

HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

MAC. APP. No.17 of 2022

Smt. Dipika Debnath, Wife of Sri Krishna Mani Debnath, Village-Krishnapur, P.S.-Dharmanagar, District-North Tripura.

.....Appellant(s)

V E R S U S

1. Sri Krishna Mani Debnath, Son of Late Lab Charan Nath, Village-Krishnapur, P.S.-Dharmanagar, District-North Tripura. (Owner of TR-02-0C-6111 Hero Honda CBZ, Extreme Motorcycle).

2. Sri Pabitra Nath, Son of Sri Pandeb Nath, Village-Kalikapur, Ward No.6, P.S.-Dharmanagar, District-North Tripura. (Rider of TR-02-0C-6111 Hero Honda CBZ, Extreme Motorcycle)

3. The Branch Manager, National Insurance Company Limited, Thana Road, Dharmanagar, P.S.-Dharmanagar, District-North Tripura. (Insurer of TR-02-0C-6111 Hero Honda CBZ, Extreme Motorcycle).

..... Respondent(s)

For Appellant(s) : Ms. M. Roy, Advocate.

For Respondent(s) : Mr. S. Debnath, Advocate.

HON'BLE THE CHIEF JUSTICE (ACTING)

Date of hearing and Judgment : 13th January, 2023.

JUDGMENT & ORDER(ORAL)

Heard Ms. M. Roy, learned counsel appearing for the appellant and also heard Mr. S. Debnath, learned counsel appearing for the respondent-insurer.

[2] The present appeal is directed against the award dated 24.09.2021 passed by the learned Member, Motor Accident Claims

Tribunal, North Tripura, Dharmanagar in T.S(MAC) No.15 of 2018 whereby the Tribunal awarded compensation of Rs.3,00,000/- in favour of the claimant with interest @ 6% per annum from the date of filing of the claim petition till realization thereof.

[3] It is alleged that on 26.01.2015 at night deceased Kishotal Debnath sustained grievous injuries in a motor vehicle accident as pillion rider involving one motorbike bearing registration No.TR-02-C-6111 (Hero Honda CBZ Extreme) driven by his friend Pabitra Nath at Padmapur on Padmapur-Krishnapur main road near the brick field of Bidhu Babu. The motorbike dashed against a bicyclist namely Subhas Paul who also sustained injuries along with rider Pabitra Nath. After getting the information, the fire service staff came to the spot and shifted the injured persons to Dharmanagar District Hospital where Kishotal Debnath succumbed to his injuries. The respondent No.1 rushed to the hospital and found the dead body of his son Kishotal Debnath lying on the bed of hospital. Subsequently, he informed Dharmanagar Police Station and police visited the place of occurrence. The deceased was aged about 22 years at the time of accident.

[4] Based on the information, a case was registered against the respondent No.2, police submitted the final report and, thereafter, further

investigation was directed by the learned Chief Judicial Magistrate, North Tripura, Dharmanagar wherefrom it was revealed that deceased Kishotal Debnath succumbed to injuries due to motorbike accident at Padmapur-Krishnapur road. It was also stated that at the time of accident deceased was riding on a motorcycle bearing No.TR-02-C-6111 (Hero Honda CBZ Extreme) as pillion rider and his friend Pabitra Nath was driving the motorbike and while proceeding towards Krishnapur side from Dharmanagar town, the offending vehicle dashed a bicyclist who sustained injury and the pillion rider namely, Kishotal Debnath fell on the road and sustained grievous injury. The motorcycle rider Pabitra Nath had also sustained injury and just after the accident the motorcycle rider entered into the house of one Manilal Malakar near the place of occurrence with injured conditions and took shelter but suddenly fled-away in the dark. After getting the information the fire-service staff came to the spot and shifted the other two injured persons to Dharmanagar District where Kishotal Debnath succumbed to injuries. At this stage, this is relevant to mention the FIR which reads as follows :

“It is my humble submission to state that yesterday dated 26.01.2015 AD last, at around 6:45 pm my deceased son, Kishotal Debnath got one telephone call. When his mother asked him he replied that Pabitra from Krishnapur Pharmacy made a phone call. Immediately he went out of house riding his Hero Honda CBZ bike bearing registration No.TR-02-C-6111. That night at around 11:20 pm, it was informed over the telephone from Dharmanagar Police station to my workplace, Bagbasha Outpost that my son had met bike accident and was admitted to Hospital. After getting

this information and obtaining proper permission, I went to the Dharmanagar Hospital. On reaching there I found my son, Kishotal Debnath lying dead on the bed of hospital. When I informed the Officer In-Charge of the Dharmanagar Police Station about the incident, he made spot investigation of the place of occurrence. I came to know from Mani Malakar going to his house at Padmapur that the said Pabitra Nath committed the bike accident and took shelter in the house of Mani Malakar. On being asked by Mani Malakar he informed that his house is in Kalikapur. After a while, he fled from home in the dark fearing for his life. When I called in his mobile number it rang but he did not receive the phone call. When I called back after a while it was switched off. Till date, he did not make any communication with us. Be it noted that out of previous enmity he committed this murder intentionally. Therefore, I am praying to your good self to render justice by conducting an investigation into the said incident.”

[5] The respondent No.1 contested the claim petition by filing written statement wherein he stated that the claim of the claimant was not maintainable and the same was barred under the principle of waiver, estoppel and acquiescence. It was further alleged that the claim of the claimant was speculative and liable to be dismissed as the claimant had not come with clean hands before the Tribunal. It was further alleged that the said vehicle bearing registration No.TR-02-C-6111 (Hero Honda CBZ Extreme) was duly insured with the National Insurance Company Limited. The respondents No.2 and 3 also contested the claim petition and filed written statements alleging that the claim of the claimant was not maintainable as the same was barred by law.

[6] On the basis of the pleadings and after hearing the parties, the following issues were framed :

- (i) Whether the suit is maintainable?
- (ii) Whether the motor vehicle No.TR-02C-6111 (Hero Honda CBZ Extreme motor cycle) met with an accident on 26-01-2015 at about 22.30 hrs on Padmapur to Krishnapur main road at Padmapur near the brick field of Bidhu Babu under Dharmanagar P.S due to rash and negligent riding of the rider of the offending vehicle resulting which Kishotal Debnath sustained grievous injuries and then dead?
- (iii) Whether the claimant is entitled to get compensation due to death of Kishotal Debnath and if so what should be the quantum of the compensation and who shall be liable to pay?
- (iv) Any other relief/reliefs is the claimant entitled to?"

[7] To establish the claim, the claimant submitted examination-in-chief of herself as PW-1, Sri Rupak Kumar Deb as P.W.2 and Sri Ranjit Debroy as P.W.3 and proved the documents adduced at the time of trial. On the other hand, the respondent No.1 also submitted his examination-in-chief as OPW1 and proved the documents produced by him.

[8] The learned Tribunal after framing the issues and appreciating the evidence on record, awarded a sum of Rs.3,00,000/- as compensation to the claimant. Since the deceased was a student and non earning member of his family, he assessed the income of the deceased at Rs.15,000/- per annum. The Tribunal further observed that since the deceased was at the age group of 21-25 years at time of his death, he applied the multiplier of

18 relying on the judgment of the Apex Court in *Sarla Verma (Smt.) and others versus Delhi Transport Corporation and another*, reported in *(2009) 6 SCC 121*. Therefore, the amount worked out to (Rs.15,000/- x 18 = Rs.2,70,000/-). Accordingly, under the head of loss of income, an amount of Rs.2,70,000/- was awarded. Further, under the head of loss of estate and funeral expenses an amount of Rs.15,000/- each was also awarded by the Tribunal based on the guidelines of the Hon'ble Apex Court in *Special Leave Petition(Civil) No.25590 of 2014* between *National Insurance Company Limited versus Pranay Sethi and others*. The total compensation awarded by the learned Tribunal worked out to Rs. (2,70,000/- + 15,000/- + 15,000/-) = Rs.3,00,000/-. The operative portion of the judgment is reproduced hereunder :

“Resultantly, the application under Section 166 of the Motor Vehicles Act, 1988 filed by the claimant is allowed on contest. Opposite party No.3 The Branch Manager, National Insurance Company Ltd., Thana Road, Dharmanagar, P.S.-Dharmanagar, District-North Tripura (Insurer of TR-02-C-6111 Hero-Honda CBZ Extreme motorcycle) shall pay the compensation of **Rs.3,00,000/- (Rupees three lakh) only** to the claimant within a period of 30 days from this day of award. This award of compensation shall carry interest at the rate of 6% per annum from the date of presentation of the claim petition before this Tribunal till the realization.

Any amount of compensation, if received by the claimant on the principle of No Fault Liability as contemplated under Section 140 of the Motor Vehicles Act, 1988 shall be adjusted to the compensation so finally awarded.

The awarded compensation together with interest shall be paid to the claimant by transmitting it directly to the savings bank accounts of the claimant.”

[9] Ms. M. Roy, learned counsel appearing for the appellant-claimant contends that the income of the deceased assessed by the learned Tribunal @ Rs.15,000/- per annum is on the lower side. The learned Tribunal ought to have awarded Rs.30,000/- per annum towards income of the deceased considering that the deceased was receiving Rs.30,000/- as stipend being an Argy-B.Sc student.

[10] On the other hand, Mr. S. Debnath, learned counsel appearing for the respondent-insurer fairly contends that the amount claimed by the counsel for the appellant-claimant towards income of the deceased is on the higher side. He further contends that on the basis of the judgment rendered by the Apex Court dated 16.11.2021 in *Civil Appeal No.6902 of 2021* arising out of Special Leave Petition (C) No.5311 of 2019 at least Rs.25,000/- can be taken as notional income of the deceased.

[11] After hearing the learned counsel for the respective parties, this Court is of the considered view that towards loss of income, the compensation awarded by the learned Tribunal needs to be interfered with. The learned Tribunal has erred in calculating the amount of compensation of the deceased towards loss of income taking his notional income at Rs.15,000/- per annum. Accordingly, the amount of compensation towards

loss of income of the deceased is hereby modified to the extent that the claimant is entitled to **Rs.25,000/-** per annum towards his notional income relying on the judgment of the Apex Court dated 16.11.2021 in **Civil Appeal No.6902 of 2021** arising out of Special Leave Petition (C) No.5311 of 2019 instead of Rs.15,000/- per annum as awarded by the learned Tribunal.

[12] In that view of the matter, I now proceed to reassess the amount of compensation as under :

(i) Notional income of the deceased per annum :- Rs.25,000/- only as per judgment of the Hon'ble Supreme Court dated 16.11.2021 in **Civil Appeal No.6902 of 2021** .

(ii) After applying the multiplier of 18, relying on the judgment of the Apex Court in **Sarla Verma (Smt.) and others versus Delhi Transport Corporation and another**, reported in **(2009) 6 SCC 121** the compensation comes to Rs. (25,000/- x 18) = Rs.4,50,000/-.

(iii) Loss of Estate :- Rs.15,000/- . (as awarded by the Tribunal)

(iv) Funeral expenses :- Rs.15,000/-.(as awarded by the Tribunal)

(iv) The total compensation works out to Rs.(4,50,000/- + 15,000/- + 15,000) = **Rs.4,80,000/-**.

[13] Accordingly, the award of the learned Tribunal is modified and the compensation is enhanced from Rs.3,00,000/- to **Rs.4,80,000/-**. On the amount of compensation so awarded, the claimants shall also be entitled to receive interest @ 6% per annum from the date of filing of the claim petition till deposit/payment of the awarded amount. The rest of the directions/orders passed by the learned Tribunal will remain the same.

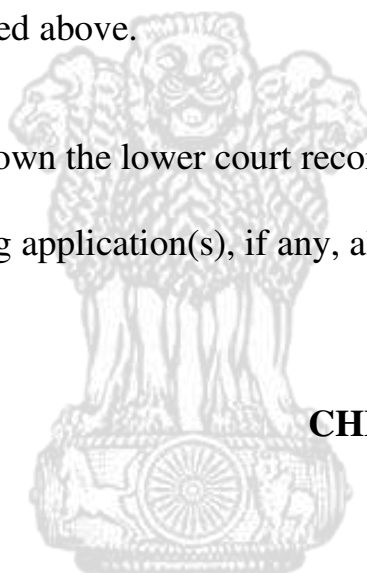
[14] In view of the above, the appeal is allowed and disposed of to the extent as indicated above.

[15] Send down the lower court records forthwith.

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

CHIEF JUSTICE (ACTING)

Pulak/Dipesh



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