

**HIGH COURT OF TRIPURA
AGARTALA**

MAC App.73 of 2023

The Oriental Insurance Company Limited

A company registered under the Companies Act 1956,
Represented by its Assistant Manager, Agartala,
Division Office, H.G.B. Road (Near Sarkar Nursing Home)
Agartala, West Tripura

.....Appellant

VERSUS

- 1. Smt. Rima Debatrata,**
wife of late Pinku Dey
- 2. Master Pijush Dey,**
son of late Pinku Dey
- 3. Smt. Jayanti Dey,**
wife of Shri Arabindu Dey
mother of late Pinku Dey
(Petitioner No.2 being minor represented by
his mother being natural guardian, petitioner
No.1) [All are residents of village Dudhpur
P.O. Didhpur P.S. Kumarghat,
District Unakoti]

.....Claimant-Respondents

- 4. Sri Subhash Das**
son of late Biswambhar Das
resident of village- Uttar Kumarghat,
PS & P.O. Kumarghat, District- Khowai,
Tripura, Owner of TR-02-G-1613
(Bolero Camper)

.....Respondent

For Appellant(s) : Mr. Biswanath Majumder, Advocate.

For Respondent(s) : Mr. HK Bhowmik, Advocate.
Mr. H. Debnath, Advocate.
Ms. U. Chanda, Advocate.

**C.O.(F.A.) 17 of 2023
in MAC App.73 of 2023**

- 1. Smt. Rima Debatrata,**
wife of late Pinku Dey, resident of Dudhpur,
P.O. Dudhpur-799288, P.S. Kumarghat,
District- Unakoti, Tripura
- 2. Master Pijush Dey,**
son of late Pinku Dey resident of Dudhpur,
P.O. Dudhpur-799288, P.S. Kumarghat,
District- Unakoti, Tripura
- 3. Smt. Jayanti Dy,**
wife of Shri Arabindu Dey
mother of late Pinku Dey
resident of Dudhpur,
P.O. Dudhpur-799288, P.S. Kumarghat,

District- Unakoti, Tripura
(petitioner no.2 being minor represented by
his mother, being natural guardian,
petitioner no.1)

.....Claimant- Appellants

VERSUS

- 1. The Divisional Manager,**
The Oriental Insurance Company Limited,
Hari Ganga Basak Road (near Sarkar Nursing
Home), P.O. Agartala- 799001,
P.S. West Agartala, District- West Tripura
(insurer of TR-02-G-1613, Bolero Camper)

- 2. Sri Subhash Das,**
son of late Biswambhar Das, resident of
Uttar Kumarghat, P.O. Kumarghat-799264,
P.S. Kumarghat, District- Unakoti, Tripura
(owner of TR-02-G-1613, Bolero Camper)

.....Respondents

For Cross-Objector(s)	: Mr. H. Debnath, Advocate. Ms. U. Chanda, Advocate.
For Respondent(s)	: Mr. Biswanath Majumder, Advocate. Mr. HK Bhowmik, Advocate.
Date of hearing and delivery of judgment and order	: 14.12.2023
Whether fit for reporting	: Yes

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 04.02.2023 passed by the learned Member, Motor Accident Claims Tribunal, Court No.2, West Tripura, Agartala in case No. T.S. (MAC) 147 of 2019 and this instant cross-objection has been filed by the claimant-respondents No.1, 2 & 3 against the appeal herein filed by the Insurer appellant for modification and enhancement of the award dated 04.02.2023.

[2] Brief facts leading to this case is that on 18.06.2019 the deceased was proceeding towards his house at Dudhpur from Kumarghat by boarding

an auto rickshaw bearing registration No. TR-02-B-3461 and when the said auto rickshaw reached at Kanchancherra near a culvert the driver stopped the said vehicle as one of the passengers wanted to get down from the said auto, at that time, one Belero Camper vehicle bearing registration No. TR-02-G1613 (here-in-after called the offending vehicle) which was coming from the opposite direction from 82 miles towards Kumarghat with an excessive speed and in rash and negligent manner suddenly knocked down the said auto rickshaw violently as a result of which deceased received grievous injuries on his persons. Immediately after the accident deceased was taken to 82 mile PHC from where he was referred to Kailashahar District Hospital and thereafter to AGMC & GBP Hospital but on the way to GBP Hospital the deceased succumbed to his injuries. As a result, deceased was taken back to Kailashahar District Hospital where the attending doctor declared him as 'brought dead'. Accordingly post mortem was also done over the body of the deceased. In this connection Manu PS Case No. 16 of 2019 u/s 279/338 of IPC 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 the offending vehicle.

[3] Claimant petitioners submitted before the Court below that the deceased was aged about 25 years and he was an assistant driver by profession and he used to earn Rs. 18,000/- per month before the accident. The claimant petitioners, therefore, approached the learned Tribunal seeking compensation due to death of the deceased and quantified their claim to the tune of Rs.25,00,000/-.

[4] The OP No.1, owner of the offending vehicle (*Respondent No.4 in the instant MAC App.73 of 2023*) through his written statement contested the suit and apart from denying all the allegations has contended that at the time of accident, his vehicle had valid documents and it was insured with the OP

No.2 (*Oriental Insurance Co. Ltd., i.e. appellant in the instant MAC App.73 of 2023*). On the other hand, the OP No.2 through his written statement apart from denying all the allegations put the claimant petitioners as well as the OP No.1 in strict proof of their respective claim.

[5] With a view to decide the claim of the claimant petitioners following issues were framed by the Motor Accidents Claims Tribunal, West Tripura, Agartala:-

"ISSUES

- (i) Is the claim maintainable in its present form and nature?
- (ii) If the death of the deceased Pinku Dey caused due to road traffic accident on the alleged date, time and place on account of rash and negligent driving on the part of the driver of offending vehicle bearing registration No.TR-02-G-1613? If so, are the claimant petitioners entitled to get compensation as prayed for?
- (iii) What should be the quantum of compensation and who shall be liable to pay the compensation?
- (iv) Relief/Reliefs?"

[6] To establish the claim before the learned tribunal, the claimant petitioner No.1 has examined herself as PW.1 along with one witness namely, Sri Bimal Malakar as PW2 . She also proved the following documents:-

- (i) Certified copy of FIR, ejahar, charge sheet, post mortem report in connection with Manu PS case No. 16 of 2019 in 14 sheets-Exhibit 1(i) to 1(xiv);
- (ii) Photocopy of driving license of the deceased (compared with the original)- Exhibit 2.

On the other hand, OP No.1 has examined himself as OPW1 and he also proved the following documents which are marked as exhibits after comparing with the originals.

- 1) Photocopy of registration certificate-Exbt.A;
- 2) Photocopy of driving license- Exbt.B;
- 3) Photocopy of policy of Insurance in 2 sheets -Exbt.C(i) and C(ii);
- 4) Photocopy of tax receipt -Ext.D ;
- 5) Photocopy of certificate of fitness-Ext.E.

On being summoned by the Tribunal, an SI namely, Ramani Debbarma was examined as OPW.2 on behalf of OP No.2.

[7] Learned Tribunal on consideration of all the facts and circumstances and on perusal of materials available on record, observed in the following manner:

"ORDER

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

(i) Claimant petitioners are entitled to get the award of Rs.22,36,144/- (Rupees twenty two lacs thirty six thousand one hundred forty four) only along with 9% simple interest per annum from the date of registration of claim i.e, w.e.f. 29.07.2019 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. 2 exclusively shall also be entitled to get the amount of Rs. 1,50,000/- (one lac fifty thousand) 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.

(ii) 50% of the share of the claimant petitioner Nos.1 and 3 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 premature withdrawal shall be allowed without prior sanction of this Tribunal.

75% of the share of the claimant petitioner No. 2 shall be invested by purchasing separate Fixed Deposit certificates from any Nationalized Bank at least for the next 5 years with auto renewal facility till he 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 and 3 shall have the liberty to withdraw the monthly interest therefrom.

The claimant petitioner No.1 shall also have the liberty to withdraw the monthly interest therefrom including from the account of her minor son.

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 himself.

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

[8] Aggrieved by the award delivered on 04.02.2023, the appellant herein has approached this Court seeking following reliefs:

- i. Admit this appeal.
- ii. Issue notice upon the respondents.
- iii. Call for records of the case from the Motor Accident Claims Tribunal/Court No.2 West Tripura, Agartala in Case No. T.S.(MAC) 147 of 2019.
- iv. Stay the operation of the impugned judgment and award dated 04.02.2023, passed by the learned Member, Motor Accident Claims Tribunal/Court No.2 West Tripura, Agartala in case No. T.S. (MAC) 147 of 2019.
- v. After hearing the parties to dismiss/set aside/ quash the impugned judgment and award dated 04.02.2023, passed by the Motor Accident Claims Tribunal/ Court No.2 West Tripura, Agartala in Case No. T.S. (MAC) 147 of 2019.

[9] Mr. Biswanath Majumder, learned counsel representing the appellant insurance company contends that the award of Rs.2,20,000/- as awarded by the learned Tribunal to the claimants under the conventional head i.e. loss of estate, funeral expenses, consortium and loss of love and affection, is on the higher side. According to learned counsel, it ought to have been at Rs.77,000/- and the learned Tribunal most erroneously awarded compensation under the conventional heads.

[10] Mr. Majumder, learned counsel submits that the Court below has fixed a very high rate of interest @ Rs.9% p.a. on the awarded sum and the same is required to be lowered. He, therefore, prays to reduce the interest rate from 9% p.a. to 6% p.a.

[11] On the other hand, Mr. H. Debnath, learned counsel for the claimant respondents who are the cross-objectors in the instant cross-objection submits before this Court that the award passed by the learned tribunal assessing the income of the deceased at Rs.10,000/- per month is perverse and wrong and the same needs to be increased as according to him, the income of the deceased was much higher than Rs.10,000/-.

[12] Heard learned counsel appearing for both the parties. Perused the record.

[13] Learned Trial court observing all the facts and circumstances of the case of the claimant, has calculated the compensation in the case, as under:

“(I) Income per month = Rs.,10,000/- only.
 (II) 40% of above to be added as future prospect :- Rs.4,000/- only.
 (III) Total of SI Nos. (I) and (II) above comes to Rs.10,000 + Rs. 4,000/- =Rs. 14,000/- only.
 (IV) one third (1/3) of above to be deducted as personal and living expenses of deceased :- Rs.14,000/- minus Rs.4,666/- = Rs.9,334/- only.
 (V) compensation after applying multiplier of 18:- Rs. 9,334x12x18=20,16,144/- 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 for the minor son= Rs. 1,50,000/- only.
 9(c). Thus, total compensation stands at Rs.20,16,144+ 15,000/- +15,000/- + 40,000/- +1,50,000/- = Rs.22,36,144/- only.”

[14] Having perused the entire record and upon hearing the submissions advanced by the learned counsel appearing for the parties, this Court is of the view that though the PW 1 (claimant respondent no.1 in the instant appeal) in her examination in chief before the Court below stated that at the time of death her husband used to earn Rs.18,000/- per month, no documentary evidence i.e., any income certificate of the deceased was proved in this regard. For that reason, the tribunal has rightly fixed the income of the deceased as Rs.10,000/- per month.

[15] It is also observed, in all the similarly situated matters this Court is fixing 7.5% interest to maintain uniformity while comparing the bank rate of interest which is also much less. Thus, ends of justice would be met if the rate of interest fixed by the learned tribunal be reduced from 9% per annum to 7.5% per annum. Consequently, the total compensation entitled by the claimant-respondent would remain **Rs. 22,36,144/- (Rupees twenty two lacs thirty six thousand one hundred forty four)** along with the modified and reduced rate of interest i.e. **7.5 % simple interest per annum** from the date of presentation of the claim petition till the date of actual payment.

In view of the above, the instant appeal is allowed to the extent as indicated above. Thus, the appellant insurance company i.e. the Oriental

Insurance Co. Ltd., is liable to pay the total amount as awarded above to the claimant-respondents. The amount to be deposited within one month from the date of receipt of the copy of this order on the file of the Motor Accidents Claims Tribunal, West Tripura, Agartala and on depositing the same, the claimants may file appropriate application to the satisfaction of the Court and withdraw the amount as per law. The cross-objection filed by the claimants shall also stand closed.

Draw the decree accordingly. Send down the LCR.

As a sequel miscellaneous application(s) pending if any, shall stand closed.

JUDGE



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Sabyasachi. G.

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