

HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A
MAC. App. No.30 of 2022

1. Shriram General Insurance Company Ltd., B.R. Arcade (3rd Floor), Opposite Priya Palace Hotel, 21 Janapath, Ulubari, Guwahati-781007. [Insurer of vehicle bearing registration No.TR-03-B-1784 Mini Truck].

.....Appellant

-VERSUS-

1. Smti. Nandita Datta, wife of late Utpal Das.
2. Smti. Utsa Das (Minor), daughter of late Utpal Das.

Both are residents of Badharghat, P.S. Amtali, Agartala, West Tripura, presently residing at Chanban P.O. Rajarbag, P.S. R. K. Pur, District: Gomati Tripura. [Sl. No.2 being minor represented by her mother, natural guardian, Sl. No.1].

..... Claimant-respondents.

3. Sri Sahadeb Saha, son of late Nakul Chandra Saha, resident of village- West Jolaibari, Ashrampara, P.O. & P.S. Baikhora, District: South Tripura. [Owner of vehicle bearing registration No. TR-03-B1784 Mini Truck].
4. Sri Benu Chandra Das, son of Sri Debendra Chandra Das, Prop. Benu Tea Stall (opposite R.K.Pur Post Office), P.S. R. K. Pur, District: Gomati Tripura. [Owner of vehicle bearing registration No. TR-03K-0260 Maruti Suzuki Omni].
5. New India Assurance Company Ltd., Agartala Branch, Mantribari Road, Agartala, West Tripura. [Insurer of vehicle bearing registration No. TR-03-K-0260 Maruti Suzuki Omni].
6. Smti. Rekha Das, wife of Sri Prafulla Chandra Das, resident of East Badharghat, Ward No.45, Agartala Municipal Council, P.O. Madhuban (Dukli), P.S. Amtali, Agartala, West Tripura.

.....Respondents

B_E_F_O_R_E
HON'BLE THE CHIEF JUSTICE (ACTING)

For Appellant(s)	:	Mr. P. K. Ghosh, Advocate.
For Respondent(s)	:	Mr. T. K. Deb, Advocate.
		Mr. S. Lodh, Advocate.
		Mr. G.S. Das, Advocate.

Date of hearing & delivery of judgment and order	:	06.01.2023
Whether fit for reporting	:	YES

JUDGMENT & ORDER [ORAL]

Heard Mr. P. K. Ghosh, learned counsel appearing for the appellant. Also heard Mr. T. Deb, Mr. S. Lodh and Mr. GS Das, learned counsel appearing for the respondents.

[2] This is an application filed under Section-173 of the Motor Vehicles Act, 1988 against the judgment and award dated 09.03.2022 passed in Case No.TS (MAC) 57 of 2017 by the learned Motor Accident Claims Tribunal, Tribunal No.1, Gomati Judicial District, Udaipur Tripura, awarding Rs.59,30,500/- only against the appellant-opposite party No.2 Shriram General Insurance @7.5% interest per annum from the date of filing of the claim petition i.e. from 05.12.2017 till realization.

[3] The case of the petitioner's as discernible from the claim petition is that on 24.04.2017 the husband of petitioner No.1 Utpal Das (now deceased) along with two others were proceeding towards Agartala by boarding the vehicle No.TR-03-K-0260 (Maruti Van). The vehicle was being driven in moderate speed and was proceeding keeping extreme left side of the road. In this process when it reached at Office Tilla in front of Bishalgarh Court, it was dashed by another vehicle bearing No.TR-03-B-1784 (Mini Truck) which was coming from the opposite direction. Resultantly, an accident occurred and the passengers of the Maruti Van including Utpal Das and its driver sustained grievous injuries on their persons. Then and there the injured persons were taken to Tripura Medical College & Dr. BRAM Teaching Hospital, Hapania wherein on examination the attending physician declared the husband of petitioner No.1 as dead.

[4] It is alleged by the petitioner that the accident occurred due to rash and negligent driving of the driver of vehicle No.TR-03-B-1784 (Mini Truck). A police case bearing No.24/2017 under Sections 279/338/304A of IPC and Section 184/187 of M.V.Act was registered at Bishalgarh PS based on the suo-moto FIR lodged by Inspector S. Basu Roy Choudhury, O/C Bishalgarh P/S. It is stated by the petitioner that at the time of death the deceased was an young energetic and healthy man of 33 years and was a Govt.

Employee serving as Rfn. (GD) under 2nd Battalion, Tripura State Rifles and used to draw monthly salary of Rs.50,000/-. The claimants were dependent upon the income of the deceased. Finally, the petitioners claim compensation to the tune of Rs.01,05,60,000/-.

[5] After hearing the parties and perusal of the material evidence on record, the learned Tribunal has observed as under:

“In the result, it is ordered that, the petitioners and the respondent No.5 are entitled to compensation of Rs.59,30,500/- (fifty-nine Lac thirty thousand and five hundred only) in total. The share of respondent no.5 is determined at Rs.7,50,000/- (Seven lacs fifty thousand) only considering her advanced age and the fact that claimant No.1 being a young widow and claimant No.2 being a school going student will be in need of more money than respondent no. 5 who will always have the back up of pension of her husband and thereafter will be entitled to family pension. The O.P. No.2, Shriram General Insurance Company Ltd., insurer of vehicle No.TR-03-B-1784 (Mini Truck) is directed to make the payment of compensation to the petitioners within two months from today along with interest thereon @ 7.5% per annum from the date of filing of claim petition i.e. from 05.12.2017 till payment/realization of the same.”

[6] Mr. P. K. Ghosh, learned counsel appearing for the appellant insurance company, in his usual manner has contended that the claimant-respondent No.1 has failed to prove rash and negligent driving on the part of the driver of the vehicle bearing registration No. TR-03-B-1784(Mini Truck) and on the basis of the charge-sheet, came to an erroneous conclusion that the appellant was liable to pay the compensation.

[7] The learned Tribunal while discussing the evidence, has recorded that the claimant-respondents had denied the suggestion of the owner of the vehicle bearing registration No. TR-03K-0260 (Maruti Suzuki Omni), the respondent No.4 herein that the said vehicle had no role. The Court below has erred both in law and fact by not appreciating the fact that there was a head on collusion between the two vehicle i.e. on Mini Truck and another Maruti Omni and the investigating agency by the charge sheet after examining the statement of witnesses, held that both the vehicles were liable for the alleged accident.

[8] He has further averred that the learned Court has failed to appreciate that both the owners of the vehicles stated that the vehicles were not in fault but, the burden was shifted on the appellant insurance company holding that the mini truck was liable as he arrived in a conclusion that the said accident occurred due to the negligence of the driver of the vehicle bearing registration No. TR-03-B-1784(Mini Truck).

[9] The award passed by the learned Tribunal is perverse and is one side as the respondent No.5 herein, adduced evidence as OPW-1 through its administrative officer and he specifically stated the vehicle which was insured with them is a private car and carrying on passengers, is illegal, violating the terms and condition of the policy and a private car cannot use for commercial purpose. The learned Tribunal considered that the deposition of OPW-1 was fettered for the owner of the said vehicle bearing registration No. TR-03K-0260 (Maruti Suzuki Omni) and as such, though there was a specific mention in the charge sheet regarding negligence of both the vehicles.

[10] He has further contended that the learned Tribunal held that on the date of accident the drivers of both the vehicles had valid driving license and both the vehicles had valid registration certificate along with all other documents and the vehicles were duly insured with the insurance company covering the date of accident and as such, the liability of paying compensation is to be shouldered by the insurance company, is quite illegal and false.

[11] The learned Tribunal while applying the multiplier to determine the quantum of compensation did not consider that a total loss of income should not have been calculated as because the survivors of the deceased would be entitled to family pension and other benefits due to the death of the deceased. The Tribunal has further held that the vehicle, Mini Truck did not raise any issue of contributory, but it will be evident from the findings of the learned Tribunal that the claim of both the owners were that they were to be exonerated as because their vehicles were insured with the respective insurance company and it was agitated before the learned Tribunal by both the owners and their respective insurers that their vehicles were not at fault and the issue

ought to have considered as both the vehicles were head on collision and both the vehicles involved in the alleged accident and for that the liability should be fixed on both the vehicles, but the learned Tribunal fixed only one vehicle, is quite illegal and it needs to be interfered with.

[12] Both the witnesses including the respondent No.1 stated that the accident occurred due to rash and negligent driving of the vehicle No.TR-03-B-1784 (Mini Truck) by its driver. Though they admitted the involvement of the vehicle No.TR-03-K-0260 (Maruti Suzuki omni) in the accident but they denied the fact that the said vehicle was responsible for the accident.

[13] In support of their case they have submitted the certified copy of FIR (Ext.2). It is a *suo-moto* FIR lodged by the Police which revealed that both the vehicles collided each other face to face on the road due to rash and negligent driving by the drivers and damage caused in front side of both the vehicles. As a result of accident all the passengers of Maruti Van including Utpal Das, husband of the petitioner, sustained injuries and on the way to hospital Utpal Das died. Due to rash and negligent driving of both the vehicles the accident occurred and accordingly, police lodged *suo-moto* FIR against the drivers of both the vehicles. After investigation police also came to the conclusion that the accident occurred due to rash and negligent driving of the drivers of both the vehicles and in the accident the husband of the respondent No.1 sustained injuries and on the way to hospital he succumbed to his injuries and accordingly, they submitted charge-sheet against the driver of both the vehicles.

[14] General presumption is that a truck is more powerful and bigger in size than a private car (Omni) which is smaller and less powerful. Whenever, these two types of vehicles collided face to face there is every possibility of causing more casualty/damage to the private car than the truck . Only because the extent of casualty/damage of the private car is higher, it would not be safe to assume that the accident occurred due to fault of the truck vehicle.

[15] However there is no doubt that husband of the respondent No.1 died in a road accident and that the accident occurred due to negligence of the driver of the offending vehicles and that deceased had no contributory negligence in the matter being a passenger only. In ***National Insurance Company Ltd Vs Chamundeswari and ors., reported in 2021 ACJ 2558 of 2019***, it was held that the evidence adduced in the Tribunal shall have preference over what is written in FIR and in case FIR runs contrary to the evidence recorded before tribunal then evidence before tribunal shall prevail. In this case both the witnesses deposed that accident occurred due to fault of the truck driver. The evidence of PW.2 is more specific and reliable.

[16] He is a survivor of the accident. He deposed that the Maruti Omni was proceeding on extreme left and in moderate speed. In spite of that the truck hit it from opposite direction. Thus the fault lies with the truck driver. In ***Kalpana Majumder and ors vs Sankar Debnath and anr (2017) 2 TLR 74*** it was held that reliance cannot be placed on contents of police investigation report to disbelieve the case of the respondent. Therefore, it is evident that Utpal Das sustained injuries on 24.04.2017 in a road traffic accident out of the use of the offending vehicles bearing registration Nos.TR-03-B-1784 (Mini Truck) and TR-03- K-0260 (Maruti Suzuki omni) and consequently died. As such, the respondent No.1 has prima-facie discharged her liability of proving that death of her husband occurred due to accident caused by the negligence of the driver of offending vehicles specially that of TR-03-B- 1784 (Mini Truck).

[17] As regards respondent No.5 Smt. Rekha Das it appears that she is the mother of the deceased Utpal Das and the petitioner No.1 also admitted that her mother-in-law is alive. According to the petitioner, her mother-in-law is not dependent upon the income of her husband as her father-in-law is a pensioner. The respondent No.5 also admitted the fact that her husband is a Pensioner being retired Govt. Employee but averred that the amount is meagre. Moreover, the respondent No.6 herein is a legal heir of the deceased & she is also entitled to compensation for the death of her son in road traffic accident more so because the bond of a mother and a son is not dissolved on his marriage and a son is duty bound to maintain his mother even after marriage.

[18] The respondent No.1 stated that her husband i.e. the deceased Utpal Das was a Government Servant and serving as Rifleman under 2nd Bn. TSR, R.K.Nagar. In this regard she submitted the salary certificate (Ext.6) issued by the DDO (Asstt. Commandant, 2nd Bn. TSR, R.K.Nagar) whereby it appears that in the month of April, 2017 the gross salary of the deceased was Rs.32,633/-. Since the respondent No.1 has submitted the salary certificate of the deceased issued by his DDO, Lalhim Molsom, Asstt. Commandant, 2nd. Bn TSR, R.K.Nagar, having DDO Code No.2002, this Court finds no reason to disbelieve the monthly income of the deceased. The salary certificate shows that there was monthly deduction of Rs.208/- towards professional tax and Rs.150/- towards General Insurance Scheme.

[19] Had the deceased been alive he had to pay these two amounts throughout his service life. So, after deducting the professional tax and the premium under General Insurance Scheme, the monthly salary comes at Rs.32,275/-. As per guideline given by the Hon'ble Apex Court in ***Sarala Verma and Ors. V. Delhi Trasport Corporation & Anr., reported in (2009) 6 SCC 121*** the multiplier '15' is adopted to determine the compensation. Therefore, the yearly income of the deceased comes at Rs.3,87,300/- and applying multiplier the amount comes at Rs.3,87,300/- x 15 = 58,09,500/-. As per the ratio set forth in ***Sarala Verma (supra)***, personal and living expenses of the deceased should be taken as one third (1/3rd) as the dependent family members of the deceased consisted of three members only and as such, the amount towards loss of dependency comes at Rs.38,73,000/- after deducting Rs.19,36,500/- for personal expense.

[20] As per ratio laid down in ***National Insurance Company Ltd. vs. Pranay Sethi reported in (2017) 16 SCC 680*** an addition of 50% of actual salary/ income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years is to be awarded. In the case in hand, deceased was a permanent Govt. Employee and he was below the age of 40 years. Therefore, as future prospect the respondent-claimant are entitled to a further sum of Rs.19,36,500/- as loss of future prospective income.

[21] In addition to this amount the respondent-claimant are also entitled to Rs.15,000/- as loss of estate, Rs.15,000/- as funeral expenses. A further sum of Rs.40,000/- as spousal consortium is awarded to claimant respondent No. 1 Smt. Nandita Datta. The minor daughter of the deceased Utpal Das is also entitled to Rs.40,000/- as parental consortium in terms of the ratio laid down in *Magma General Insurance Co. Ltd. v. Nanu Ram @ Chuhru Ram & Ors., (2018) 18 SCC 130*, affirmed in *United India Insurance Company vs. Satinder Kaur, reported in (2020) SCC Online 410*. Thus, the total conventional amount comes to Rs.1,10,000/-. In *Pranay Sethi supra* the Apex Court directed that these conventional amounts should be increased by 10% every three years. Since that judgment already 5 years have passed. Thus, 1,10,000/- awarded under heads loss of estate, consortium & funeral expenditure is increased to Rs.1,21,000/-. Therefore, in total the compensation comes to Rs.59,30,500/-(Rs 38,73,000+Rs 19,36,500/-+Rs 1,21,000/-).

[22] Now, the question arises who is to pay the compensation. It is already concluded that the accident occurred due to rash and negligent driving of the driver of vehicle No.TR-03-B-1784 (Mini Truck). The claimants have also made claim against TR-03-B-1784 (Mini Truck) only and adduced evidence to that effect. After investigation, police held both the drivers of the vehicles responsible for the accident. The liability to pay compensation in a case of composite negligence is both joint as well as several. The insurance company or owner of TR-03-B-1784 (Mini Truck) did not raise the issue of contributory negligence on the part of the other vehicle and for apportionment of the compensation amount. Therefore owner of TR-03- B-1784 (Mini Truck) is fastened with liability to pay the compensation.

[23] As regards vehicle No.TR-03-B-1784 (Mini Truck), its owner submitted the registration certificate, insurance certificate and driving licence of the driver which were marked as Ext.E, Ext.F and Ext.G respectively. On perusal of the registration certificate and driving licence same are found to be valid on the date of accident. The driver was competent to drive the vehicle as per driving licence. It appears from the policy papers of insurance that the offending vehicle bearing registration No.TR-03-B-1784 (Mini Truck) was

duly insured covering the date of accident and type of policy was package policy, which includes third party damage.

[24] It was argued by the learned counsel appearing for the appellant-insurance company that the vehicle No.TR-03-K-0260 (Maruti Suzuki Omni) is a private car and the owner of the vehicle used the vehicle for commercial purpose by carrying passengers. Any use of private car for commercial purpose is in violation of the terms and conditions of the insurance policy. As such, the insurer of the vehicle is not liable to pay any compensation. Moreover the New India Assurance Company Ltd. could not show by adducing cogent evidence that the offending vehicle was used for commercial purpose.

[25] I have gone through the factual and legal aspects of the instant appeal and this Court is of the considered opinion that the findings as returned by the learned Tribunal need not be interfered with. As such, I find no infirmity in the judgment of the learned Motor Accident Claims Tribunal and it has not been interfered with. Thus, the appeal stands dismissed. Draw the decree accordingly and thereafter LCRs be sent back. It is further made clear that the claimants are at liberty to withdraw the amount deposited to their respective shares, as per procedure. As a sequel, miscellaneous applications pending, if any, shall stand closed.

CHIEF JUSTICE (ACTING)

A.Ghash

