs.21,00,000/-. So, in terms of the above calculation and other heads as given by the learned Tribunal

below, the total compensation comes to Rs.21,00,000/- + Rs.1,65,000/- = Rs.22,65,000/- - Rs.50,000/- = **Rs.22,15,000/-** (*Rupees twenty two lakh fifteen thousand*) only, the said amount, the appellant here are entitled to get as compensation.

16. The said amount be deposited in 2(two) months if not already deposited and on such deposit, the claimants are at liberty to withdraw the same as per the directions of the award passed by the Tribunal below.

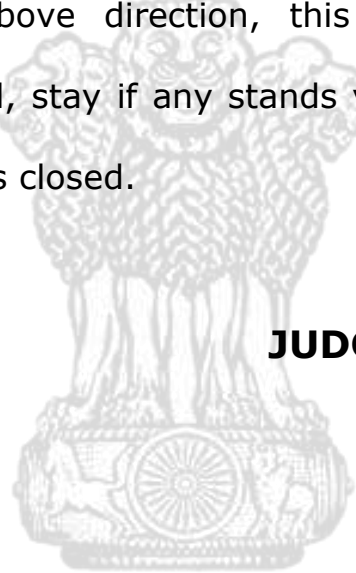
17. With the above direction, this present appeal stands disposed of. As a sequel, stay if any stands vacated. Pending application(s), if any also stands closed.

JUDGE

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