

**HIGH COURT OF TRIPURA
AGARTALA**

Mac.App 64 of 2022

The Oriental Insurance Company Limited
Represented by the Divisional Manager,
Agartala, Division Office,
H.G.B Road, (Near Sarkar Nursing Home)
Agartala, West Tripura

---Appellant

Versus

1. Smt. Shipra Debnath
W/o Late Amar Debnath
2. Smt. Ratna Debnath
D/o Late Amar Debnath
3. Sri Antar Debnath
S/o Late Amar Debnath
4. Smt. Rekha Debnath
W/o Sri Dinabandhu Debnath

(Claimant-Respondent Nos. 2 & 3 being minor are represented by their mother
Claimant-Respondent No.1)

All are the residents of village- Brajanagar, Tantipara, P.S- Ranirbazar,
District- West Tripura

5. Sri Baikhanta Debbarma
S/o- Dwijendra Debbarma
Of Village- Dasharambari, Mohanpur,
PS: Jirania, District: West Tripura
(Owner of truck bearing No.TR-01-AC-1867)

---Respondent

For Petitioner(s)	: Mr. B. Majumder, CGC.
For Respondent(s)	: Mr. S. Bhattacharjee, Adv. Mr. A. Acharjee, Adv.
Date of hearing and date of judgment and order	: 03.05.2023.
Whether fit for reporting	: No

HON'BLE MR. JUSTICE T. AMARNATH GOUD

Judgment & Order (Oral)

This is an appeal under Section 173 of the Motor Vehicles Act,
1988 along with its up to date amendments against the impugned judgment
and award dated 18.04.2022 passed by Motor Accident Claims Tribunal, Court

No.4, West Tripura, Agartala rendering in Case No.T.S(MAC) 148 of 2019, accordingly.

[2] Brief facts leading to this case is that on 25.03.2019 at about 09.30 hrs. Amar Debnath (deceased) was proceeding towards Ranirbazar from his house by riding his bicycle and while reaching near Mohanpur market in front of the shop of one Sadhan Debnath a truck bearing registration No.TR-01-AC-1867 coming with high speed in rash and negligent manner dashed him from back side. As a result, he fell down on the road and thereby sustained grievous injuries on various parts of his body. Instantly he was taken to AGMC & GBP Hospital by some local people where the attending doctor declared him dead. It has been further contended that the accident occurred due to reckless and irresponsible driving of the offending truck by its driver. It is also pleaded that the deceased 39 years and being a mason used to earn Rs.16,000/- per month.

[3] The OP No.1 owner of the offending vehicle has contested the suit by filing written statement and apart from denying all the allegations he has also contended that he was the owner of the offending vehicle and at the time of accident the vehicle was driver with valid driving licence and the vehicle was insured with the OP No.2 the Oriental Insurance Co. Ltd. Therefore, OP No.1, urged for fixing the liability on his insurer to pay the compensation, if any.

[4] The OP No.2 the insurance company through their written statement have denied all the allegations and thereby put the claimant petitioners as well as the OP No.1 in strict proof of their respective claims.

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

ISSUES

(1) Whether Amar Debnath died in a vehicular accident which alleged to have been took place on 25.03.2019 at about 0930 hrs. at Mohanpur market on Assam – Agartala Road under Ranirbazar P.S. West Tripura District due to rash and negligent driving of vehicle bearing No. TR-01-AC-1867 (Truck) by its driver?

(2) Whether the claimant petitioners being the wife, daughter, son and mother of the deceased, are entitled to get compensation, if so, upto what extent and who shall be liable to pay the same?

[6] To establish the claim, the claimant petitioner No.1 has examined herself as PW.1 and Sri Sankar Debnath as PW2. PW1 has also exhibited the following documents :

- i) original school certificate of deceased (Exbt.1);
- ii) computer generated survival certificate (Exbt.1/1),
- iii) certified copy of FIR, Post Mortem Certificate and charge sheet (Exbt.2 series);
- iv) panchayet certificate (Exbt.3).

[7] The O.P. No.1, owner of the offending vehicle, has examined himself as OPW.1 and exhibited the following documents :

- i) copy of registration certificate of vehicle No.TR-01-AC-1867 (Exbt.A);
- ii) copy of driving licence No. TR0120130085956 (Exbt.B);
- iii) copy of Tax token (Exbt.C);
- iv) certificate of permit (Exbt.D);
- v) certificate of fitness of vehicle (Ext.E),
- vi) copy of insurance policy (Ext.F).

[8] Learned Tribunal after hearing both the parties awarded the compensation of Rs. 30,49,000/- to the claimants in the following terms:-

“(i) Claimant petitioners are entitled to get the award of Rs.30,49,000 /-(Thirty lacs forty nine thousand) only along with 9% simple interest per annum from the date of registration of claim i.e, w.e.f. 31.7.2019 till the date of realization thereof.

The amount of compensation shall be divided in equal share amongst the claimant-petitioners.

(ii) 30% of the share of the claimant petitioner Nos.1 and 4 each in the award be invested by purchasing separate Fixed Deposit certificates from any Nationalized Bank at least for the next 5 years with a liberty to the claimant petitioner Nos.1 and 2 to withdraw the monthly interest from their own accounts and no loan or advance or pre-mature withdrawal shall be allowed without prior sanction of this Tribunal.

Entire shares of minor claimant petitioner Nos. 2 and 3 shall be invested by purchasing separate Fixed Deposit certificates from any Nationalized Bank at least for the next 5 years or upto the age of 21 years of each whichever is later and no loan or advance or pre-mature withdrawal shall be allowed without prior sanction of this Tribunal.

However, the claimant petitioner No.1 shall have the liberty to withdraw the monthly interest from the account of her minor children.

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

The OP No.2, i.e., the Oriental Insurance Company Limited shall deposit the

awarded amount along with interest thereon within one month from this day with this Tribunal."

[9] Being aggrieved and dissatisfied with the impugned judgment and award passed on 18.04.2022, by the learned Member, Motor Accident Claims Tribunal, Gomati Judicial District, Udaipur in T.S.(MAC)148 of 2019, the appellant has filed this present appeal praying for the following reliefs:-

- i. admit this appeal.
- ii. Issue notice upon the respondents.
- iii. Call for records of the case from the Ld. Member, Motor Accident Claims Tribunal, Court No.4, West Tripura, Agartala in Case No. T.S. (MAC) 148 of 2019.
- iv. Stay the operation of the impugned judgment and award dated 18.04.2022, passed by the Ld. Member, Motor Accident Claims Tribunal, Court No.4, West Tripura, Agartala in Case No. T.S. (MAC) 148 of 2019.
- v. After hearing the parties at length, to dismiss/set aside/ quash the impugned judgment dated 18.04.2022, passed by the Ld. Member, Motor Accident Claims Tribunal, Court No.4. West Tripura, Agartala in Case No. T.S. (MAC) 148 of 2019.

[10] Heard Mr. B. Majumder, learned CGC appearing for the appellant-insurance company and Mr. A. Acharjee, learned counsel appearing for the respondent-claimants.

[11] After perusing the entire records so placed before this court, this court in terms of the principles laid down by the Hon'ble Supreme Court in **Ramchandruppa vs Manager, Royal Sundaram Alliance Insurance Company Ltd** reported in **(2011) 13 SCC 236 dated 08.09.2011** fixes the notional income @ Rs.10,000/- per month for the deceased. It is also a fact that the said judgment determining the notional income as Rs.10,000/- per month for the deceased was passed way back in 2011. By this time, the scenario of the daily income of every daily wage has increased. Therefore, considering the prevailing hikes in price of essential commodities, this court fixes the notional income @ Rs.12,000/- per month for the deceased.

[12] According to the Ld. Tribunal, the wife, daughter, son and mother of the deceased are entitled to get compensation at the rate of Rs.44,000/- each as loss of consortium. This court feels that the said entitlement of

Rs.44,000/- each as loss of consortium is of higher side and hence needs to be reduced. Hence, this court reduces it to the tune of Rs.40,000/- each loss of consortium following **Magma General Insurance Co. Ltd. vs. Nanu Ram Alias Chuhru Ram & Ors.** reported in **2018 SCC Online SC 1546, (2018) 18 SCC 130 dated 18.09.2018.**

[13] Now, in view of the aforesaid principles of law the amount of compensation can be calculated in the following manner:

- (i) Income per month: Rs.12,000/-
- (ii) 40% of above to be added as future prospect $12,000 \times 40\% = \text{Rs.}4800/-$ only
- (iii) Total of SI Nos. (i) and (ii) above comes to $\text{Rs.}12,000 + \text{Rs.}4800/- = 16,800/-$
- (iv) One fourth (1/4) of above to be deducted as personal and living expenses of deceased: - $\text{Rs.}16,800/-$ minus $\text{Rs.}4200/-$ (one fourth of $\text{Rs.}16,800/-$) = $\text{Rs.}12,600/-$ only.
- (v) compensation after applying multiplier of 15 : $\text{Rs.}12,600 \times 12 \times 15 = \text{Rs.}22,68,000/-$ only.
- (vi) Loss of Estate = $\text{Rs.}16,500/-$
- (vii) Funeral Expenses = $\text{Rs.}16,500/-$
- (viii) Loss of consortium = $\text{Rs.}40,000/-$ each dependent i.e. $40,000 \times 4 = \text{Rs.}1,60,000/-$
- (ix) Transportation = $\text{Rs.}5000/-$

[14] Hence, the total compensation stands at $\text{Rs. } 22,68,000/- + \text{Rs.}16,500/- + \text{Rs.}16,500/- + \text{Rs.}1,60,000/- + \text{Rs.}5,000/- = \text{Rs.}24,66,000/-$ only.

[15] In so far as interest is concerned, this court in all Motor Vehicle Accident Claims is taking a consistent stand in fixing interest @ 7.5% per annum.

[16] Accordingly, the claimant-petitioners are entitled to get the award of $\text{Rs.}24,66,000/-$ (Twenty four lacs sixty six thousand) only with 7.5% simple interest per annum from the date of registration of claim i.e. w.e.f. 31.07.2019 till the date of realization thereof.

[17] It is represented by Mr. B. Majumder, learned CGC that in terms of the award dated 18.04.2022, 75% of the said compensation has already

been paid to the claimant-respondents. Now taking into account the submission made by Mr. B. Majumder, learned CGC, the insurance company is directed to deposit the remaining amount within one month from today.

[18] It is needless to mention here that the statutory amount of Rs.25000/- deposited by the Insurance company while filing the case stands refunded as per procedure.

[19] In terms of the above, the instant appeal is allowed and disposed of to the extent as indicated above.

JUDGE

