

**HIGH COURT OF TRIPURA
AGARTALA**

Mac. App No.58 of 2023

New India Assurance company Ltd.

Represented by its Divisional Manager
Agartala Division 4, Mantribari Road, PS -West Agartala
District- West Tripura, Pin- 799001
(Insurer of Vehicle bearing No. TR-03-1286, Bus and
TR-0IC-4392, Max)

---Appellant(s)

VERSUS

1. Smt Lina Debbarma,

W/o. Late Sunil Debbarma.

2. Smt. Rajlaxmi Debbarma

W/o. Late Rahajit Debbarma.

3. Smt. Sweta Debbarma

D/o. Late Sunil Debbarma.

(Claimant respondent no. 3 being minor is represented through her mother as natural guardian, claimant respondent no.1)

-All are residents of Vill- South Ramnagar, Golchakkar, C/O. MD. Joynal Miah, P.O Ramnagar, P.S West Agartala.
District- West Tripura, Pin- 799002.
(Claimant Petitioners)

4. Sri Mithun Pal,

(Legal heir of Late Dipali Pal),

S/o- Sri Chira Ranjan pal,

Resident of Vill- Dhajanagar Police Line

Gokulpur, PS R.K. Pur

PO-R .K. Pur.

District- Gomati Tripura,

Pin- 799120

(Owner of vehicle bearing No. TR-03-1286, Bus)

5(i) Mrs. Mani Sarkar (Malakar)

W/o Late Shital Malakar.

5(ii)Mrs. Priyanka Malakar

D/o- Late Shital Malakar

5(iii). Sri Bishu Malakar

S/o. Late Shital Malakar

All are resident of Vill- Barnarayan.

Bejimara, Sonamura

PO & PS Sonamura

District- Sepahijala, Tripura
PIN- 799131
(Owners of vehicle bearing No. TR-01C-4392,Max)

---Respondent(s)

For Appellant(s)	:	Mr. G.S Das, Advocate.
For Respondent(s)	:	Mr. D. C. Roy, Advocate.
Date of hearing and date of delivery of judgment and order	:	20.11.2023
Whether fit for reporting	:	No

HON'BLE MR. JUSTICE T. AMARNATH GOUD

Judgment & order (Oral)

This is an appeal filed under Section 173 of the M.V Act, 1988 against the award dated 25.01.2023 passed by the Learned Motor Accident Claims Tribunal, Court no. 2, West Tripura, Agartala in case bearing no. T.S. (MAC) No. 214 of 2019 to reduce the awarded amount of Rs. 3,00,000/- as awarded for loss of love and affection for minor daughter and the rate of interest @ 7% per annum instead of @ 9% per annum.

[2] Brief facts, leading to this case is that on 26.09.2019 at about 5-15 p.m. deceased was proceeding from Bishramganj towards Gakulnagar by boarding a Max vehicle bearing registration No. TR-01C-4392(here-in-after called the offending vehicle) and when it reached at Chesrimai near Sukanta Tant Shilpa the said Max vehicle collided with a bus bearing registration No. TR-03-1286 (here-in-after called the offending vehicle) came with excessive speed in the same direction and in negligent manner and a fatal accident occurred as a result of which deceased along with some passengers died on the spot. Post Mortem examination was also done over the body of deceased on the next day. In this connection Bishramganj PS Case No.48 of 2019u/s279/337/304(Part-II)/427 of IPC read with Section 177/184 of the M.V. Act was also registered. Claimant

petitioners further stated in their claim petition that the accident occurred due to rash and negligent driving on the part of the driver of both the offending vehicles.

[3] Claimant petitioners also stated that at the time of death deceased was aged about 38 years and he was a govt. employee as Rifleman in the 7thBN TSR attached with the office of the DGP, Govt. Of Tripura, Agartala and used to earn Rs. 43,000/- per month.

[4] The claimant petitioners, therefore, approached the court below seeking compensation due to death of the deceased and quantified their claim to the tune of Rs.80,00,000/-.

[5] The OP Nos.1 and 3(i) to 3(iii), owner of the offending vehicles have contested the suit by filing written statement and stated that on the period of accident their vehicles have valid documents and also insured with OP No.2 and put the claimant petitioners in strict proof of their respective claim.

[6] The OP No.2 through his written statement apart from denying all the allegations also put the claimant petitioners as well as the OPNo.1 and in strict proof of their respective claim.

[7] With a view to decide the claim of the claimant petitioners following issues were framed:-

ISSUES

- (i) Is the claim maintainable in its present form and nature?
- (ii) If the death of deceased Sunil Debbarma was caused on the alleged date, time and place due to RTA on the rash and negligent driving of the driver of the alleged vehicle? If so, are the claimant petitioners entitled to compensation as prayed for?
- (iii) Who shall be held liable to pay the compensation?
- (iv) What other relief/reliefs the parties are entitled?

[8] After considering all these aspects and materials available in the record, this Tribunal finally observed in the following manner:

ORDER

"In the result, claim is awarded in following terms:-

Claimant petitioners are entitled to get the award of **Rs.77,59,720/-(rupees seventy seven lacs fifty nine thousand seven hundred twenty) only along with 9% simple interest per annum** from the date of registration of claim i.e, w.e.f. 30.10.2019 till the date of realization thereof.

The petitioner No.1 exclusively shall be entitled to get the amount of Rs.40,000/-as consortium. The petitioner No.3 exclusively shall also be entitled to get the amount of Rs.3,00,000/-(three lacs) as awarded under the head loss of love and affection. The claimant petitioners Nos. 1 to 3 shall have equal share on the rest amount.

75% of the share of the claimant petitioner No.1 and 2 in the award be invested by purchasing separate Fixed Deposit certificate from any Nationalized Bank at least for the next 5 years and no loan or advance or pre- mature withdrawal shall be allowed without prior sanction of this Tribunal.

75% of the shares of the claimant petitioner No. 3 shall be invested by purchasing separate Fixed Deposit certificate from any Nationalized Bank at least for the next 5 years with auto renewal facility till she attains 21 years and no loan or advance or pre-mature withdrawal shall be allowed without prior sanction of this Tribunal.

Remaining amount of shares of the claimant petitioner Nos. 1, 2 and 3 shall be credited directly to their individual bank account.

However, the claimant petitioner No.1 shall have the liberty to withdraw the monthly interest there from including from the account of his minor daughter. Claimant petitioner No.2 shall also be entitled to withdraw monthly interest.

Needless to say that the amount so ordered to be paid to the minor claimant petitioner shall be incurred only for the welfare and benefit of herself.

The OP No.2 shall deposit the awarded amount along with interest thereon within one month to this Tribunal."

[9] Aggrieved by the award delivered on 25.01.2023 the appellant herein approached this court seeking the following reliefs :-

- I. Admit the appeal.
- II. Call for the records from the Motor Accident Claims Tribunal, Court No. 2, West Tripura, Agartala of the case bearing No. T.S.(MAC) No. 214 of 2019.
- III. Issue notices to the respondents.
- AND
- IV. After hearing the parties, your Lordships would be pleased to reduce the amount of Rs.3,00,000/- as awarded for loss of love and affection for the minor daughter and also reduce the rate of interest from 9% per annum to 7% per annum on the awarded amount.
- AND
- V. Pass such other order/orders as this court made deem fit and proper.

[10] Mr. G. S Das, learned counsel appearing for the appellant-Assurance Company submits before this Court that the learned Tribunal considered an amount of Rs. 3,00,000/- for loss of love and affection for the minor daughter beyond any provision of law and as such the said amount as

awarded very illegally which may kindly be deducted by this Hon'ble Court for ends of justice.

[11] Mr. G.S Das, learned counsel for the appellant-Assurance Company further submits that the Learned Tribunal very illegally awarded higher rate of interest @ 9% per annum in place of 7% per annum and the Learned Tribunal ought to have considered the rate of interest as per decision of the Hon'ble Supreme Court as well as our own High Court @ 7% per annum and as such the rate of interest may kindly be reduced by this Hon'ble Court.

[12] Heard learned counsel appearing for the parties.

[13] Having perused the entire record this court is of the view that the learned court below erroneously determined the compensation award under the head of loss of love and affection for the minor daughter to the tune of Rs. 3 lakh. This court feels that the amount so awarded is on the higher side and it may be reduced to the tune of Rs. 40,000/-. In so far as parental consortium with regard to love and affection is concerned, in terms of Hon'ble Apex Court Judgment reported in **(2018) 18 SCC 130** titled as **Magma General Insurance Company Ltd. Vs. Nanu Ram Alias Chuhru Ram and Ors**, the dependents of the deceased are only entitled to a sum of Rs. 40,000/- each.

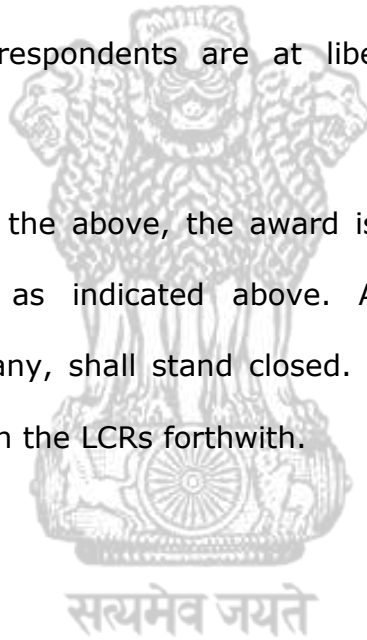
Thus the amount would come to :

- i. Income per month= Rs.41,054/- only.
- ii. 50% of above to be added as future prospect Rs.20,527/- only.
- iii. Total of serial no. (i) and (ii) above comes to Rs. 41,054+ Rs.20,527 = Rs. 61,581/-only.
- iv. One third (1/3) of above to be deducted as personal and living expenses of deceased Rs.61,581, minus Rs. 20,527 =Rs. 41,054/-.
- v. Compensation after applying multiplier of 15:- Rs. 41,054 X 12 X 15 = 73,89,720/- only.
- vi. Loss of Estate = Rs. 15,000/-only.
- vii. Funeral expenses = Rs. 15,000/- only.
- viii. Loss of consortium = Rs. 40,000/- only.
- ix. Loss of love and affection of the minor daughter = 40,000/- only.
- x. Thus the total compensation stands at Rs. 73,89,720+40,000 +15,000 +15,000 +40,000=74,99,720/-only.

[14] This Court in all matters fixing 7.5% interest to maintain uniformity while comparing with the bank rate of interest which is much less. Consequently, the total compensation entitled by the claimant-respondents are Rs. 74,99,720/- (Rupees Seventy Four Lakhs Ninety Nine Thousand and Seven hundred twenty) only along with 7.5% interest per annum with effect from the date of presentation of the claim petition till the date of actual payment. Thus, the insurance company i.e. New India Assurance Company Ltd. is liable to pay the modified amount i.e. Rs. 74,99,720/- instead of Rs. 80,00,000/- in favour of the claimant-respondents within a period of 30 days from the date of receipt of the copy of this order.

[15] However, it is made clear that if the amount is already deposited, the claimant-respondents are at liberty to withdraw the same unconditionally.

[16] In view of the above, the award is modified and the appeal is allowed to the extent as indicated above. As a sequel, miscellaneous applications pending, if any, shall stand closed. Draw the decree accordingly and thereafter, send down the LCRs forthwith.



JUDGE

Paritosh

**SABYASACHI
GHOSH**

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