

**HIGH COURT OF TRIPURA**

**A\_G\_A\_R\_T\_A\_L\_A**

**MAC. App. No.75 of 2022**

1. Oriental Insurance Co. Ltd., Agartala Division, H.G. B. Road, Agartala, P.S. West Agartala, District: West Tripura, represented by its Divisional Manager (*insurer of vehicle bearing registration No.TR-01-P-1787 bolero maxi truck*).

**.....Appellant**

**-VERSUS-**

1. Smti. Shova Rani Saha, wife of late Sankar Saha.
2. Miss. Sonai Saha, daughter of late Sankar Saha, both are residents of East Shibnagar, Kalitala, near Anik Club, P.S. East Agartala, District: West Tripura.

**.....Claimant-respondents.**

3. Sri Sajal Bhowmik, son of Haripada Bhowmik, C/O Joyguru Cement near Satsangha Ashram Routhkhola, Bishalgarh, P.S. Bishalgarh, District: Sepahijala.  
(*Owner of No.TR-01-P-1787 bolero maxi truck*)
4. Abu Taher, son of Jakir Hossain of Tarapukur, Sonamura, P.S. Sonamuar, District: Sepahijala.  
(*Owner by purchase of No.TR-01-P-1787 bolero maxi truck*)

**.....Owner-respondents**

5. Md. Sarif Miah, son of Md. Subha Miah of Palwanbari, Sonamura, P.S. Sonamura, District: Sepahijala.  
(*Driver of No.TR-01-P-1787 bolero maxi truck*)

**.....Driver-respondent.**

**B\_E\_F\_O\_R\_E**

**HON'BLE MR. JUSTICE T. AMARNATH GOUD**

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|---------------------------|---|-----------------------------------------------------------------------------------------|
| For Appellant(s)          | : | Mr. P.S. Roy, Advocate.                                                                 |
| For Respondent(s)         | : | Mr. B. N. Majumder, Sr. Advocate.<br>Ms. V. Poddar, Advocate.<br>Mr. B. Paul, Advocate. |
| Whether fit for reporting | : | <b>YES/NO</b>                                                                           |

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**Judgment and order dated 2<sup>nd</sup> May, 2023**

**JUDGMENT & ORDER [ORAL]**

Heard Mr. P.S. Roy, learned counsel appearing for the appellant-insurance company. Also heard Mr. B. N. Majumder, learned senior counsel, Ms. V. Poddar, learned counsel and Mr. B. Paul, learned counsel appearing for the respondents.

[2] This appeal has been filed under Section-173 of the MV. Act, 1988 against the award dated 28.03.2022 passed by the learned Motor Accident Claims Tribunal, Court No.4 West Tripura, Agartala in connection with T.S. (MAC) 226 of 2015.

[3] Brief facts leading to this case is that on 16.10.2014 at about 11.30 a.m. Debu Saha (deceased) was standing by the side of the Agartala Sonamura Road at Melaghar market in front of Madan Mohan Pharmacy while he found the vehicle bearing No. TR-01-P-1787 was coming with high speed in rash and negligent manner from Agartala side and he signed the driver to slow down the speed of vehicle but in the mean time the vehicle ran over the deceased and fled away towards Sonamura side. As a result, the victim sustained severe injuries on various parts of his body and instantly he was taken to Melaghar Hospital by local people wherefrom he was shifted to BRAM Hospital, Hapania and there the attending doctor declared him dead. Subsequently, his post mortem examination was done in the AGMC & GBP Hospital, Agartala. Hence, the claimant petitioners being the mother and younger sister of the deceased Debu Saha filed this suit seeking compensation to the tune of Rs.49,29,000/-. It has been further stated that the accident occurred due to reckless and irresponsible driving of the vehicle by its driver. That the deceased was of the age of 26 years and being manager of a contractor used to earn Rs.15,000/- per month.

[4] The O.P. No.1, owner of the offending vehicle has contested the suit by filing written statement and apart from denying all the allegations has contended that he was the owner of the offending vehicle and at the time of accident the vehicle was driven by a person having valid driving licence and

the vehicle was insured with the O.P. No.4 the Oriental Insurance Co. Ltd. O.P. No.1, therefore, urged for fixing the liability of his insurer to pay the compensation, if any. However, the O.P. No.1 contended that he sold out the vehicle to another person prior to the date of accident.

[5] Accordingly, a police case vide Melaghar P.S. Case No.85 of 2014 under Sections-279/304 (ii) of IPC & 187 of M.V. Act was registered. The learned Court below after hearing the parties and having perused the material evidence on record has observed as under:

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

(i) Claimant petitioners are entitled to get the award of Rs.22,24,000/-(Twenty two lacs twenty four thousand) only along with 9% simple interest per annum from the date of registration of claim i.e. w.e.f. 26.08.2015 till the date of realization thereof.

(I) Out of the total compensation an amount of Rs.44,000/- awarded as loss of consortium, shall be given only to the claimant petitioner No.1 i.e. mother of deceased.

Rest amount shall be divided in equal share.

(ii) 50% of the share of the claimant petitioner Nos.1 and 2 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.

The O.P. No. 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.”

[6] Mr. P.S. Roy, learned counsel appearing for the appellant insurance company has submitted that the learned tribunal considered the monthly income of the deceased as Rs.15,000/- which is very high. Moreover, the claimant respondents did not submit any documents regarding the profession as well as income of the deceased and as such, the learned tribunal assessed the income with the higher side and ought to have considered the income of the deceased. In the claim petition the claimant respondent

contended that the deceased was the manager under PW-3 but, PW-3 has stated that he was a supervisor of his work place. So, supervisor and manager is not same profession and as such, the same may be interfered with.

[7] The learned tribunal has awarded loss of consortium of Rs.40,000/- wherein the mother of the deceased is the claimant and she is not entitled to get any amount of consortium which is awarded illegally. Hence, this amount of consortium of Rs.40,000/- may be deducted from the awarded compensation.

[8] In view of above, let us re-look in the evidence as let in by the parties in the present appeal. During argument Ld. Counsel appearing for the respondents submitted that Debu Saha died in the road traffic accident which occurred only due to rash and negligent driving of the offending vehicle and hence, the claimant-petitioners are entitled to get compensation. It is also submitted by Ld. Counsel that the deceased was the only earning member of the family and he was of the age of only 26 years and used to earn about Rs.15,000/- per month, so adequate compensation may be awarded.

[9] As per the claim petition victim Debu Saha died in the road traffic accident occurred on 16.10.2014 at about 11.30 a.m. while he was standing by the side of Agartala-Sonamura Road at Melaghar market in front of one Madan Mohan Pharmacy, at that time the offending vehicle bearing registration No.TR-01-P-1787 came in a high speed in rash and negligent manner from Agartala side and he signed the driver to slow down speed of the vehicle but ultimately the vehicle ran over him and fled away towards Sonamura side. As a result, victim Debu Saha sustained serious bleeding injury and instantly taken to Melaghar Hospital wherefrom he was shifted to BRAM Hospital, Hapania where the attending doctor declared him dead.

[10] The version of the claim petition has been corroborated by the evidence of PW1 namely, Smt. Shova Rani Saha, mother of the

deceased, and also by the evidence of eye witness namely, Sri Bihag Saha (PW2) and the opposite parties failed to extract anything contrary during the cross examination of those petitioner witnesses. The version of the witnesses has been further corroborated by Ext.1 i.e. printed form of FIR and the ejahar submitted with the O.C. Melaghar P.S. as well as by Ext. 3 i.e. charge sheet and Ext.4 i.e. certified copy of post mortem report. Moreover, from the evidence of OPW-1 Sajal Bhowmik, owner of the offending vehicle, it is also found that the owner confirmed the fact of accident as alleged by the claimant petitioners

[11] It has been established by the claimant petitioners that the death of deceased was caused due to rash and negligent driving of the driver of offending vehicle. Therefore, the claimant petitioners i.e. the mother and unmarried sister of the deceased are entitled to have the compensation under the beneficial legislation, namely the M.V. Act as the claimant petitioners were dependent on the income of the deceased as stated in their claim petition and the fact was not disputed by any party. In the claim petition the age of the deceased was mentioned as 26 years. In support of such contention birth certificate of the deceased has been exhibited from which it appears that deceased Debu Saha took birth on 25.9.1988. So, at the time of accident i.e. on 16.10.2014 he was 26 years old.

[12] As per the claim petition, deceased Debu Saha was earning Rs.15,000/- per month from a private job. It was pleaded that Debu Saha was manager of a contractor namely, Sri Rajesh Nag of Melaghar by profession. Said fact has been corroborated by the evidence of PW1 as well as by the evidence of PW3 i.e. RajeshNag who deposed admitting that Debu Saha was a supervisor of his work place having monthly salary of Rs.15,000/-. During his cross examination though it was admitted by him that he was not able to produce any document in support of such

version, but he issued one salary certificate in his own pad putting his signature and seal certifying that Late Debu Saha used to work under him since 2008 having monthly salary of Rs.15,000/-.

[13] First of all, in the examination in chief of PW-3 clearly speaks that Lt. Debu Saha was a supervisor of his workplace and used to supervise all sites. In the claim petition it was averted that Lt. Debu Saha was a manager of PW3. Thus, only on the differences of literal meaning of supervisor and manager this Tribunal cannot doubt the credibility of the evidence of PW3. Lastly, not submitting the enlistment number of PW-3 cannot be treated as a lacuna to accept the salary certificate issued by him which was exhibited before the Tribunal without any objection from the other side. Moreover, O.P. No.4 was not permitted under Section-170 of M.V. Act to contest the suit on the above mentioned factual aspects. Thus, the argument raised by the Ld. Counsel of the O.P. No.4 is not tenable in law and from the evidence on record as discussed above, it is sufficiently proved by the claimant petitioners that at the time of death Late Debu Saha had an income of Rs.15,000/- per month. The deceased was being at his age less than 40 years having fixed salary there should be 40% addition in his income.

[14] In view of the law laid down in Sarla Varma's case (AIR 2009 SC 3104) for the age group of 26 to 30 the appropriate multiplier is M-17 and being a bachelor deduction as personal and living expenses will be 50%. Now, regarding granting of compensation for loss of consortium is not only limited to the spouse but also it extends to the parents and children. But it does not extend to other dependents like unmarried sister, brother etc. So, the claimant petitioner No.1 being the mother of deceased alone is entitled to get compensation for loss of consortium at the rate of Rs.40,000/-. Thus, the calculation will be (VIII) Loss of consortium = Rs. 40,000/-.

[15] But in view of Pranay Sethi case as mentioned above, the reasonable figures on conventional heads, namely loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10 percent in every 3 years. The judgment was passed in the year 2017 and so three years has already been elapsed from the date of passing judgment of Pranay Sethi case. Thus, reasonable compensation which is to be given under the conventional heads shall increase 10%.

[16] Now coming to the question of liability, it appears that the O.P. No.1 being owner of the offending vehicle claimed that his vehicle was insured with the O.P. No.4. In support of such claim he has proved the policy of insurance (Ext.A) which was valid at the time of accident. But, it was pleaded by O.P. No.1 that prior to the accident he sold out the vehicle to one Raju Bhowmik and in support of such contention he exhibited one notarized affidavit sworn for the purpose of transfer of ownership. From the said document it is found that on 15.5.2014 the affidavit was sworn for the purpose of transfer of ownership of the offending vehicle which was prior to the date of accident. But in the recitals of the agreement it was mentioned that the papers of the vehicle would remain same till completion of payment of monthly installments of loaned amount by O.P. No.1 which was taken at the time of purchasing of the vehicle. Thus, it is clear that the documents regarding the ownership of the vehicle remained same i.e. in the name of O.P. No.1 at the time of accident as no document submitted by O.P. No.1 to show that the final monthly installment has been paid prior to the accident.

[17] The O.P. No.1 besides the insurance certificate issued in his name by O.P. No.4, submitted another insurance certificate issued in the name of one Jayanti Dutta (Saha) for the same vehicle having validity on

the date of accident issued by O.P. No.4. But there is nothing on record about the details of said Jayanti Dutta (Saha). However, the Tribunal has not gone to that issue to decide the genuineness of second insurance certificate which was issued in the name of Jayanti Dutta (Saha) as the first insurance certificate i.e. Ext.A clearly shows that on the date of accident the offending vehicle was insured with the Oriental Insurance Co. Ltd. issued in the name of O.P. No.1 Sajal Bhowmik. It is also not the case of the O.P. No.4 that the vehicle was not insured with them. It is, therefore, held that the O.P. No.4 being insurer is liable to satisfy the award. Accordingly, liability is fastened on OP No.4, Oriental Insurance Company Ltd.

[18] In view of above arguments advanced by the learned counsel appearing for the appellant, this Court is of the view that the learned Court below has assessed the compensation in a reasonable and justifiable way. But the interest rate as adopted by the Court below is not justifiable and needs to be interfered with.

[19] This Court in all matters is fixing 7.5% interest and to maintain uniformity while comparing the bank rate of interest which is also much less. Consequently, the claimants would be entitled compensation as assessed by the learned Court below along with 7.5% interest per annum, with effect from the date of presentation of the claim petition till the date of actual payment. Thus, the appellant insurance company is liable to pay the total amount as awarded by the Tribunal below in favour of the claimant-respondents within a period of 30 days from today. However, it is made clear that if the amount is already deposited, the claimant-respondents are at liberty to withdraw the same unconditionally.

[20] In view of above discussion and observation, the present appeal stands allowed and disposed of. As a sequel, miscellaneous

applications pending, if any, shall stand closed. Draw the decree accordingly and thereafter, send down the LCRs forthwith.

**JUDGE**

*A.Ghash*

