

**HIGH COURT OF TRIPURA
AGARTALA**

MAC.APP. No.15/2022

The National Insurance Company Limited, Represented by its Divisional Manager, Agartala Divisional Office, A.K. Road, Agartala, P.O.-Agartala, P.S.-West Agartala, District-West Tripura. (Insurer of the Bus bearing no.TR-01-AB-0795 (Bolero)

..... Appellant(s)

V E R S U S

1. Smt. Laxmi Das, W/O. Late Maran Das, Resident of Karaimura, South Badharghat, P.O. & P.S.-Amtali, District-West Tripura.

2. Sri Biki Das,

3. Sri Akash Das,

(Claimant respondent no.1 is the wife and Respondent no.2 and 3 are sons of Lt. Maran Das and all are residents of Karaimura, South Badharghat, P.O. & P.S.-Amtali, District-West Tripura)

.....Claimant-Respondent(s)

4. Sri Ashim Sing, S/O-Rajeswar Singh, Subhas Palli, North Badharghat, P.O.-Badharghat, P.S.-A.D. Nagar, West Tripura, Pin-799003. (Owner of Vehicle bearing no.TR-01-AB-0795 (Bolero).

.....Owner-Respondent(s)

For Appellant(s)

: Mr. S. Debnath, Advocate.

For Respondent(s)

: Mr. Ankan Tilak Paul, Advocate.

Along with

CO(FA) No.09/2022

1. Smt. Laxmi Das (35), W/O. Late Maran Das, Karaimura, South Badharghat, P.S.-Amtali, West Tripura.

2. Sri Biki Das (22),

3. Sri Akash Das (21),
Both sons of Late Maran Das, Karaimura, South Badharghat, P.S.-Amtali,
West Tripura.

..... Claimant-Petitioners/Appellant(s)

V E R S U S

1. Sri Ashim Singh, S/O-Rajeswar Singh, Subhas Palli, North Badharghat,
P.S.-A.D. Nagar, West Tripura, Pin-799003. (Owner of TR-01-AB-0795
(Bolero)

2. The National Insurance Company Limited, 42, Akhaura Road, Agartala,
District-West Tripura.

.....Opposite parties/Respondent(s)

For Appellant(s) : Mr. Ankan Tilak Paul, Advocate.

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

HON'BLE THE CHIEF JUSTICE (ACTING)

Date of hearing and judgment : **28th March, 2023.**

Whether fit for reporting : **NO.**

JUDGMENT & ORDER (ORAL)

This appeal and cross objection are being disposed of by a common judgment since they arise out of the same award dated 31-08-2021 passed by the learned Motor Accident Claims Tribunal, Tribunal No.5, West Tripura, Agartala in case No. T.S.(MAC) 101 of 2018 whereby he awarded compensation of Rs.27,29,550/- to the claimant petitioners with 8% interest per annum from the date of filing of the claim petition till realization thereof.

2. Brief facts of the case are as under:

The claimant petitioners being the wife and son of the deceased filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 (M.V. Act) before the Motor Accident Claims Tribunal for compensation due to the accidental injuries and death of deceased Maran Das in a road traffic accident. In this claim petition, it was alleged that on 29.04.2017 at about 4 a.m. while the deceased Maran Das along with one Haripada Sarkar was going by his rickshaw and reached ONGC main gate, suddenly the offending vehicle bearing registration No.TR-01-AB-0795 (Bolero) coming from Agartala on the wrong side being driven rashly and negligently dashed his rickshaw resulting which he and Haripada sustained grievous injuries and were taken to TMC Hospital where Haripada was declared dead and Maran Das was referred to GBP Hospital wherein he remained admitted w.e.f. 29.04.2017 to 01.06.2017. But his condition was deteriorated and subsequently, he succumbed to his injuries on 25.07.2017. In this connection, a specific police case vide Amtali PS Case No.40 of 2017 under sections 279/304 (Part-II)/338 of IPC and under Section 184 of M.V. Act was registered. The claimants, therefore, approached the Claims Tribunal seeking compensation to the tune of Rs.40,40,000/- due to the injuries and subsequent death of deceased Maran Das. The Claims Tribunal framed

issues and after appreciating all evidence and documents produced on record awarded a compensation of Rs.27,29,550/- in favour of the claimants with 8% interest from the date of filing of the claim petition. Being aggrieved by the award dated 31.08.20120, the insurance company has preferred the instant appeal being MAC.APP. No.15 of 2022 for reduction of compensation whereas the claimants has also preferred a cross appeal being CO(FA) No.09 of 2022 for enhancement of compensation. Hence, this case.

3. Heard Mr. S. Debnath, learned counsel appearing for the appellant-insurance company and Mr. Ankan Tilak Paul, learned counsel appearing for the respondent-claimants.

4. From the order dated 23.03.2023 it is apparent that with regard to the enhancement of the award this Court finds that there is no infirmity and hence, the prayer made by the claimants seeking enhancement of the awarded amount cannot be considered. So, the only issue involved in this case is with regard to the notional monthly income of the deceased.

5. Mr. S. Debnath, learned counsel appearing for the appellant-insurance company, has referred to the judgments of the Hon'ble Supreme Court in case of *Minu Rout and another vrs. Satya Pradyumna Mohapatra and others* reported in (2013) 10 SCC 695 and in case of *Syed Sadiq and*

others vrs. Divisional Manager, United India Insurance Company Limited reported in (2014) 2 SCC 735 and contended that as per the Apex Court judgments where the proof of income is not placed before the Tribunal, a notional income of Rs.6,500/- per month has to be considered as decided by the Apex Court.

On the other hand, Mr. Ankan Tilak Paul, learned counsel appearing for the respondent-claimants, has relied on the judgment of the Apex Court in case of *Manusha Sreekumar and others vrs. United India Insurance Co. Ltd.* reported in 2022 SCC OnLine SC 1441 wherein the Apex Court has fixed a notional income of Rs.15,600/- per month and the accident had taken place in 2015 and the deceased was a driver by profession and there was no proof of income filed before the Tribunal.

6. Having considered the submissions of learned counsel for the respective parties, this Court is of the considered view that since it is a beneficial legislation, the benefit has to go to the claimants and as such, this Court considers that the award passed by the learned Tribunal is just and proper and needs no interference.

7. Accordingly, the appeal is dismissed. The award dated 31-08-2021 passed by the learned Motor Accident Claims Tribunal, Tribunal No.5,

West Tripura, Agartala in case No. T.S.(MAC) 101 of 2018 is confirmed. Consequently, the cross objection being CO(FA) No.09 of 2022 filed by the claimants for enhancement of compensation also stands dismissed.

8. Send down the lower court records forthwith.

Stay order, if any, stands vacated.

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

CHIEF JUSTICE (ACTING)

Pulak



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