

**HIGH COURT OF TRIPURA
AGARTALA**

MAC App. 25 of 2023

The General Manager,

Oriental Insurance Company Limited
"Oriental House", A-25/27, Asaf Ali Road,
New Delhi-11002
Represented by the Branch Manager,
Oriental Insurance Company Limited
P.O. Rajbari, Dharmanagar, North Tripura, PIN 799253

.....Appellant

VERSUS

- 1. Shri Krishna Nandan Singh**
Son of late Ramswarup Singha
Represented by his constituted attorney and
Son Shri Ram Gopal Singh
- 2. Smt. Alo Devi**
wife of Krishna Nandan Singh
Both of village- Khamhar, P.O. Rajaura
P.S. Muffasil, District- Begusarai, Bihar
PIN 851131
- 3. Ram Kripal Singh Construction Pvt. Ltd.**
Site Office- Tripura Cricket Association
P.O. Naraingarh, Agartala- 799015
(Owner of vehicle)

.....Respondents

For Appellant(s)	: Mr. P.S. Roy, Advocate.
For Respondent(s)	: Mr. K. Datta, Advocate.
Date of hearing and delivery of judgment and order	: 14.12.2023
Whether fit for reporting	: No.

HON'BLE MR. JUSTICE T. AMARNATH GOUD

JUDGMENT & ORDER (ORAL)

This is an appeal under Section 173 of the Motor Vehicles Act., 1988 against the award dated 22.09.2022 passed by the learned Motor Accidents Claim Tribunal (IST), Unakoti district, Kailashahar, Tripura in case No. T.S. (MAC) 07 of 2021.

[2] The fact of the case is that on 29-01-2020 at about 1000 hours while the vehicle bearing No. JH01CN 7111(Miller) was coming from Panisagar to Pecharthal side along NH 08 road with loaded mixture stones/cement for

NH08 road construction. The driver of the vehicle Jitendra Kumar was driving the vehicle rash and negligently and when the vehicle reached at Laxmanchhera, it fell into a deep lunga by the side of the road with the driver and the assistant/helper and due to this accident the assistant/helper Shyam Kumar received head injury and died on the spot. The driver at the time of accident survived but subsequently he also died. It is stated in the claim petition that at the time of death deceased was 20 years old. He left behind his parents. Deceased had a good physique and he used to earn Rs. 9,000/- per month as helper/assistant of the vehicle.

[3] The claimant-petitioners claimed Rs. 37,55,000/- as compensation from the opposite parties.

[4] The OP No. 1(respondent No.3 in the instant appeal), who is the owner of vehicle appeared through the learned counsel but, the said OP did not submit any written statement. OP No.2, i.e. the appellant insurance company herein, resisted the claim by submitting written statement. In its written statement, OP No. 2 denied the accident, involvement of the vehicle bearing No. JH01CN 7111(Miller) and the coverage of the vehicle with policy of insurance issued by them. The profession and the income of the deceased have also been denied by the OP No. 2. OP No. 2 ultimately submitted that the claim was not maintainable and the petition of the claimants would be liable to be dismissed.

[5] With a view to decide the claim of the claimant-petitioner, following issues were framed by the Motor Accidents Claims Tribunal (IST), Unakoti District, Kailashahar:

"I. Whether the suit is maintainable in its present form & manner?"

II. Whether on 29-01-2020 at about 1000 hours the vehicle bearing No. JH01CN 7111(Miller) loaded with mixture stone/cement was proceeding from Panisagar towards Pecharthal and while it reached at Laxmanchhera it fell into a deep lunga due to rash and negligent driving of the driver Jitendra Kumar, as a result the assistant of the vehicle, i.e, the son of the claimant-petitioners, namely, Shyam Kumar received head injury and died on the spot and later on the driver also died?

III. Whether the claimant-petitioners 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 party is entitled to, if any?"

[6] From the side of the claimant-petitioners two witnesses have been examined. PW 1 is Smti. Alo Devi, mother of the deceased (respondent No.2 herein) and claimant-petitioner No. 1 (respondent no.1 herein) who adduced their evidence in the same line as the claim statement. During her re-examination PW-1 has exhibited the following documents: -

I. Original insurance policy certificate in five sheets: Ext. P.1

II. Original registration certificate of the vehicle in one sheet: Ext. P.2

III. Original death certificate of driver Jitendra Kumar in one sheet : Ext. P.3

IV. Aadhar card of Shyam Kumar in one sheet : Ext. P.4

V. Salary certificate of Shyam Kumar in one sheet :Ext. P.5

VI. Driving licence of driver in one sheet : Ext.t. P.6

VII. Original general power of attorney dated 02-02-2021 bearing sl. No. 134 of 2021 in three sheets : Ext. P.7.

[7] Learned Tribunal on consideration of all the facts and circumstances and on perusal of material evidence available on record, observed in the following manner:

"A W A R D

11. In the result, it is ordered that O.P. No. 2, the Oriental Insurance Company Limited, Dharmanagar Branch, Dharmanagar, the Insurer of the offending vehicle bearing No. JH-01CN-7111, shall pay the amount of compensation of Rs. 16,08,000/- (rupees sixteen lakhs eight thousand) with interest @ 6% per annum from the date of filing of this claim-petition, i.e., from 10-05-2021 to the

claimant petitioners within 02(two) months from today, failing which the OP No.2 shall have to pay penal interest of 9% p.a. till the date of actual payment.

14. Order regarding manner of disbursement of the compensation amount shall be passed as per the guidelines of the Hon'ble High Court of Tripura after payment of the awarded amount.

12. Supply a copy of this judgment to the claimant-petitioners and OP No. 2 free of cost through their respective engaged counsels.

13. The case stands disposed of."

[8] Aggrieved by the award delivered on 22.09.2022, the appellant herein has approached this Court seeking following reliefs:

- a) Admit the appeal;
- b) Call for the records from the Motor Accidents Claim Tribunal, Unakoti District, Kailashahar of the case bearing no. T.S. (MAC) 07 of 2021.
- c) Issue notice to the Respondents;

[9] Mr. PS Roy, learned counsel representing the appellant insurance company contends that learned tribunal considered the monthly income of the deceased of Rs.9000/- which is according to the learned counsel is very high. It is also submitted by the learned counsel that learned Motor Accidents Claim Tribunal erroneously added 50% hike in the income of the deceased as future prospect though the deceased was not a government employee.

[10] Mr. K. Datta, learned counsel is present before this Court for respondent No.3 i.e. the owner of the vehicle.

[11] Heard learned counsel appearing for both the parties. Perused the record.

[12] Having perused the entire evidence on record and upon hearing the submissions advanced by the learned counsel appearing for the parties, this Court is of the view that there is no infirmity in the award passed by the learned Court below on 22.09.2022. Accordingly, this present appeal is dismissed being devoid of merit and the judgment and award dated 22.09.2022 is confirmed and thus upheld.

As a sequel, miscellaneous application(s) pending, if any, shall also stand closed.

Send down the LCR.

JUDGE

Sabyasachi. G.

SABYASACHI GHOSH

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Date: 2023.12.21 12:46:45 +05'30'

