

**HIGH COURT OF TRIPURA
AGARTALA**

MAC.App 59 of 2023

United India Insurance Company Ltd.

---Appellant(s)

Versus

Sima Rani Debbarma (Dey) & 4 ors.

---Respondent(s)

For Appellant(s)	: Mr. S. D. Choudhury, Advocate.
For Respondent(s)	: Ms. Sarama Deb, Advocate.

HON'BLE MR. JUSTICE T. AMARNATH GOUD

ORDER

20.11.2023

Heard learned counsel for the parties.

[2] This is an appeal under Section 173 of the Motor Vehicle Act, 1988 against the judgment dated 14.02.2023 passed by the Ld. Member, Motor Accident Claims Tribunal, Khowai, Tripura in connection with Case No.T.S.(MAC) 9 of 2019.

[3] Briefly stated the case of the claimant-respondents is that on 21.09.018 at about 10.00 pm while the deceased Suman Dey was responding to nature's call at the left side of the main road at Maharanipur keeping his Auto Rickshaw bearing Reg No. TR-01-D-4396, at that time one truck bearing No. TR-01-1732 coming from Ambassa side loaded with wooden log dashed the victim Suman Dey. As a result, he sustained multiple grievous injuries on his head and other vital parts of his body and he died on the spot. Thereafter, he was taken to Teliamura Sub-Divisional Hospital by the Fire Brigade vehicle and the attending doctor of the said hospital declared him dead. Accordingly, on 22.09.2018 his post-mortem was done. According to the claimant-respondents at the time of accident the deceased was 31 years old. He

used to earn Rs. 20,000/- per month and he survived by his wife, children and his mother. A criminal case has been registered for the said accident in Teliamura PS vide Teliamura PS Case No. 073/2018, U/s. 279/304 (A)/427 of IPC and under Section 177/184 of MV Act.

[4] The OP No.1 contested the case by filing written objection stating interalia that no accident occurred due to the rash and negligent driving of the driver of the vehicle bearing Reg No. TR-01-1732. The OP No.01 admitted that the said vehicle was duly insured by the United Indian Insurance Company Ltd. and the vehicle had all valid documents i.e. registration certificate, fitness certificate, driving license of the driver and tax token at the time of alleged accident. He further submitted that the vehicle was duly insured by the United Indian Insurance Company Ltd. so, OP No.02 is liable to pay compensation if awarded by this tribunal.

[5] On the other hand, the OP No.02, the United Indian Insurance Company Ltd. also contested the case by filing their written statements. It is cited in the written objections that the Insurance company is not liable to pay any compensation unless it is proved that the person who drove the vehicle at the material time of accident had valid and effective driving license and the said vehicle is anyway involved in the accident.

ISSUES

(I) Whether deceased Suman Dey died on 21.09.2018 due to Road Traffic Accident at about 10.00 p.m. as the offending Truck bearing Regn. No. TR-01-D-4396 coming from Ambassa side loaded with wooden log dashed the victim on the left side of the main road of Maharanipur rashly and negligently of the said vehicle.

(II) Whether the OP No.1 is the registered owner of the said offending vehicle bearing No. TR-01-1732 (truck) at the time of accident.

(III) Whether the offending vehicle had effective vehicular documents including Insurance Policy at the time of accident.

(IV) Whether the claimant-claimant-respondents are entitled to get compensation including other expenses as per provisions of Motor Vehicles Act; If so, to what extent and payable by whom.

(V) What other relief/reliefs the claimant claimant-respondents are entitled to.

[6] By the order dated 14.02.2023, the learned court below has finally made the following observation:

"Being the insurer of the offending vehicle, the OP No.2, the United India Insurance Company Ltd (OP No.02) is to pay the awarded compensation amount of Rs.35,63,000/- (rupees thirty five lakh and sixty three thousand) along with interest @ 9 % per annum within 60 days from the date of passing of this award.

The claimant-petitioner No.1 Smt.Sima Rani Debbarma (Dey) is entitled to get compensation for an amount of Rs.8,90,750/- (rupees eight lakh ninety thousand and seven hundred fifty) only, the claimant-petitioner No.2, Smt. Maya Dey is entitled to get an amount of Rs.8,90,750/- (rupees eight lakh ninety thousand and seven hundred fifty) only and the claimant-petitioner No.3 and No.4 is entitled to get an amount of Rs.8,90,750/- (rupees eight lakh ninety thousand and seven hundred fifty) only and Rs.8,90,750/- (rupees eight lakh ninety thousand and seven hundred fifty) only respectively. The United India Insurance Company Ltd (OP No.02) is to pay the awarded amount of compensation to the claimant claimant-respondents with 9 % interest per annum from the date of filing of the claim petition by the claimant-claimant-respondents till the date of payment. Out of the amount of total compensation in favour of claimantpetitioner No.1 and 2, 50 % of the awarded amount be kept in fixed deposit scheme in any Nationalized Bank for a period of 5 (five) years and the said claimant claimant-respondents if desire will be at liberty to draw the monthly interest to be accrued from the fix deposit scheme. Similarly out of the amount of total compensation amount in favour of claimant-petitioner No.3 and 4, 75 % of the awarded amount be kept in fixed deposit scheme in any Nationalized Bank for a period of 5 (five) years and the said claimant claimant-respondents if desire will be at liberty to draw the monthly interest to be accrued from the fix deposit scheme."

[7] Aggrieved by the impugned order dated 14.02.2023, the appellant-Insurance Company has approached this court for seeking relief.

[8] The only point which came before this court for consideration in the light of the argument made by the learned counsel for the appellant, Insurance Company is in regard to the driver of the vehicle who was not having valid license as on the date of the accident.

[9] A bare perusal of the judgment and the records show that no such issue was framed and no such argument was advanced by the appellant insurance company before the court below on the said point. Now, it is not open for the appellant insurance company to raise fresh issue before this court at the appellate stage.

[10] In view of the same, the appeal is dismissed confirming the judgment dated 14.02.2023 passed by the Ld. Member, Motor Accident Claims Tribunal, Khowai, Tripura in connection with Case No. T.S (MAC) 9 of 2019. The appellant-Insurance company, if not already deposited, shall deposit the awarded amount within one month from today. On deposit of the same, the respondent-claimants are at liberty to withdraw the said amount unconditionally.

[11] With the above observation and direction, this present appeal stands disposed of. As a sequel, stay, if any, stands vacated. Pending application(s), if any also stands closed.

JUDGE

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