

HIGH COURT OF TRIPURA

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Mac App No.62 of 2022

Cholamandalam MS General Insurance Company Limited, represented by its authorized signatory, 1st Floor, Above 'W' Showroom, Mantribari Road, Old RMS Chowmuhani, P.S. West Agartala, District- West Tripura (Insurer of vehicle bearing registration No.TR-01-AB-1641, Tipper Truck).

.....Appellant(s)

V E R S U S

1. Smt. Nayantara Das Deb, wife of late Nirmal Deb, residence of village Sukanta Palli, Sukantanagar, P.O. & P.S. Kumarghat, District- North Tripura.

2. Master Bantu Deb, son of late Nirmal Deb, residence of village Sukanta Palli, Pabiacherra Sukantanagar, P.O. & P.S. Kumarghat, District- North Tripura.

3. Miss Arpita Deb, daughter of late Nirmal Deb, residence of village Sukanta Palli, Sukantanagar, P.O. & P.S. Kumarghat, District- North Tripura.

All claimant petitioners are now presently residing at Dhaleswar Road No.16, P.S. East Agartala, District- West Tripura. Claimant petitioner No.2 & 3 being minor are represented by their mother as natural guardian i.e., claimant-respondent No.1.

.....Claimant-Respondent(s)

4. MS Gital Steel Fabrication Prof Tapan Kumar Paul, of Netaji Chowmuhani, Kumarghat, District- Unakoti Tripura. [Owner of the vehicle bearing Registration No.TR-02-E-1722 Excavator].

.....Owner-Respondent(s)

For Appellant(s) : Mr. Rajib Saha, Advocate.

For Respondent(s) : None.

HON'BLE THE CHIEF JUSTICE (ACTING)

Date of hearing and Judgment : 14th March, 2023.

JUDGMENT & ORDER(ORAL)

Heard Mr. Rajib Saha, learned counsel appearing for the appellant-insurance company. No representation is made on behalf of the respondents.

[2] The present appeal is directed against the award dated 19.01.2022 passed by the learned Member, Motor Accident Claims Tribunal, West Tripura, Agartala in T.S(MAC) No. 19 of 2019 whereby the Tribunal awarded compensation of Rs.13,36,600/- in favour of the claimants with interest @ 8% per annum from the date of filing of the claim petition.

[3] It is alleged that on 24.11.2017 in a vehicular accident at Naydrun adjacent to the house of Sri Arabinda Deb under Kumarghat P.S, deceased Nirmal Deb sustained multiple injuries. At the time of accident, he was aged about 55 years and was working as a carpenter and used to earn Rs.15000/- per month. Immediately after the accident, he was taken to Gramin hospital, Kumarghat and subsequently was referred to District Hospital, Kailashahar where he succumbed to his injury on 24.11.2017 at about 7 pm. It was alleged that the accident took place due to rash and negligence driving of the driver of the offending vehicle (Excavator) bearing registration No.TR02-E-1722.

[4] The case of the claimant was contested by the owner of the offending vehicle by filing written statement *inter alia* contending that the accident took place due to the fault and negligence of the deceased Nirmal Deb as the vehicle TR-02-E-1722 was being driven in normal speed. It was also pleaded that the claim of compensation was excessive and the driver of the vehicle had valid driving licence at the time of accident and was duly insured with Cholamandalam MS General Insurance Company Limited and subsequently prayed for dismissal of the claim of the claimant. The insurance company had also contested the claim of the claimant by filing written statement denying the plea of the claimants and pleaded that the insurance company was not liable to pay any compensation.

[5] The learned Tribunal after framing the issues and appreciating the evidence on record, awarded a sum of Rs.13,36,600/- as compensation to the claimants. He observed that since the deceased was aged about 54 years at the time of accident, his monthly income was assessed at Rs.12,000/- per month and relying on the judgment of ***National Insurance Company Limited versus Pranay Sethi reported in 2017 16 SCC 680***, the loss of income was determined by the Tribunal at Rs.11,61,600/-. For loss of consortium Rs.40,000/- each was awarded, for loss of estate Rs.15,000/- and for funeral expenses Rs.15,000/- was awarded by the Tribunal. The

learned Tribunal had also awarded Rs.10,000/- towards transportation charges and for medical treatment. Accordingly, the Tribunal awarded total compensation of Rs.13,36,600/- to the claimants fastening the liability on the insurance company to pay the same. The operative portion of the judgment is reproduced hereunder :

“The Noticee, Cholamandalam M/S General Insurance Company Limited, Mantribari Road, opposite side of New India Assurance company is directed to deposit the awarded compensation of Rs.13,36,600/- only within 30 days from today with interest thereon at the rate of 8% per annum with effect from date of filing of the claim application i.e. from 25.01.2019 to till realization of the full.

Distribution of compensation

The claimant No.1 being the wife is entitled to 50% of total compensation. The claimant No.2 and 3 are equally entitled to the rest 50% of compensation.

Protection awarded compensation

The 50% of the amount of claimant No.1 is to be deposited for 5 years. As claimant 2 and 3 are minor the full amount of them are to be fixed deposited for the period till they attained 21 years respectively. The remaining amount of compensation of claimants No.1 is to be released in her favour in her bank account. The interest on the fixed deposit can be withdrawn by claimants. However, in case of necessity, the Tribunal can be approached for withdrawal fixed deposit amount. On maturity of the fixed deposits the Banker shall credit the amounts to be sole SB Accounts of claimants without any further order from the Tribunal.”

[6] The only contention raised by the learned counsel appearing for the appellant-insurance company is that the monthly income of the deceased assessed by the learned Tribunal at Rs.12,000/- per month is on the higher side. He further asserts that without any cogent evidence the Tribunal has determined the monthly income of the deceased which needs

to be interfered with. Subsequently, he prays for disposal of the appeal. No representation is made on behalf of the respondents.

[7] After hearing the learned counsel for the respective parties, this Court is of the considered view that the learned Tribunal did not commit any error in passing the award. The learned Tribunal has correctly come to the conclusion and awarded the compensation in favour of the claimants after appreciating the evidence on record and no interference is required in the award passed by the learned Tribunal. The only reason given by the learned counsel for the appellant-insurance company that the monthly income of the deceased determined by the learned Tribunal at Rs.12,000/- per month is on the higher side, is not very convincing.

[8] Accordingly, the present appeal filed by the appellant-insurance company is dismissed and the award dated 19.01.2022 passed by the learned Member, Motor Accident Claims Tribunal, West Tripura, Agartala in T.S(MAC) No. 19 of 2019 is confirmed. Send down the LCRs forthwith.

[9] Pending application(s), if any, also stands disposed of.

CHIEF JUSTICE (ACTING)

Dipesh