

**HIGH COURT OF TRIPURA
AGARTALA
MAC APP NO.32 OF 2022**

National Insurance Company Ltd.

..... **Appellant(s)**

Vs.

Smt. Rita Debnath and ors

..... **Respondent(s)**

For the Petitioner(s) : Mr. S.D. Choudhury, Advocate.

For the Respondent(s) : Mr. S. Das, Advocate

Date of hearing and delivery of
Judgment & Order : 09.01.2023.

Whether fit for reporting : NO.

HON'BLE THE CHIEF JUSTICE(ACTING)

JUDGMENT AND ORDER(ORAL)

This is an appeal filed under Section 173 of the Motor Vehicle Act, 1988 against the Judgment and Award dated 19.01.2022 passed by the learned Motor Accident Claims Tribunal (Court No.5), West Tripura, Agartala in T.S.(MAC)55 of 2018, wherein, the appellant-Insurance Company was directed to pay compensation amounting to Rs.11,25,400/- with 8% interest per annum to the claimant-respondents herein.

2. The fact of the case, in brief, is that on 09.10.2016 at about 1.30 am one Subash Debnath after closing his shop was going on foot towards Ashram Chowmuhani from Lal Bahadur Chowmuhani through the left side of the road. When he reached near Old Central Jail, at that time, an Alto car bearing registration No. TR01-AD(TEM) - 0861 came from the back side in a very rash and negligent manner and dashed him. As a result, the said-Subash Debnath sustained injuries and was immediately shifted to AGMC and GBP hospital. He was discharged from the hospital after primary treatment but after returning home, the health condition of the said-Subash Debnath became serious and he was again admitted to AGMC and GBP hospital. He expired on 10.10.2016 at about 4.30 am. In connection with the accident, the son of the deceased lodged an FIR at East Agartala PS vide No. 108 of 2016 under section 279/338 of IPC on 10.10.2016. It was also pleaded that deceased was having fast food business and he used to earn Rs.25,000/- per month. At the time of the accident, the deceased was 59 years old.

3. Thereafter, the claimant-respondents herein as appellants filed a case bearing registration No.T.S(MAC)55 of 2018 under Section 166 of the Motor Vehicle Act, 1988 claiming compensation of Rs.22,50,000/- due to the death of

said Subash Debnath, the deceased herein in the said road traffic accident.

4. The case of the claimants was contested by O.P. No.1, the owner of the offending vehicle by filing a written statement. He pleaded that at the time of the accident, the vehicle was insured with O.P. No.2, the National Insurance Company Limited i.e. the appellant herein. The case of the claimants was contested by O.P. No.2, the Insurance Company by filing a written statement denying the plea of the claimants. The insurance company, i.e. the appellant herein pleaded that claimants are to prove their case by producing documents and the insurance company is not liable to pay any compensation unless a valid driving licence, insurance certificate, registration certificate, and other documents of the said vehicle is produced by the owner. It is further pleaded that any breach of conditions specifically those relating to the driving licence and use of the vehicle may entitle O.P No.2 to avoid liability as per section 149(2) of M.V. Act.

5. The learned Tribunal for adjudication of the said matter framed the following substantial questions of law:-

"(I) Whether the present claim petition is maintainable both in law and facts ?

(ii) Whether the predecessor of the claimant- petitioners died as a result of an accident occurred on 09.10.2016 at about

01.30 hours near old Central Jail, Jail Road within the jurisdiction of East Agartala PS, West Tripura involving the vehicle bearing Registration No.TR-01-AD- TEM-0861(Alto Car) ?

(iii)Whether claimant petitioners are entitled to get compensation as prayed for and if so, who shall be liable to pay the compensation and upto what extent?

6. To prove the case, the claimant-respondents examined two witnesses, namely, Mr. Dipankar Debnath as P.W.1 and Sri Ishwar Biswas as P.W.2. The respondent No.4 herein adduced himself as O.P.W-1 before the learned Tribunal below and appellant-Insurance Company herein adduced the investigation officer of the East Agartala P.S. Case No.108/2016 as O.P.W.-2.

7. The learned Tribunal below after hearing both the parties and perusing the evidence on record passed the judgment and award dated 19.01.2022 awarding Rs.11,25,400/- along with 8% per annum from 17.04.2018 till the payment in favour of the claimants. The O.P. No.2, i.e. the appellant-Insurance Company herein was fastened the liability to pay the said amount.

8. Aggrieved thereby, the O.P. No.2, i.e., the Appellant-Insurance Company herein filed this instant appeal and prayed for the following reliefs:-

" i) Admit the appeal;

ii) Call for the records hearing Case No.T.S.(MAC)55/2018 from the Ld. Tribunal, West Tripura, Agartala, Court No.5.

iii) Issue notice upon the respondents as to why the impugned judgment shall not be set aside, cancelled, quashed.

iv) After hearing be kind enough to set aside, quash, cancel, modify the impugned judgment passed by the learned Tribunal(Court No.5), West Tripura, Agartala. During the pendency of the appeal be kind enough to stay further proceeding arising out of the impugned judgment in T.S.(MAC)55/2018."

9. Heard Mr. S.D Choudhury, learned counsel appearing for the appellant-Insurance Company as well as Mr. S. Das, learned counsel appearing for the claimant-respondents.

10. Mr. Choudhury, learned counsel appearing for the appellant-Insurance Company submitted that the driver of the offending vehicle was not having a valid driving license at the time of the said accident, which violates the policy condition. Moreover, at the time of the accident, the driver of the offending vehicle was in a drunken condition. Further learned Tribunal below in Para-26 of its judgment observed that '*As the driver of the offending vehicle was driving without driving licence, OP No.1-the owner is liable to pay compensation. However, as submitted by the Ld. Counsel for the claimants in view of the Judgment of the Honble Supreme Court in Parminder Singh(Supra) and the Judgment of the Honble Madras High Court in Branch Manager, Ifko Tokiyo*

General Insurance company Limited(Supra), the insurance company(OP No.2) can be directed to pay the compensation amount to the claimants and OP No.2 can recover the same from OP No.1, the owner on the principle of pay and recover policy as the offending vehicle was insured with OP No.2'. But the same was not mentioned in the operative part of the impugned judgment and award and the appellant-Insurance Company herein was simply directed to deposit the whole amount.

11. Heard both sides and perused the evidence on record.

12. The learned Tribunal below in Para-26 of the impugned judgment and order dated 19.01.2022 observed thus:-

*"26. As the driver of the offending vehicle was driving without driving licence, OP No.1-the owner is liable to pay compensation. However, as submitted by the Ld. Counsel for the claimants in view of the Judgment of the Honble Supreme Court in Parminder Singh(Supra) and the Judgment of the Honble Madras High Court in Branch Manager, Ifko Tokiyo General Insurance company Limited(Supra), **the insurance company(OP No.2) can be directed to pay the compensation amount to the claimants and OP No.2 can recover the same from OP No.1, the owner on the principle of pay and recover policy as the offending vehicle was insured with OP No.2'***

[Emphasis added]

13. Accordingly, this instant appeal is allowed and disposed of to the extent indicated here-in-above on the

principle of *pay and recover* given in para-26 of the impugned Judgment and Award dated 19.01.2022.

14. Consequently, pending application(s), if any also stands closed.

CHIEF JUSTICE (ACTING)

suhanjit

