

**HIGH COURT OF TRIPURA
AGARTALA
MAC APP NO.13 OF 2022**

Smt. Champa Sinha,
W/o. Lt. Babu Chan Sinha,
Of Village-AC office Elaka, P.S.-Kumarghat,
District- Unakoti Tripura.

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

Vs.

1. Sri Nepal Sharma,
S/o Late Jagadish Sharma,
Of Ambassa Colony, P.S.-Ambassa,
District- Dhalai Tripura,
[Driver of TR-04-A-1802(Truck)].

2. Sri Kishaloy Roy,
S/o. Sri K.K. Roy,
Of 86 Hospital, Extension Road,
Agartala, West Tripura,
(Owner of Motorcycle TR-01-N-7181).

3. Sri Nishan Saha,
S/o Nitai Saha,
Of Ambassa Town, P.S.- Ambassa,
District- Dhalai Tripura,
[Owner of TR-04-A-1802(Truck)]

**4. The Branch Manager,
New India Assurance Company Limited,**
Divisional Office, Mantri Bari Road,
Page NO.1 of 19 Title Suit (MAC) 20 of 2018,
Agartala West Tripura,
(Insurer of Motor Cycle TR-01-N-7181).

**5. The Branch Manager,
Future General India Insurance Co. Ltd,**
2nd Floor, GRS Towwer RMA Chowmohani,
A.K. Road, Agartala, West Tripura.
[insurer of Motor Cycle TR-04-A-1802(Truck)].

6. Prasenjit Sinha,
S/o. Late Pratap Sinha,
Ward No.3, S.E. Office, Kumarghat,
Unakoti District.

(The name of Sri Prasenjit Sinha added as OP No.6 as per Order dated 30.05.2019).

..... Respondent(s)

MAC APP NO.14 OF 2022

1. Sri Sukumar Sinha,
S/o Late Ram Babu Sinha,

2. Smt. Debakanya Sinha, Age-60
W/o. Sukumar Sinha,
Both are resident of Village-S.E. Complex,
P.S.-Kumarghat, District-Unakoti Tripura.

..... Appellant(s)

Vs.

1. Sri Nepal Sharma,
S/o Late Jagadish Sharma,
Of Ambassa Colony, P.S.-Ambassa,
District- Dhalai Tripura,
[Driver of TR-04-A-1802(Truck)].

2. Sri Kishaloy Roy,
S/o. Sri K.K. Roy,
Of 86 Hospital, Extension Road,
Agartala, West Tripura,
(Owner of Motorcycle TR-01-N-7181).

3. Sri Nishan Saha,
S/o Nitai Saha,
Of Ambassa Town, P.S.- Ambassa,
District- Dhalai Tripura,
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S/o. Late Pratap Sinha,
Ward No.3, S.E. Office, Kumarghat,
Unakoti District.

(The name of Sri Prasenjit Sinha added as OP No.6 as per Order dated 30.05.2019).

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

For the Appellant(s) : Mr. H.K Bhowmik, Advocate.

For the Respondent(s) : Mr. P. Chakraborty, Advocate.
Mr. S. Lodh, Advocate.
Mr. D. Debnath , Advocate.

Date of hearing and delivery of
Judgment & Order : 18.07.2023

Whether fit for reporting : YES/NO.

HON'BLE MR JUSTICE T. AMARNATH GOUD

JUDGMENT AND ORDER

Both these appeals are heard and taken up together for disposal since similar questions of facts and law are involved.

2. Both these appeals are filed under Section 173 of the Motor Vehicles Act, 1968.

i. MAC App No.13 of 2022 has been filed against the impugned Judgment and Order dated 23.11.2021 passed by the learned Member, MACT(2nd), Unakoti Judicial District, Kailashahar in connection with Case No.TS(MAC) No.03 of 2019 arising out of the Misc. petition 24 of 2017(AIR), whereby, learned Tribunal has rejected the prayer of claimant made under Section 166 of the M.V. Act, being devoid of merit.

ii. MAC App No.14 of 2022 has been filed against the impugned Judgment and Order dated 23.11.2021 passed by the learned Member, MACT(2nd), Unakoti Judicial District, Kailashahar in connection with Case No.TS(MAC)20 of 2018 arising out of Misc. Petition 26 of 2017(AIR), whereby, the learned Tribunal rejected the prayer of the claimants made under Section 166 of the M.V. Act being devoid of merit.

3. The brief fact of these cases is that on 05.10.2016 at about 22.30 hours, a truck loaded with wooden logs was parked on the Kumarghat-Fatikroy Road near Ramkrishna Ashram. At that time, a vehicle bearing no. TR-01-N-7181 (Motorcycle) was proceeding from Fatikroy side and dashed on the backside of the truck. As a result, the rider-Pradip Sinha and the pillion rider-Raju Sinha of the motorcycle fell down on the road and sustained severe bleeding injuries. Kumarghat fire service personnel rushed to the spot and shifted the injured to Kumarghat Hospital, Kumarghat, and on 06.10.2016 both the injured died. The deceased Raju Sinha was about 24 (twenty-four) years of age and the deceased Pradip Sinha was about 32(thirty-two) years of age at the time of accident. The deceased Raju-Sinha left the claimant of MAC App No.13 of 2022 as his legal heirs and the deceased Pradip Sinha left the claimants of MAC App No.14 of 2022 as his legal heir. Both the deceased were businessmen by profession and their monthly

income was claimed to be about Rs. 6,000/- (Rupees six thousand) only each.

4. Due to the sudden unnatural death of the deceased Raju Sinha, the claimant of MAC App No.13 of 2022 estimated a claim of Rs. 20,54,000/- (Rupees twenty lakhs fifty-four thousand) only towards compensation and due to sudden unnatural death of the deceased-Pradip Sinha, the claimants of MAC App No.14 of 2022 estimated claim is Rs. 16,22,000/- (Rupees sixteen lakhs twenty-two thousand) only towards compensation. In response to the show cause, the respondents appeared and filed their respective written statements.

5. After perusal of the pleadings of the parties and documents, learned Tribunal framed the following issues in T.S.(MAC) No.03 of 2019:-

"(I) Whether the suit is maintainable in its present form and nature?

(II) Whether on 05.10.2016 at about 22:30 hours the victim Raju Sinha had met with an accident at Nidevi near Ramkrishna Ashram on Kumarghat-Fatikroy road under Kumarghat PS while he was proceeded towards Kumarghat from Fatikroy as pillion rider of a motorcycle bearing no. TR-01-N-7181 piled by Pradip Sinha and dashed on the back side of the vehicle bearing no. TR 04-A-1802 (Truck) being negligently and wrongfully parked by driver Nepal Sharma and the victim fell down and sustained grievous injury and on 06.10.2016 he died?

(III) Whether the claimant is entitled to get any compensation, if so, to what extent?

(IV) Who is liable to pay the compensation?

(V) To any other relief/reliefs to which the party is entitled to, if any?"

6. Learned Tribunal framed the following issues in T.S.(MAC) No.20 of 2018:-

"(I) Whether the suit is maintainable in its present form and nature?

(II) Whether on 05.10.2016 at about 22:30 hours the victim Pradip Sinha had met with an accident at Nidevi near Ramkrishna Ashram on Kumarghat-Fatikroy road under Kumarghat P/S while he was proceeded towards Kumarghat from Fatikroy by riding a motorcycle bearing no. TR-01-N-7181 and dashed on the backside of the vehicle bearing no. TR 04-A-1802 (Truck) being negligently and wrongfully parked by driver Nepal Sharma and the victim fell down and sustained grievous injury and on 06.10.2016 he died?

(III) Whether the claimants are entitled to get any compensation, if so, to what extent?

(IV) Who is liable to pay the compensation?

(V) To any other relief/reliefs to which the parties are entitled to, if any?"

7. After hearing the argument of both sides, the learned Tribunal as per Judgments and Orders dated 23.11.2021 rejected the prayer of the claimants being devoid of merit. Being aggrieved and dissatisfied with the aforesaid judgment and Order of rejection, this present appeals have been preferred seeking the set aside the impugned Judgments and Orders dated 23.11.2021.

8. Heard Mr. H. Bhowmik, learned counsel appearing for both the appeals as well Mr. P. Chakraborty, learned counsel appearing for the respondent-New India Assurance Company Ltd, Mr. S. Lodh, learned counsel for respondent No.2 and Mr. D. Debnath, learned counsel appearing for respondents No.1 and 3.

9. Mr. H. Bhowmik, learned counsel appearing for the appellants submits that the truck driver negligently parked his truck on the road and due to the negligence of the driver of the truck the accident occurred. This statement is also supported by the written statement in the FIR wherein the Officer-in-Charge Kumarghat Police Station stated that he saw a truck loaded with wooden logs wrongly parked in the middle of road and the accident

occurred due to the negligence of the driver of the truck. Learned counsel further stated that even if it is presumed that the accident occurred due to the rash and negligent driving of the driver of the motorbike, but, the claimant of deceased Raju-Sinha ought to have received the compensation as he was the pillion rider. Learned counsel further submitted that the learned Trial Court without any exhibited documents came to the conclusion that the involved motorbike was not insured.

10. On the other hand, Mr. P. Chakraborty, learned counsel appearing for respondent No.4 i.e. the insurer of Motorcycle No. TR.01-N-7181 submits that due to the rash and negligent driving of the motorcycle, the same hit the stationary Truck due to which the accident occurred. He further submitted that if any liability is to be fasten, the same is to be fastened on the insurer of the Truck bearing No.TR-04-A-1902.

11. Mr. S. Lodh, learned counsel appearing for the registered owner of the Motorbike submits that his client has already leased out the Motorbike to respondent No.6 for the terms of 3(three) years. Mr. D. Debnath, learned counsel appearing for respondent No.3 i.e., the owner of the Truck stated that his vehicle was insured with respondent No.5 herein i.e., Future General India Insurance Company Ltd, and if any liability is to fasten then the said liability is to be fasten on the insurance-Company. He further submitted that there was no negligence on the part of the driver of

the truck because though the truck was parked in the middle of the road, but, it was due to mechanical failure and the driver of the vehicle was trying to fix the vehicle.

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

13. There is no evidence with regard to the fact that the vehicle i.e. the Truck bearing No.TR-04-A-1802 which was parked in the middle of the road has taken proper care and measures by putting parking lights or further steps while attending the repair. As per the evidence of the eye-witness, i.e., the Officer-in-Charge Kumarghat Police Station who is the complainant indicated that the vehicle i.e. the Truck bearing No.TR-04-A1802 was parked negligently and the accident had taken place due to this. But in the final report filed by the investigating officer, who was examined before the camera by the learned Tribunal below indicated that the mistake was committed by the 2(two) wheeler motorcycle which dashed the parked Truck in a rash and negligent manner. The investigating officer has filed the final report but has not indicated the source as to how he came to the conclusion that due to rash and negligent driving of the 2(two) wheeler vehicle, it hit the Truck especially when the eye-witness i.e., the statement of the Officer-in-charge, Kumarghat Police Station is otherwise.

14. In terms of the above discussion, this Court is of the opinion that compensation is to be awarded to the claimants of

both appeals as this Court finds sufficient ground to allow these appeals.

15. Now in terms of the compensation, the deceased-Raju Sinha, at the time of death, was 24 (twenty-four) years of age. The deceased was a businessman by profession. So, his minimum monthly income as per the claimant is Rs.6,000/- per month. If he had been alive, he might have worked up to the age of 60 (sixty) years. So, as per schedule, he ought to have earned {(Rs. 6,000/- X 12) X 36} = Rs. 25,92,000/-.

16. Now for personal and living expenses, the Hon'ble Apex Court in **Para-31** of its landmark Judgment passed in **Sarla Verma(Smt.) and ors. Vs. Delhi Transport Corporation and anr.**, reported in **(2009) 6 SCC 121** held as under:-

"31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent/s and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependant on the father."

The Hon'ble Apex Court reiterated its stand in **Para-41** of its Judgments passed in **National Insurance Company Ltd. Vs. Pranay Sethi and ors.**, reported in **(2017)16 SCC 680**, which is reproduced herein under:-

"41. On a perusal of the analysis made in Sarla Verma which has been reconsidered in Reshma Kumari, we think it appropriate to state that as far as the guidance provided for appropriate deduction for personal and

living expenses is concerned, the tribunals and courts should be guided by conclusion 43.6 of Reshma Kumari. We concur with the same as we have no hesitation in approving the method provided therein."

17. In the case is hand, the sole claimant-appellant herein is the mother of the deceased Raju Sinha who was a bachelor. So, in terms of the above discussion, 50% is to be deducted as personal and living expenses of the deceased. So, after a deduction of 50% of Rs.25,92,000/- for his personal and living expenses, the deceased would have contributed Rs.12,96,000/- only towards his family. For funeral expenses, Hon'ble Apex Court in **Magma General Insurance Company Ltd. Vs. Nanu Ram Alias Chuhru Ram an ors.**, reported in **(2018) 18 SCC 130** awarded Rs.15,000/- towards funeral expenses, and the same is awarded herein. Further in **Magma(supra)** Rs.40,000/- each was awarded for loss of filial consortium. Accordingly, in this case also the same is awarded as filial consortium. So, the compensation for the claimant of MAC APP No.13 of 2020 comes to Rs.12,96,000/-+Rs.15,000/-+Rs.40,000/- =Rs.13,51,000/- (Rupees thirteen lakhs and fifty-one thousand) only along with interest @ 7.5% p.a. from the date of filing of this claim petition till payment.

18. Now in the Mac App. No.14 of 2022, the deceased Pradip Sinha at the time of death was 32 (thirty-two) years of age. The deceased was a businessman by profession. So, his minimum monthly income as per claimants is Rs.6,000/- per month. If he

had been alive, he might have worked up to the age of 60 (sixty) years. So, as per schedule, he ought to be earned {(Rs. 6,000/- X 12) X 28} = Rs. 20,16,000/-. The claimants in this case are the mother and father of the deceased and the deceased was a bachelor. In terms of **Sarala Verma(supra)**, 50% is to be deducted as personal and living expenses of the deceased. So after a deduction of 50% of Rs.20,16,000/-, then, he would have contributed Rs.10,08,000/- only towards his family. In terms of **Magma(supra)**, Rs.15,000/- is awarded towards funeral expenses. Further in **Magma(supra)** Rs.40,000/- each was awarded for loss of filial consortium. Accordingly, in this case for both claimants, Rs.40,000/- each is awarded as filial consortium. So, the compensation for the claimants of MAC APP No.14 of 2022 comes to Rs.10,08,000/- + Rs.15,000/- + Rs.80,000/- =Rs.11,03,000/- (Rupees eleven lakhs and three thousand) only along with interest @ 7.5% p.a. from the date of filing of this claim petition till payment.

19. Since the Truck bearing No.TR-04-A-1802 is insured with the Future General India Insurance Company Ltd, this Court fastens the liability to pay the compensation to the said Insurance Company within a period of 2(two) months from today. On depositing the said above compensation amounts, the claimants are at liberty to withdraw the same unconditionally as per the procedure.

20. With the above observation and direction, these present appeals are allowed and thus disposed of. As a sequel, stay if any stands vacated. Pending application(s), if any also stands closed.

JUDGE

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