

**HIGH COURT OF TRIPURA
AGARTALA**

MAC App. 32 of 2023

Shriram General Insurance Company Ltd.,
E-8, EPIP, RHCO, INDUSTRIAL AREA
Sitapur, Jaipur, Rajasthan, PIN- 302022
(Insurer of vehicle bearing registration No.TR-01-N-1841
Canter Truck)

.....**Appellant**

VERSUS

- 1. Ratan Miah**
Son of late Ali Ahmed Miah
Resident of village- Joynagar, Kalabagan
P.O. Birendranagar, P.S. Jirania
District- West Tripura
- 2. Joynal Hossain**
Son of Sultan Ahmed
Resident of village- No.2 Chandranagar
Baidya Dighi near Baidya Dighi School
P.S. Bishalgarh, District- Sepahijala.
(Owner of vehicle bearing registration No.
TR 01-N-1841 Canter Truck)

.....**Respondents**

For Appellant(s)	: Mr. PK Ghosh, Advocate.
For Respondent(s)	: Mr. Biplab Debnath, Advocate. Mr. Samar Das, Advocate.
Date of hearing and delivery of judgment and order	: 14.12.2023
Whether fit for reporting	: Yes

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 judgment and award dated 09.09.2022 passed by the learned Motor Accident Claims Tribunal, Tribunal No.2, West Tripura, Agartala in case No. TS (MAC) 378 of 2013.

[2] Brief facts of the case is that on 08.06.2013 at about 11-10 a.m. one Amena Khatun (now deceased) was proceeding towards her house after completion of her work through Assam-Agartala road on foot and when reached near Jirania Fire Service Station, at that time one Canter Truck

bearing the registration No. TR-01-N-1841 (hereinafter referred as the offending vehicle) which was coming from Agartala side being driven by its driver in a rash and negligent manner dashed her violently as a result, victim fell down on the road and sustained grievous injuries on her persons. Immediately after the accident the deceased was brought to Jirania Hospital from where she was sent to GBP Hospital considering the seriousness of her injuries on the same day but on 09.06.2013, she succumbed to her injuries in the GBP Hospital. After death Post Mortem examination was held and a specific case vide Jirania PS Case No. 54 of 2013 u/s 279/338/304(A) of IPC was also registered. According to the claimant petitioner the accident took place due to rash and negligent driving on the part of the driver of offending vehicle. It is also mentioned that in the claim petition that being at her age of 38 years, the deceased was a daily labourer and she used to earn Rs.12,000/- per month.

[3] The claimant petitioner, quantified his claim to the tune of Rs. 34,15,200/- only before the learned Tribunal.

[4] The OP No.1, owner of the offending vehicle (respondent No.2 herein) through his written statement apart from denying all the allegations in the claim petition contended that he is the registered owner of the said offending vehicle and it was duly insured with the Opposite Party No.2 (appellant insurance company herein). OP No.1, therefore, urged for fixing the liability of his insurer to pay the compensation, if any.

The appellant-insurance company herein through their written statement have denied all the allegations and put the claimant-respondents as well as the OP No.1(respondent No.2) before the Tribunal.

[5] With a view to decide the claim of the claimant petitioner following issues were framed by the Motor Accidents Claims Tribunal, West Tripura, Agartala:

"ISSUES

(i) Whether the deceased amena Khatun, D/O Late Ali Ahmed of village- Joynagar, Kalabagan, Birendranagar, P.S. Jirania, District-West Tripura,aged about 38 years died on 08.06.2013 at about 11-10 a.m. at near Jirania Fire Service, under Jirania Police Station due to proceeding towards her house by a road traffic accident for negligence of the driver of the vehicle bearing registration No. TR-01-N-1841(Canter Truck)?

(ii) Whether the claimant petitioner is entitled to get any compensation due to the said death, if so what would be quantum of compensation and who shall be held liable for payment of the same?

(iii) What other relief/reliefs are the parties entitled to?"

[6] To establish the claim, the claimant petitioner has examined himself as PW.1 and PW.1 has also proved the following documents before the learned Tribunal:-

- i) Certified copy of FIR and ejahar in c.w. Jirania PS case No. 54 of 2013 in four sheets -[Exbt.1(i) to 1(iv)];
- ii) Certified copy of Post Mortem Report in c.w. Jirania PS case No. 54 of 2013 in two sheets[Exbt.2(i) to 2(ii)];
- iii) Certified copy of charge sheet in c.w. Jirania PS case No. 54 of 2013 - (Exbt.3);
- ii) Original copy of Post Mortem certificate of the deceased-Exbt.4 respectively.

On the other hand, OP owner also proved some documents to fortify his claim.

- I) Original copy of screen report in respect of the vehicle bearing registration No. TR-01-N-1841 being collected from the office of Joint Transport Commissioner, Agartala-Ext.A;
- II) Photocopy of policy of insurance (comparing with the original)-Ext.B;
- II) Photocopy of driving license of one Charu Miah(comparing with the original)-Ext.C;

[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:

"O R D E R

In the result, claim is awarded in following terms :-

- (i) Claimant petitioner is entitled to get the award of Rs.22,98,000/- (Twenty two lacs ninety eight thousand)only with 9% Simple interest per annum from the date of registration of claim i.e, w.e.f. 03.10.2013 till the date of realization thereof. While counting the interest the period from 29.07.2016 to 12.04.2022 shall be excluded as per order dated 12.04.2022 of the Hon'ble High Court made in MAC APP No. 40 of 2020.**
- (ii) 50% of the total award be invested by purchasing Fixed Deposit certificate from any Nationalized Bank at least for the next 5 years and no loan or advance or pre-mature withdrawal shall be allowed without prior sanction of this Tribunal. However, the claimant petitioner shall have the liberty to withdraw the monthly interest therefrom. Rest part of award be directly transferred to his individual bank account."**

[8] Aggrieved by the award delivered on 09.09.2022, the appellant herein has approached this Court seeking following reliefs:

- a) Admit the appeal;
- b) Call for the lower Court record of Case No. TS(MAC) 378 of 2013 from the Court of learned Motor Accidents Claims Tribunal, Tribunal No.2, West Tripura, Agartala;
- c) Issue notice upon the respondents;
- d) To set aside the impugned judgment/award dated 09.09.2022 passed by the learned Motor Accidents Claims Tribunal, Tribunal No.2, West Tripura, Agartala in Case No. TS (MAC) 378 of 2013.

[9] Mr. PK Ghosh, learned counsel appearing for the appellant insurance company submits that supported by an oral evidence, the learned Tribunal came to a decision that the deceased was earning monthly amount of Rs.18,000/- but, no documentary proof has been adduced by the claimant-respondents. He also submits that the 9% per annum simple interest as fixed by the learned Tribunal on the awarded amount is also very high. Learned

counsel, therefore urges before this Court that the compensation as awarded by the learned Tribunal to the claimant-respondents is liable to be set aside.

[10] Mr. Biplab Debnath, learned counsel is present on behalf of the claimant-respondent-1 and Mr. Samar Das, learned counsel is present on behalf of Respondent No.2, owner of the vehicle. Mr. Biplab Debnath, learned counsel for the claimant respondent prays before this Court that the instant appeal filed by the appellant insurance company is liable to be dismissed.

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

[12] Having perused the entire record and upon hearing the submissions advanced by the learned counsel appearing for the parties, this Court is of the view that in the absence of documentary proof adduced by the claimant-respondents on the income of the deceased, learned tribunal fixed the income of the deceased as Rs.18,000/-. This Court is of the view that in the absence of documentary proof of income of the deceased, the principle as laid down in **Ramachandrappa v. Royal Sundaram. Alliance Insurance Co. Ltd.,** be followed by fixing a notional income @ Rs.10,000/- per month. Insofar as other heads which have been calculated by the learned Tribunal are concerned, the same shall be unaltered.

[13] This Court in all the similarly situated matters is fixing 7.5% interest and to maintain uniformity while comparing the bank rate of interest which is also much less. Thus, this Court is of the view that ends of justice would be met if the rate of interest fixed by the learned tribunal be reduced from 9% per annum to 7.5%. per annum.

[14] Now in terms of the present appeal, the total compensation to be awarded to the claimants herein stands as under:

(I) Income per month = Rs.10,000/- only.

(II) 40% of above to be added as future prospect :- Rs. 4,000/-only.

(III) The sum total of (I) and (II) works at :- Rs.14,000/- only.

(IV) 50% of above to be deducted as personal and living expenses of deceased :- Rs. 14,000/- minus Rs.7,000/- = Rs.7,000/- only.

(V) compensation after applying multiplier of 15:- Rs.7,000x12x15= 12,60,000/- only.

(VI) Loss of Estate = Rs.15,000/-only.

(VII) Funeral expenses = Rs.15,000/- only.

Thus, total compensation stands at Rs.12,60,000/- +15,000/- + 15,000/- = **Rs.12,90,000/- only.**

Consequently, the total compensation entitled by the claimant-respondent would be Rs.12,90,000/- (Rupees Twelve Lakh Ninety Thousand only) along with 7.5% simple interest per annum from the date of presentation of the claim petition till the date of actual payment. However, it is made clear that as per the argument of Mr. Ghosh, learned counsel for the appellant insurance company, the case was initially dismissed for default and thereafter, the same was restored and final award has been passed. So for the period during which, the case was dismissed and restored, the claimant-respondent is not entitled for any interest. This argument appears to be cogent and accordingly, while computing the same the Court below shall consider deduction of the interest for the said period.

[15] In view of the above, the instant appeal is allowed to the extent as indicated above. Thus, the appellant insurance company i.e. the Shriram General Insurance Company Ltd is liable to pay the total amount as awarded above to the claimant-respondent. The amount to be deposited within one month from the date of receipt of the copy of this order on the file of the

Motor Accidents Claims Tribunal, West Tripura, Agartala and on depositing the same, the claimant may file appropriate application to the satisfaction of the Court and withdraw the amount as per law.

The statutory amount of Rs.25,000/- deposited by the insurance company at the time of filing of this appeal, shall be returned to them as per procedure.

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

Send down LCR.

JUDGE

Sabyasachi. G.

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