

**HIGH COURT OF TRIPURA
AGARTALA**

MAC App. 44 of 2023

1. Smti. Shikha Pal,
wife of late Swapan Pal

2. Sri Sujit Pal,
son of late Swapan Pal

Both are residents of village Badharghat,
P.S. Amtali, District- West Tripura.

.....**Claimant Appellants**

VERSUS

1. Sri Surajit Roy,
Son of Sri Bimal Roy,
Resident of Amtali, Ashram Para
District- West Tripura.
(owner of motor bike bearing No. TR-01-AC-
6533)

2. The Divisional Manager,
The New India Assurance Company Ltd.
Mantribari Road, Agartala
P.S. West Agartala, District- West Tripura
(Insurer of motor bike bearing No. TR-01-AC-
6533)

.....**Respondents**

For Appellant(s)	: Mr. PS Roy, Advocate.
For Respondent(s)	: Ms. S. Deb (Gupta), Advocate Ms. Rumpa Dey, Advocate Mr. A Baidya, 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 judgment and award dated 24.02.2023 passed by the learned Motor Accidents Claims Tribunal, Court No.1, West Tripura, Agartala in case No. TS (MAC) 209 of 2019..

[2] Brief facts of the case is that on 11.09.2019 at about 9.30 a.m. when the victim Swapan Pal was standing by the left side of the road at

Nimbark, at that time, one motor bike bearing registration No. TR-01-AC-6533 coming from Agartala side with high speed and in a rash and negligent manner dashed the victim Swapan Pal from his back side. As a result, he fell down on the road and sustained grievous multiple injuries on his body and blood was oozing continuously from his injuries. Immediate after the accident, he was taken to the T.M.C. and Dr. BRAM Teaching Hospital, Hapania wherefrom he was referred to the AGMC & GBP Hospital, Agartala wherein he got admitted as an indoor patient for the treatment of his injuries and ultimately, he succumbed to his injuries in the said hospital on 21.09.2019 and thereby they incurred Rs.65,000/- for the treatment of his injuries. They also stated that the accident had occurred due to high speed with rash and negligent driving by the rider of the Motor Bike bearing registration No. TR-01-AC-6533. Concerning the said accident a police case was registered with the Amtali Police Station vide Amtali P.S. Case No.161 of 2019 under Sections 279/338/304A I.P.C.

[3] It is also submitted by the claimant petitioners (appellant herein) in the claim petition that the deceased was aged about 55 years at the time of death and he used to earn Rs.15,000/- per month by way of mason and also as an employee under Agartala Municipal Corporation. Finally, the petitioners claimed compensation to the tune of Rs.62,15,000/- in total before the Tribunal.

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

“(1) Did the deceased Swapan Pal die in a road traffic accident occurred on 11.09.2019 at about 9.30 a.m. at Nimbark on Agartla- Bishalgarh Road under Amtali P.S. out of use of vehicle bearing registration No. TR-01-AC-6533 (Motor Bike) due to rash and negligent driving by the rider of the said motor bike?”

(2) Are the petitioners entitled to get compensation as prayed for and if so, to what amount and who is liable to pay the same?

(3) To what other reliefs the parties are entitled."

[5] Before the Tribunal, during the hearing, the petitioner No.1 (claimant appellant No.1 herein) examined herself as PW.1 and proved certain documents into evidence which were marked as Exbt.1 to Exbt.5. The Opposite Party No.1 (respondent No.1 in the instant appeal) examined himself as OPW1 and proved certain documents into evidence in respect of his vehicle which were marked as Exbt.A to Exbt.C.

[6] 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"

It is, therefore, held that the petitioners are entitled to get compensation of Rs.8,33,800/- (Rupees Eight Lakh Thirty-three Thousand Eight Hundred only) with interest @ 7% per annum with effect from 01.10.2019 i.e. the date of filing of the claim petition till the date of actual payment. The Opposite Party No.2 New India Assurance Company Ltd. will pay the amount of compensation with interest within 30 days from today in terms of Section 168(3) of M.V. Act, 1988.

Out of the awarded amount of compensation inclusive of interest, the petitioner no.1 will get 60% and the petitioner no.2 will get 40%. Out of the respective share of petitioners no.1 and 2, 50% each of their share shall be kept in fixed deposit scheme in their respective name in any Nationalized Bank of their locality for a period of five years each and the remaining 50% of their respective share shall be paid to them through their respective bank account. The petitioners no.1 and 2 shall however be at liberty to withdraw monthly interest from their fixed deposit to meet their day to day expenses. No loan or withdrawal shall be permitted from/against any of the fixed deposit certificates without prior permission of this Tribunal.

Supply copy of this award free of cost to the parties.

The claim petition stands disposed of on contest."

[7] Aggrieved by the award delivered on 24.02.2023, the appellants herein have approached this Court seeking following reliefs:

- A. admit this appeal;
- B. call for records;
- C. issue notice upon the respondents;

D. pass judgment and award setting aside, canceling and/or reversing the judgment and award passed by the learned Motor Accident Claims Tribunal (Court no.1). West Tripura, Agartala in Case No. T.S. (MAC) 209/2019;

[8] Mr. PS Roy, learned counsel appearing for the claimant appellants submits that the claimant appellants in the claim petition said that deceased Swapan Pal was a mason and he used to earn Rs.15,000/- per month but, the learned tribunal below did not consider his monthly income properly and considered his income at Rs.9,000/- only. He prays that the monthly income of the deceased as considered by the tribunal below needs to be enhanced. Learned counsel further submits that the learned tribunal awarded interest @7% on the awarded compensation which is also very low and the same needs to be increased.

[9] Mr. A. Baidya, learned counsel is present for respondent No.1, owner of the vehicle. Ms. S. Deb (Gupta), learned counsel and Ms. R. Dey, learned counsel are present on behalf of respondent No.2, insurance company (insurer of the vehicle). Ms. Deb (Gupta), learned counsel for the respondent insurance company submits that the award passed by the learned tribunal is sufficient for the claimant respondents and as such, learned counsel prays that the same should not be increased further by this Court. Learned counsel, therefore, urges before this Court that the instant appeal is liable to be rejected.

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

[11] Having perused the entire records 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 at Rs.9,000/- only. 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.

[12] This Court in all the similarly situated matters is fixing 7.5% interest to maintain uniformity while comparing the bank rate of interest. 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 increased from 7% per annum to 7.5%. per annum.

[13] Thus, this Court is of the view that the income of the deceased be assessed at Rs.10,000/- per month. Now, if the income of the deceased is considered as Rs.10,000/- per month, the modified head under the income of the deceased stands as under:

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

(II) 10% of the income to be added as future income= Rs.1,000/-

On addition of (I) and (II), it comes to Rs.11,000/-

Thus, loss of dependency is assessed at Rs.11,000 X 12 X 9 = Rs.11,88,000/-

If 1/3 of the same is deducted therefrom on account of personal expenditure, the net amount comes to **Rs.7,92,000/-** (Rs.11,88,000/- - Rs.3,96,000/-).

[14] Now in terms of the present appeal, the modified total compensation to be awarded to the claimants herein stands at **Rs.9,13,500/-** (Rs.7,92,000/- + Rs.16,500/- + Rs.16,500/- + Rs.88,500/-).

Consequently, the total compensation entitled by the claimant-respondents would be Rs.9,13,500/- (Rupees Nine Lakh Thirteen Thousand Five Hundred only) along with 7.5% simple interest per annum from the date of presentation of the claim petition till the date of actual payment.

[15] In view of the above, the instant appeal is allowed to the extent as indicated above. Thus, the respondent insurance company i.e. the New India Assurance Company Ltd. is liable to pay the total amount as awarded above to the claimant-respondents. 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 claimants may file appropriate application to the satisfaction of the Court and withdraw the amount as per law.

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

Send down LCR.

JUDGE

Sabyasachi. G.

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