

**HIGH COURT OF TRIPURA
AGARTALA**

MAC.App 63 of 2022

The Divisional Manager,
Oriental Insurance Co. Ltd,
Office at 48/3, HGB Road, PO: Agartala,
PS: West Agartala, District: West Tripura, PIN: 799001
(Insurer of TR-01-J-1560, Truck)

---Appellant(s)

Versus

1. Sri Jadu Kishore Jamatia, S/o Lt. Ananta Hari Jamatia,
2. Sri Birendra Kishore Jamatia, S/o Lt. Ananta Hari Jamatia,
3. Sri Birchandra Jamatia, S/o Lt. Ananta Hari Jamatia,
4. Sri Ananta Kishore Jamatia, S/o Ananta Hari Jamatia,
5. Sri Naithak Jamatia, S/o Lt. Ananta Hari Jamatia,
6. Sri Jitendra Jamatia S/o Lt. Ananta Hari Jamatia,
7. Smt. Natun Devi Jamatia, W/o Lt. Ananta Hari Jamatia,

All are resident of Gamaku Bari, Fast Malbasa, PO: Amarpur, Amarpur,
District-Gomati, Tripura, PIN: 799101.

(out of them Respondent No.1 and 4 are presently residing at C/o Sri
Banajit Debbarma of Banamalipur, PO: Agartala, PS: East Agartala,
District: West Tripura, PIN: 799001.

---Respondent(s)

For Appellant(s)	: Mr. B. Majumder, Deputy SGI
For Respondent(s)	: Mr. Raju Datta, Adv. Mr. K. Pandey, Adv.

Date of hearing & date of delivery of judgment and order	: 24.07.2023
Whether fit for reporting	: No

HON'BLE MR. JUSTICE T. AMARNATH GOUD

Judgment & order (Oral)

Heard Mr. B. Majumder, learned Deputy SGI appearing for
the appellant as well as Mr. K. Pandey, learned counsel appearing for the
respondents.

[2] This is an appeal under Section 173 of the Motor Vehicles
Act, 1988 against the judgment and award dated 10.03.2022 passed in
Case No. TS(MAC) 112 of 2017 by the learned Member, Motor Accident
Claims Tribunal, West Tripura, Agartala, Tribunal No.4.

[3] Brief facts leading to this case is that on 29.5.2017 at about 1300 hrs. Ananta Hari Jamatia (deceased) was coming from Garjee towards Udaipur by riding his motor bike bearing No.TR-03-9880 and while reached at Paratia market on National Highway at that time truck bearing No.TR-01-J1560 came with high speed in rash and negligent manner dashed him from back side causing fatal injuries on his person. Instantly the local people shifted him to the GBP Hospital, Agartala where he succumbed to his injuries on the same day. Hence, the claimant petitioners being the legal representatives of deceased Ananta Hari Jamatia filed this suit seeking compensation to the tune of Rs.75,00,000/-. 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 was of the age of 46 years and being a Govt. employee used to draw monthly salary of Rs.27,294/-.

[4] The O.P. No.1, owner of the offending truck has contested the suit by filing written statement and apart from denying all the allegations has contended that he is the owner of the offending vehicle and that at the time of accident the vehicle was driven by one Krishna Bhowmik having valid driving licence and that the vehicle was insured with the O.P. No.2, the Oriental Insurance Co. Ltd. Therefore, O.P. No.1, urged for fixing the liability on his insurer to pay the compensation, if any.

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

[6] With a view to decide the claim of the claimant petitioners following issues were framed by the Ld. Tribunal:-

ISSUES

(1) Whether Ananta Hari Jamatia died in a vehicular accident which alleged to have been took place on 29.5.2017 at Paratia on

National Highway under R.K. Pur P.S. Gomati District due to rash and negligent driving of vehicle bearing No. TR-01-J-1560 (Truck) by its driver.

(2) Whether the claimant petitioners, being the legal representatives of the deceased, are entitled to get compensation, if so, upto what extent and who shall be liable to pay the same.

(3) Reliefs

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

(i) Claimant petitioners are entitled to get the award of Rs.48,58,948/-(Rupees Forty eight lacs fifty eight thousand nine hundred and forty eight) only along with 9% simple interest per annum from the date of registration of claim i.e, w.e.f. 17.06.2017 till the date of realization thereof from the O.P. No.2 the Oriental Insurance Co. Ltd. The entire amount of compensation shall be divided in equal share amongst all the claimant-petitioners.

(ii) 60% of the share of claimant petitioner No.7 and 50% of the share of the claimant petitioner Nos. 1 to 6 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 petitioners 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.

The O.P. No.2 , i.e. the Oriental Insurance Co. Ltd. shall deposit the awarded amount along with interest thereon within one month from this day with this Tribunal.

[8] Being aggrieved by the judgment and award dated 10.03.2022, the insurance company-appellant has approached this court seeking the following reliefs:

- (i) Admit this appeal*
- (ii) Issue notice upon the respondents*
- (iii) Call for the records of the judgment & Award dated 10.03.2022 passed in Case No.TS(MAC) 112 of 2017 passed by the Ld. Member, Motor Accident Claims Tribunal, West Tripura, Agartala, (Tribunal No.4)*
- (iv) After hearing both the parties Hon'ble Court would be pleased enough to pass necessary Order for setting aside the Judgment & Award dated 10.03.2022 passed in Case No. TS(MAC) 112 of 2017 passed by the Ld. Member Motor Accident Claims Tribunal, West Tripura, Agartala, Tribunal No.4)*
- (v) To pass any other order/orders as your Lordship deems fit and proper.*

[9] Mr. B. Majumder, learned Deputy SGI appearing for the appellant has submitted before this court that the learned Tribunal failed to appreciate that no independent eye witnesses was examined that the accident occurred due to high speed in rash and negligent of the offending Truck bearing No.TR-01-J-1560. It is further submitted by the learned Deputy SGI for the appellant that the Ld. Tribunal failed to appreciate those necessary documents to prove the liability of the appellant namely

Oriental Insurance Co. Ltd. was not submitted by the Claimants therefore the Appellant nowhere is liable to pay any Award. Further the Ld. Tribunal awarded excess amount of compensation with its exorbitant interest contrary to law which is liable to be modified by this court.

[10] On the contrary, Mr. K. Pandey, learned counsel appearing for the respondents has submitted before this court that the judgment and order dated 10.03.2022 passed in Case No.TS(MAC) 112 of 2017 is just and proper and need no interference from this court.

[11] In view of the above submission and having perused the record, this court does not find any infirmity in the judgment and order dated 10.03.2022 passed in Case No. TS(MAC) 112 of 2017. However, this court is of the view that the rate of simple interest per annum may be reduced to the tune of 7.5% instead of 9%. Therefore, this court directs the appellant to pay the total award of compensation of Rs.48,58,949/- (Rupees Forty eight lacs fifty eight thousand nine hundred and forty eight) only along with 7.5% simple interest per annum from the date of registration of claim i.e. w.e.f. 17.06.2017 till the date of realization.

[12] In view of the above, the present appeal is allowed to extent as indicated above. As a sequel, stay, if any, stands vacated. Pending application(s), if any also stands closed.

JUDGE

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