

**HIGH COURT OF TRIPURA
AGARTALA
MAC.APP.No.49 of 2022**

The New India Assurance Company Limited,
represented by its Branch Manager,
having is branch office at 4, Mantribari Road, Agartala,
P.S. West Agartala, District-West Tripura

.....Appellant(s)

Versus

1. Smt. Udarung Reang,
wife of late Bilaxman Reang,
Halaram Para, Kakracherra,
P.S. Manugiakami, Khowai, Tripura

2. Sri Pashuram Reang,
son of late Late Bilaxman Reang,
Halaram Para, Kakracherra,
P.S. Manugiakami, Khawai, Tripura

3. Sri Balendra Reang,
son of late Late Bilaxman Reang,
Halaram Para, Kakracherra,
P.S. Manugiakami, Khawai, Tripura

4. Sri Annajoy Reang @ Aranajoy,
son of late Late Bilaxman Reang,
Halaram Para, Kakracherra,
P.S. Manugiakami, Khawai, Tripura

.....Respondent-claimant petitioner(s)

5. Sri Punkhiroy Debbarma,
son of Reshnay Debbarma,
Tuikarmapara, Teliamura,
P.S. Teiamura, District-Khowai, Tripura
(Owner of Vehicle No.TR-01-A-2017 Commander Jeep)

.....Respondent-owner(s)

For Appellant(s)	:	Mr. A. Das, Adv.
For Respondent(s)	:	Mr. S.B. Debnath, Adv. Mr. R. Saha, Adv.
Date of Hearing &		
Judgment and Order :		26.04.2023
Whether fit for reporting	:	YES

HON'BLE MR. JUSTICE T. AMARNATH GOUD

Judgment & Order(Oral)

Heard Mr. A. Das, learned counsel appearing for the appellant-Insurance Company as well as Mr. S.B. Debnath, learned counsel appearing for the claimant-respondents and Mr. R. Saha, learned counsel appearing for the respondent-owner.

2. The fact of the case is that on 07.10.2013 at about 4.30 p.m. deceased Bilaxman Reang was proceeding towards Kakracherra from Hazra by a Commander Jeep bearing registration No.TR-01-A-2017 and when reached at Kakracherra, the said vehicle stopped and while Bilaxman Reang started to get down from the vehicle, the said vehicle started to run by a rash and negligent driving and Bilaxman Reang fall down and sustained injury and was shifted to Teliamura PHC by local public, but doctor declared him dead. It is pleased that at the time of death the deceased was 53 years old and was the owner of a cattle firm and also a cultivator and used to Rs.15,000/- per month. In connection with the accident Mungiakamji P.S. Case No.30 of 2013 was registered under Section 279/304 A of the IPC.

3. The respondent claimant petitioners filed a claim petition for granting compensation due to the death of Bilaxman Reang in a road traffic accident before the Motor Accident Claims Tribunal, West Tripura, Agartala making parties to the owner and insurer of the vehicle. After receiving the notice from the learned Tribunal the owner-respondent and the appellant-

Insurance Company turned up and submitted their respective written statements.

4. It is further to be mentioned here that earlier the respondent claimants NO.1 Smt. Udarung Reang filed a claim petition for granting compensation due to death of Bilaxman Reang in a road traffic accident vide Case No.T.S.(MAC)No.426 of 2013 before the MACT, West Tripura, Agartala which was dismissed by the learned Tribunal and thereafter, as per the Hon'ble High Court, the respondent claimants filed the present claim petition by adding parties including the sons and daughters.

5. On the basis of the pleading and the written statements along with the documents the learned Tribunal framed the following issues:

- "(i) Whether the case is maintainable ?**
- (ii) Whether deceased Bilaxman Reang died on 07.10.2013 due to the rash and negligent driving of commander jeep TR01A2017 at Kakracherra at about 4.30 pm on Hazra to Kakracherra Road under Mungiakami PS ?**
- (iii) Whether claimants are entitled to get compensation ?**
- (iv) What should be the just amount of compensation ?**
- (v) Who is liable to pay compensation ?"**

6. In support of the claim, the respondent claimants adduced evidence and also exhibited the relevant documents. From the documents i.e. Survival Certificate, it revealed that the deceased was 60 years old at the time of death. *From the side of the respondent owner exhibited the vehicular documents. It revealed that on the date of accident he has no valid registration certificate.*

7. After hearing both sides, the learned Tribunal delivered the judgment on 08.10.2021 awarding the compensation to the tune of

Rs.14,37,400/- only along with interest which is beyond the evidence on record.

8. Mr. A. Das, learned counsel appearing for the appellant-Insurance Company has relied on three points for consideration by this Court assailing the order passed by the Motor Accident Claims Tribunal viz. (i) he has contended that as per survival certificate issued, the age of the wife of the deceased is shown as 65 years and accordingly, he has contended that the age of the deceased husband would be more than the age of the wife and accordingly, multiplier has to be applied. This general submission though appears logical; according to the Indian traditional marriage this cannot be considered when it comes to the consideration of the age under the M.V. Act.

9. The learned counsel appearing for the claimant draws attention of this Court to the school certificate issued wherein, it has been categorically given the date of birth of the deceased as 03.02.1958 and accordingly, his age needs to be considered as 55 years 8 months 4 days and the learned Court below has rightly considered as 55 years and made the multiplier applicable. In view of the said submission made by the counsel appearing for the claimant, this Court is not inclined to consider the grounds contended on the this point made by the learned counsel appearing for the appellant. Accordingly, the said ground in appeal on the point of age is rejected.

10. Learned counsel appearing for the Insurance Company has contended on the point of fixing income at Rs.14,000/- where there is no recognize proof of income and no document has been exhibited since, the

deceased is an unemployed, considering Rs.14,000/- by the tribunal is on the higher side. Learned counsel appearing for the respondent-claimant contended that the salary/income certificate issued by the Chairman ADC Block Development, who is a public representative has categorically stated that the deceased was conducting cattle business and also a vegetable vendor and accordingly, a sum of Rs.14,000/- which has been fixed was reasonable and also submitted that since the deceased was a person of 55 years of age with a family responsibility would easily earn Rs.14,000/- as fixed by the Court below. The said argument advanced by the claimant appears to be logical and reasonable since the local public representative who has the association with reasonable since the local public representative who has the association with the local people and at the same time in the cross-examination also before the Court below the same was not taken and leading a family with the minimum of Rs.500/- per on an average of Rs.15,000/- per month appears to be reasonable income and is not on the higher side. Accordingly, this Court negates the argument of the appellant-Insurance Company and confirms the income @ Rs.14,000/- as fixed by the Court below.

11. Insofar as the third point is concerned, the appellant has contended that since the Commander Jeep registration No.TR-01-A-2017 valid from 14.05.1999 up to 25.09.2012 registration of the vehicle as on the date of accident has expired and though there was valid Insurance, the principle of

pay and recovery ought to have been adopted and the Court below has failed on the point of awarding the pay and recovery.

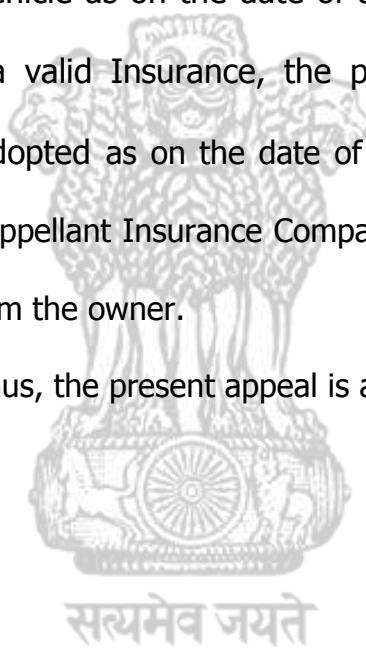
12. In this regard, learned counsel appearing for the claimant makes no submission since his main interest is to get the compensation either through Insurance Company or through the owner of the vehicle. In support of his contention the principle of pay and recovery, learned counsel appearing for the appellant Insurance Company has relied upon a decision of the Hon'ble apex Court in **Narinder Singh versus New India Assurance Company Limited and Others**, which is also, incorporated in the judgment of the learned Court below in its order, but this Court finds that there is no specific observation or direction while awarding the compensation in appreciating the said issue to say that pay and recovery principle needs to be made applicable. The accident has taken place on 07.10.2013 and the Survival Certificate was issued on 30.09.2021 which does not support the argument of the learned counsel appearing for the appellant-Insurance Company.

13. Learned counsel appearing for the respondent owner has submitted that there is the ratio opined by the learned Tribunal below that the pay recovery can be applied in this matter. There is no such direction that the Insurance Company shall pay the amount of compensation. According to him, according to the learned Tribunal below the judgment of the Hon'ble Supreme Court in **United India Insurance Company Limited versus Sushil Kumar Godara**, Civil Appeal No.5887 of 2021 dated 30.09.2021 is related to the claim

of the compensation filed by the owner(insured) and not by the third party. In this case, the claim of compensation is claimed by the third party and thus, the decision of the Hon'ble Apex Court relied on by the learned counsel for the Insurance Company will be of no help to Insurance Company. According to the learned Tribunal below, the Insurance Company is liable to pay the compensation at first instance and can recover the same from the owner. According to the learned Tribunal below, the OP No.2, the New India Assurance Company Limited is liable to pay the compensation.

14. Having heard both sides as advanced by the learned counsel appearing for the parties this court is of the considered opinion that since the Commander Jeep registration No.TR-01-A-2017 valid from 14.05.1999 up to 25.09.2012 registration of the vehicle as on the date of accident has expired 25.09.2012 though there was a valid Insurance, the principle of pay and recovery ought to have been adopted as on the date of accident there is no valid registration. Therefore the appellant Insurance Company is directed to pay the compensation and recover from the owner.

Having observed thus, the present appeal is allowed in part.



JUDGE