

HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_
MAC. App. No. 73 of 2022

United India Insurance Company Ltd.

.....Appellant(s)

VERSUS

Sri Sudarshan Sur and Another

.....Respondent(s)

For Appellant(s)	:	Mr. A. Gon Chaudhury, Advocate.
For Respondent(s)	:	Mr. S. Lodh, Advocate.

HON'BLE MR. JUSTICE T. AMARNATH GOUD

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06/07/2023

Heard Mr. A. Gon Chaudhury, learned counsel appearing for the appellant insurance company and Mr. S. Lodh, learned counsel appearing for the respondents.

[2] This is an appeal filed under Section 173(1) of the Motor Vehicles Act, 1988 against the judgment and award dated 03.02.2022 passed by the learned Motor Accident Claims Tribunal, Court No.2, Udaipur, Gomati Tripura in connection with case No. T.S.(MAC)69 of 2018.

[3] The facts of the claimant-respondent herein, case as it depicts from the claim petition, in brief is that on the fateful day of accident i.e. on 25.04.2017 at about 2100 hours Sourav Sur and another person namely Suman Das were going towards Gakulpur from Rajarbag after riding a motor bike bearing registration No. TR-03-B-5598 through the NH road and when they reached near Old Satsangha Ashram, Chhanban they saw one vehicle bearing registration No. TR-01-AD-1581 (Tripper) was coming from opposite direction in abnormal high speed as well as in rash and negligent manner. Then they stopped the motor bike on the extreme left side of the 44-NH road but the said Tripper unfortunately dashed on their motor bike. As a result Sourav Sur received fatal injuries on head, chest and other vital parts of the body and the pillion rider Suman Das also sustained injuries on his person. Immediately after the accident Sourav Sur was taken to Gomati District Hospital, Tepania, Udaipur and considering his alarming condition then and there he was referred to GB Hospital, Agartala. During treatment Sourav Sur succumbed to his injuries on 25.04.2017.

[4] Immediately an ejahar was lodged by one Subiresh Majumder with the R.K. Pur PS which was registered vide R.K. Pur PS Case No. 65 of 2017 dated

25.04.2017 under Sections 279/338/427 of IPC and under Sections 177/187 of the M.V. Act. Deceased Sourav Sur was a young, energetic, stout healthy unmarried boy of 23 years of age and earning Rs. 8,000/- per month as a day labourer and a private tutor. It is also alleged by the claimant-respondent that the accident occurred due to rash and negligent driving by the driver of the offending vehicle bearing Registration No. TR-01-AD-1581 (Tripper).

[5] The owner of the vehicle bearing Registration No. TR-01-AD-1581 (Tripper) contested the case by filing his written statement denying the averments made in the claim petition. It is denied by him that the vehicle bearing Registration No. TR-01-AD-1581 (Tripper) of the answering OP No.1 was involved in the alleged accident and the offending vehicle was being driven in rash and negligent manner as well as in abnormal high speed at any point of time. The owner of the vehicle further stated that the alleged accident was occurred with no fault of his vehicle. He also denied the age, occupation, monthly income of the injured as well as expenditure incurred thereon for the purpose of treatment of the injured-claimant. It is also stated by him that the vehicle bearing Registration No. TR-01-AD-1581 (Tripper) is registered in the name of the owner-respondent, duly insured with the Appellant vide Policy No. 1309003116P112403061 w.e.f. 20.12.2016 to midnight of 19.12.2017 and the said vehicle was driven by Anar Hossain having valid driving licence bearing No.TR-0120050054693, issued by the competent authority.

[6] The United India Insurance Company Limited, the insurer of the vehicle bearing Registration No.TR-01-AD-1581 (Tripper) in their written statement denied the age, occupation and monthly income of the deceased as well as the facts of accident and further stated that in case of violation of any terms and condition of the insurance policy they would not be responsible to indemnify the owner. According to the appellant they were not aware of any criminal case registered concerning the alleged accident. It is further stated by the Appellant that the owner and the driver of the offending vehicle did not inform them anything about the alleged accident, as such, they are not liable to pay any compensation until and unless it is proved that the person at the wheel was having valid and effective driving licence to drive such vehicle and it was roadworthy to ply. Under the above fact and circumstances, the Appellant prays for dismissal of the claim petition with cost.

[7] The learned tribunal after considering the facts and circumstances of the case and also the submission made on behalf of the parties has observed, inter alia:

“In the result, it is hereby ordered that the claimant petitioner is entitled to get compensation of Rs. 12,09,600/- + 15,000/- + 40,000/- + 15,000/- = 12,79,600/- (Rupees twelve lacs seventy nine thousand six hundred) only. The OP.No.2 i.e. United India Insurance Company Ltd., the insurer of the offending vehicle bearing Registration No.TR-01-AD-1581 (Tripper) is directed to make the payment of compensation to the claimant-petitioner within 30 (thirty) days from today along with interest thereon @ 6% per annum from the date of filing of claim petition, i.e., from 30.11.2018 till payment/realization of the same.

Out of the said amount the claimant-petitioner be paid Rs.5,00,000/- and the rest amount of Rs.7,79,600/- should be kept in fixed de-posit in his respective account in any Nationalized Bank for the period of 5(five) years. In the case in which investment in long term in the nature of fixed deposit is made on condition that the Bank will not permit any loan or advance on the Fixed Deposit and interest on the amount invested is paid monthly directly to the claimant or his legal heir, as the case may be. Further the claimant-petitioner is also granted liberty to apply for withdrawal in case of an emergency. To facilitate the payment of amount of the claimant-petitioner and the fixed deposit amount on maturity, the claimant-petitioner at the appropriate time shall file photo copy of their Bank Pass Book in his name containing photograph, account number, IFSC number and the RTGS number duly certified by the Banker and a copy of Passport Size photograph before making payment so as to enable this Tribunal to transfer the amounts directly to his Bank Account.”

[8] Being highly aggrieved by and dissatisfied with the impugned judgment and award passed on 03.02.2022 by the learned Member, Motor Accident Claims Tribunal (Court No.2) Gomati Judicial District, Udaipur in T.S. (MAC) 69 of 2018, the appellant-insurance company has preferred this appeal.

[9] Mr. Gon Chaudhury, learned counsel appearing for the insurance company has submitted that the learned Motor Accident Claims Tribunal has committed gross error in awarding of compensation based on the points of law and facts. Learned tribunal has failed to appreciate the evidence on record and the written statement along with petition under Section-170 of MV. Act submitted by the appellant as from the records it reveals that though the deceased was a bachelor so obviously first claimant should be his mother then father. But there is nothing in the petition why mother was not made the claimant.

[10] The tribunal has miserably failed to consider the fact as stated above and passed the judgment and award in favour of the claimant respondent which is illegal and wrong in the eye of law. It is clear from the charge sheet that there was a head on collision and for that both the vehicle was liable for the accident and for that as per decision of the Apex Court the bike should be made party in the case. The learned tribunal resulting in the impugned award was grossly erroneous perverse and the same has to be set aside.

[11] Learned Counsel appearing for the appellant submits that the claim of the claimant-respondent is very excessive considering the age of the deceased who was 17th years old at the time of accident. Learned counsel further argued that the interest rate over the awarded amount, if any, may be fixed at an existing rate and such amount may be allowed from the date of filing of the claim petition instead of the date of accident.

[12] In view of above discussion, it would be appropriate if we revisit to the evidence once again. PW.1 in his Examination-in-chief by affidavit deposed that on 25.04.2017 at about 2100 hours his son Sourav Sur and another person namely Suman Das were going towards Gakulpur from Rajarbag after riding a motor bike bearing registration No. TR-03-B-5598 through the NH road and when they reached near Old Satsangha Ashram, Chhanban they saw one vehicle bearing registration No. TR-01-AD-1581 (Tripper) was coming from opposite direction in abnormal high speed as well as in rash and negligent manner. PW.1 also deposed that then they stopped the motor bike on the extreme left side of the 44-NH road but the said Tripper dashed on their motor bike as a result Sourav Sur received fatal injuries on head, chest and other vital parts of the body and the pillion rider Suman Das also sustained injuries on his person. PW.1 further deposed that immediately after the accident Sourav Sur was taken to Gomati District Hospital, Tepania, Udaipur and considering his alarming condition then and there he was referred to GB Hospital, Agartala but during treatment Sourav Sur succumbed to his injuries on 25.04.2017. सत्यमेव जयते

[13] It is also in the evidence of PW.1 that an ejahar was lodged by one Subiresh Majumder with the R.K. Pur PS which was registered vide R.K. Pur PS Case No. 65 of 2017 dated 25.04.2017 under Sections 279/338/427 of IPC and under Sections 177/187 of the M.V. Act. PW.1 deposed that Deceased Sourav Sur was a young, energetic, stout healthy unmarried boy of 23 years of age and earning Rs. 8,000/- per month as a day labourer and a private tutor. It is also alleged by the PW.1 that the accident occurred due to rash and negligent driving by the driver of the offending vehicle bearing Registration No. TR-01-AD-1581 (Tripper).

[14] PW.2 Suman Das in his Examination-in-chief by affidavit corroborate the version of PW.1 and also deposed that on the fateful day of accident he was the pillion rider on the motorbike bearing registration No. TR-03B-5598 which was dashed by the vehicle bearing Registration No. TR-01-AD-1581 (Tripper) near Old Satsangha Ashram, Chanban over on NH 44 road. PW.2 also corroborated the testimony of PW.1 that the accident was occurred due to the

rash and negligent driving by the driver of offending vehicle bearing Registration No. TR-01-AD-1581 (Tripper).

[15] There is no material to suggest that the claim-petition is not maintainable in its present form and nature. Further there is no evidence led by the OP side that the alleged accident was took place due to the negligent riding of motorbike by deceased to constitute contributory negligence. From the discussion of evidences of the parties there is no doubt in holding that the deceased Sourav Sur succumbed to his injuries on 25.04.2017 due to the alleged RTA occurred on 25.04.2017 and such accident was caused due to rash and negligent driving by the driver of vehicle bearing No. TR-01-AD-1581 (Tripper).

[16] It is established that the accident occurred due to the fault on the part of the driver of vehicle bearing Registration No. TR-01-AD-1581 (Tripper), owned by the owner-respondent which is insured by the appellant, covering the period from 20.12.2016 to midnight of 19.12.2017. The alleged accident was occurred on 25.04.2017 i.e., at the time of accident the vehicle bearing registration No. TR-01-AD-1581 (Tripper) was under insurance coverage and on that day such vehicle bearing was driven by the driver of owner-respondent having valid driving licence i.e. Exhibit-E, so the liability for payment of compensation is fixed upon the United India Insurance Co. Ltd., the insurer of the offending vehicle bearing Registration No. TR-01-AD-1581 (Tripper).

[17] The School certificate i.e. Exhibit-4 revealed that the date of birth of deceased Sourav Saha was on 10.09.1999 so it is clear that at the time of alleged accident the deceased was 18 years old. The claimant produced no income certificate to prove the monthly income of deceased, however considering the situation and inflation of day to day commodities prevalent at the time accident this Tribunal could draw an inference regarding the income of deceased as Rs.400/- per day, so, the monthly income of deceased would be around Rs.8,000/- per month calculating 20 working days in a month and per annum income comes to the tune of Rs.96,000/-.

[18] The Hon'ble Supreme Court in *National Insurance Company Limited vrs. Pranay Sethi & others*, AIR 2017 SC 5157 in sub-Para (iv) of Para-61 held that "In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of

computation. The established income means the income minus the tax component.” In the present case the deceased was Sourav Sur was self-employed aged about 18th years old. So, the income of deceased towards future prospects would be 40% in addition. Hence, the total income of deceased is around Rs.1,34,400/-(Rs.96,000 X 40% = Rs.38,400 + Rs. 96,000 = Rs.1,34,400/-).

[19] Following the multiplication table laid down by the Hon’ble Supreme Court in *Smt Sarla Verma & ors v Delhi Transport Corporation & another, (2009) 6 SCC 121* in Para No. 21 the multiplier would be 18 since the deceased was 18 years old at the time of accident. Therefore, the total loss of dependency would be Rs. 1,34,400/- X 18 = Rs. 24,19,200/-. In the present case the deceased was a bachelor as such the deduction on account of personal and living expenses of the deceased should be 50%. Therefore, after deduction total contribution to the family (dependents) is determined as of Rs.12,09,600/- (Rs. 24,19,200/- X 1/2 = Rs. 12,09,600/-). In addition the claimant will be entitled to a sum of Rs. 15,000/- under the head of ‘loss of estate’, Rs. 40,000/- under the head of ‘loss of consortium’ and Rs. 15,000/- towards funeral expenses.

[20] Hence, this Court is of the considered view that the order passed by the learned tribunal needs no interference. Since it is a beneficial legislation, it is settled principle of law and the Apex Court in number of matters held that the awarded amount need not be restricted to the amount i.e. claimed by the claimant, it can vary depending on the facts and circumstances of the case either reducing the claim or increasing the claim.

[21] With the above, observations, the present appeal filed by the appellant-insurance company, stands dismissed. As a sequel, miscellaneous applications pending, if any, shall stand closed. Draw the decree accordingly.

JUDGE

A. Ghosh

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