

**HIGH COURT OF TRIPURA  
A\_G\_A\_R\_T\_A\_L\_A**

**MFA(EC) No.04 of 2022**

1. Smti. Jharna Ghosh, wife of late Sushil Ghosh (48).
2. Sri Pritam Ghosh, son of late Sushil Ghosh (20).

[Both are residents of village Fulchari, P.S. Kamalpur, District: Dhalai, Tripura, PIN-799285]

*.....Petitioner-appellanta*

**-V E R S U S-**

1. Sri Prantosh Deb, son of Sukumar Deb, resident of village Narayanpur, P.O. & P.S. Airport, Agartala, PIN-799009, District: West Tripura.  
**[Owner of TATA Indigo C.S. bearing registration No. TR-01-Z-0607].**
2. The National Insurance Company Ltd., represented by its General Manager, A. K. Road P.S. West Agartala, District: West Tripura  
**[Insurer of TATA Indigo C.S. bearing registration No. TR-01-Z-0607].**
3. Sri Goutam Ghosh, son of late Sushil Ghosh, resident of West Bhubanban, P.O. Ramnagar, P.S. West Agartala, District: West Tripura.
4. Smti. Lila Ghosh, wife of late Jitendra Ghosh, resident of Navagram, P.O. Gandhigram, P.S. Airport, District: West Tripura, PIN-799012.

*..... Opposite Party-respondents.*

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

**HON'BLE THE CHIEF JUSTICE (ACTING)**

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|---------------------------|---|-------------------------------------------------------------|
| For Appellant(s)          | : | Mr. D. C. Saha, Advocate.<br>Mr. T. K. Choudhury, Advocate. |
| For Respondent(s)         | : | Mr. S. D. Choudhury, Advocate.<br>Mr. A. Das, Advocate.     |
| Whether fit for reporting | : | <b>NO</b>                                                   |

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Judgment and order dated 18<sup>th</sup> January, 2023

**JUDGMENT & ORDER [ORAL]**

Heard Mr. D. C. Saha, learned counsel and Mr. T. K. Choudhury, learned counsel appearing for the appellant. Also heard Mr. S. D. Choudhury, learned counsel and Mr. A. Das, learned counsel appearing for the respondents.

[2] This appeal has been filed under Section-30 of the Employees' Compensation Act, 1923 against the judgment and award dated 06.07.2022 holding that the appellant No.1 and 2 are not legal heirs of the deceased and as such, they are not entitled to get any compensation passed by the learned Commissioner, Employees' Compensation, West Tripura, Agartala in connection T.S.(EC) 05 of 2015.

[3] The case, in brief, is that the victim Swagatam Ghosh was employed as driver by the owner of the vehicle bearing no. TR-01-Z- 0607 (TATA Indigo C.S.). On 28.02.2012 at about 01.15 hours the victim Swagatam Ghosh under instruction of his employer was proceeding a marriage ceremony of the relatives of his employer and when he reached near Athletic Club of Resham Bagan, the vehicle was capsized due to heavy fog skidding in the road and met with an accident. As a result, four persons including the driver Swagatam Ghosh expired on the spot and one Jayanta Kapali sustained grievous injuries on his person in the said road traffic accident.

[4] After the accident, the local people, fire service personnel and police personnel rescued all of them and brought to the AGMC & GBP Hospital, Agartala. On the following morning the appellant no.1 was informed by her near relatives about the accident and death of her son Swagatam Ghosh. The whole incident occurred while Swagatam Ghosh

was on duty arising out of and in course of his employment under the O.P. no.1 and as such the appellants are entitled to get compensation. Concerning the said accident a police case was registered at East Agartala Police Station vide East Agartala P.S. Case No.36 of 2012 under Sections 279/338/304(A) of I.P.C.

[5] It is claimed that at the time of death, deceased Swagatam Ghosh was 20 years old and would get monthly wages of Rs.5,000/- besides daily allowance at the rate of Rs.100/- and in case of night duty he used to get extra allowance of Rs.300/-. The said accident was within the knowledge of the owner of the vehicle but subsequently, he was also verbally informed and requested to pay compensation as per law though he extended some help towards funeral expenses and assured that he will try to provide adequate compensation as per law but he remained unattended with an advice to file application for compensation as the vehicle was duly insured with the National Insurance Company Ltd. and ultimately, the present case. Finally, they claimed Rs.14,07,625/- as compensation.

[6] O.P. No.1 in his written statement stated that the appellants are not legally entitled to file the present petition as they are not the legal representatives/survivors of the deceased Swagatam Ghosh. In his written statement he admitted the averments of the appellants made in their claim petition. In his written statement he stated that the appellants are not entitled to get any compensation as they are neither dependent nor the legal representatives of the deceased. In his written statement he also stated that the deceased never resides with the appellants at Fulchari, Kamalpur. In his written statement he also stated that at the relevant date and time of accident the vehicle was insured with the National Insurance Company Ltd.

[7] O.P. No.2, National Insurance Company Ltd., in their written objection denied that the driver of the offending vehicle bearing no. TR-01-

Z-0607 (TATA Indigo CS) was the deceased Swagatam Ghosh and also denied that the deceased Swagatam Ghosh was driving the vehicle bearing no. TR-01-Z-0607 on the alleged date and time of accident under instruction of his employer i.e. the O.P. no.1. O.P. No.2 in their written objection formally denied about the age, income, profession of the deceased at the time of accident and sustaining of his injuries and succumbed to the injuries arising out of and in course of his employment.

[8] O.P. No.2 in their written objection stated that after the alleged accident neither the owner nor the appellants informed them about the alleged accident. In their written objection they stated that they have no knowledge about any accident which occurred on 28.02.2022 and Swagatam Ghosh died due to road traffic accident during the course of his employment. They also stated that neither the notice was given to them nor the application was filed by the appellants within the stipulated period as per Employee's Compensation Act.

[9] O.P. No.3 in his written statement stated that the appellant No.1 was not the mother of the deceased Swagatam Ghosh and she along with her son Pritam Ghosh was dependent upon the income of the deceased. He also stated that the answering opposite party is not the son of the appellant No.1. In his written statement he admitted that Late Swagatam Ghosh was a driver of the vehicle bearing no. TR-01-Z-0607 (TATA Indigo CS). O.P. no.3 in his written statement stated that he along with his full blood brother of Late Swagatam Ghosh and their mother Jharna Ghosh were residing at Nabagram, Gandhigram in the house of their maternal granduncle from their childhood due to mental and physical torture inflicted upon their mother by their father.

[10] In his written statement he stated that his mother Jharna Ghosh died on 03.01.2002. He also stated that actual name of the appellant No.1 is

Depali Ghosh and not Jharna Ghosh and she had illicit relation with his deceased father Late Sushil Ghosh and subsequently, she changed her name as Jharna Ghosh to grab the property of Late Sushil Ghosh. O.P. no.3 in his written statement admitted the averments of the appellants made in their claim petition. In his written statement he stated that the appellants are not at all entitled to get compensation under the Employee's Compensation Act due to death of Late Swagatam Ghosh as they are not legal heirs of deceased Swagatam Ghosh. Lastly, he prayed that he is entitled to get compensation for death of Swagatam Ghosh.

[11] The OP No.4 by filing his written statement stated that she is the grandmother of the deceased Swagatam Ghosh and aged about 70 years and fully dependant on the income of deceased Swagatam Ghosh and supported the submission of the OP No.3.

[12] After hearing both the parties, the Commissioner Employee's Compensation, West Tripura, Agartala in case No. TS(EC) 05 of 2015 has awarded as under:

*"In the result, the O.P. no.3 Sri Goutam Ghosh is entitled to get compensation of Rs.6,73,200/- (Rupees Six Lakh Seventy-three Thousand Two Hundred) only with interest @ 12% per annum from 28.03.2012 i.e. one month after the date of accident till realization. O.P. no.2, National Insurance Company Ltd. will pay the amount of compensation with interest within 30 days from today.*

*Out of the total amount of compensation inclusive of interest, 50% shall be kept in fixed deposit scheme in his name with the UCO Bank, District Court Branch, Agartala for a period of five years and the balance amount shall be paid to him through his bank account. Opposite Party No.3 shall be at liberty to withdraw monthly interest from his fixed deposit account to meet his day to day expenses. No loan or withdrawal shall be permitted from the fixed deposit certificate without prior permission of this Commission."*

[13] The appellants herein, being aggrieved by and dissatisfied with the impugned judgment and award of compensation dated 06.07.2022, has preferred this present appeal for the ends of justice.

[14] Learned counsel appearing for the appellant has submitted that the learned Court below has failed to appreciate that most of the documents produced by Goutam Ghosh was obtained after filing of the claim petition on 25.03.2015 and as such, judgment and award dated 06.07.2022 is perverse and *nonest* in the eye of law.

[15] The learned Court below has also failed to appreciate that deletion of name of Goutam Ghosh and Swagatam Ghosh from the ration card of the appellant No.1 was effected with effect from 17.03.2018 i.e. after about 3 years of filing of the claim petition collecting the ration card from the appellant No.1 i.e. Jharna Ghosh and as such resulting erroneous judgment and award. Goutam Ghosh could not produce any document or any independent witness to substantiate his statement that his father during his life time used to torture upon him mother i.e. first wife of Sushil Ghosh.

[16] He has submitted that the original survival certificate (Exbt.7) dated 19.05.2006 was issued upon the application of the appellant No.1. In the survival certificate it is categorically stated “certified that an enquiry on the petition of Sri /Smt Jharna Ghosh W/o late Sushil Ghosh of Fulchari\*\*\*\*” and as such resulting erroneous judgment and award.

[17] The learned Court below has failed to appreciate that in the original survival certificate dated 19.05.2006 was not challenged by Goutam Ghosh and Swagatam Ghosh before the appropriate forum till date even after about more than 22 years therefore the original survival certificate dated 19.05.2006 is valid and as such, the impugned award needs to be interfered with.

[18] PW-2 Ranjit Ghosh in his cross-examination has stated that the wife of Sushil GHosh died when Sushil Ghosh was alive. The wife of Sushil Ghosh died probably in the year 1995 which is collaborated with the

certificate of Panchayat Pradhan. The learned Court below has failed to appreciate that the original certificate of the Pradhan, Noagaon Gram Panchayat Durgachowmohani R.D. Block Kamalpur, Dhalai Tripura stated that first wife of late Sushil Ghosh namely, Jharna Ghosh expired on 03.01.1995 in their dwelling house of late Sushil GHosh.

[19] Appellant No.1 as PW-1 deposed that she is the mother of deceased Swagatam Ghosh and she along with his younger son Pritam Ghosh was fully dependent on the income of the deceased. She also deposed that elder son Goutam Ghosh was reluctant to maintain her and staying separately. She further deposed that deceased Swagatam Ghosh was employed as a driver by the owner of the vehicle bearing no. TR-01-Z-0607 (TATA Indigo CS) under O.P. No.1 namely, Sri Prantosh Deb. She deposed that on 28.02.2012 at about 01.15 hours her son Swagatam Ghosh under instruction of his employer was proceeding towards Nabagram of Gandhigram by driving the said vehicle after attending a marriage ceremony of the relatives of his employer and on the way, when he reached near Athletic Club of Resham Bagan, the vehicle was capsized due to heavy fog skidding in the road and met with an accident. As a result, four persons including her son Swagatam Ghosh expired on the spot and one Jayanta Kapali sustained grievous injuries on his person in the said road traffic accident and the said accident was occurred while her son Swagatam Ghosh was on duty.

[20] After accident, the local people, fire service and police personnel rescued all of them and brought to the AGMC & GBP Hospital, Agartala. Subsequently, said accident was registered at East Agartala Police Station vide East Agartala P.S. Case No.36 of 2012 under Sections 279/338/304(A) of I.P.C. Nothing material came from her cross examination by O.P. No.3 except one reply that she could not say the

address of the driver mentioned in the driving licence submitted by her in this case.

[21] Sri Ranjit Ghosh as PW-2 deposed that he is a neighbour of the appellants of this case and he is well conversant with the facts and circumstances of the case. He also deposed that the O.P. No.3 Goutam Ghosh is the full blooded brother of deceased Swagatam Ghosh and father of the deceased Swagatam Ghosh as well as Goutam Ghosh was never separated from his family in the year 1993. He further deposed that Goutam Ghosh is the full blooded brother of deceased Swagatam Ghosh and half blooded brother of Sri Pritam Ghosh. In his evidence he deposed that Goutam Ghosh being driver by profession never dependent upon deceased Swagatam Ghosh. He also deposed that he witnessed the first wife of Late Sushil Ghosh namely, Jharna Ghosh who expired on 03.01.1995 in the house of Sushil Ghosh situated at Noagaon Gram Panchayet, Kamalpur leaving behind the O.P. No.3 and deceased Swagatam Ghosh.

[22] He further deposed that after sad demise of first wife, Sushil Ghosh socially married another lady whose name is also Jharna Ghosh in the last part of the year 1995 to look after his two minor children namely, Goutam Ghosh, O.P. No.3 and the deceased Swagatam Ghosh and he knows Smti. Jharna Ghosh who is the appellant No.1 of this case. In his cross by O.P. No.3 he stated that the distance between his house and the house of Jharna Ghosh will be 2½ kilometer approximately. He also stated that the wife of Sushil Ghosh died probably in the year 1995 when Sushil Ghosh was alive. Except these nothing material came out from his cross examination. Nothing material also came out from his cross examination by O.P. No.1 and 2.

[23] O.P. No.1 Sri Prantosh Deb as OPW-1 in his cross by the O.P. No.2 he stated that on the intervening night of 27.02.2012 and 28.02.2012

at about 1.15 a.m. his vehicle met with an accident when it was returning from Kashipur and at that time the vehicle was duly insured with the National Insurance Company Ltd. He also stated that after the accident he informed the matter to the insurance company but he did not submit any document as proof of the same before this Court. He further stated that in the charge-sheet it has been mentioned that the driver of the vehicle was in drunken condition while driving the vehicle at the time of accident. In his cross by the O.P. No.3 and 4 he stated that his driver Swagatam Ghosh is a resident of their locality and was residing in the house of his grandmother Lila Ghosh along with his brother. He also stated that the parents of Swagatam Ghosh expired while he was very young and since that time he and his brother are residing in the house of their grandmother.

[24] O.P. No.4 Smti. Lila Ghosh as OPW-3 has stated that issue of torture was cropped up due to illicit relation between Sushil Ghosh and Deepali Ghosh. Subsequently, Deepali Ghosh changed her name as Jharna Ghosh to grab the property of Sushil Ghosh and in the mean time her daughter Jharna Ghosh died on 03.01.2002 due to torture of her husband Sushil Ghosh. Except denial nothing material came out from her cross examination by O.P. no.1. In her cross examination by O.P. no.2 she stated that on the date of incident her grandson Swagatam Ghosh went on a trip along with passengers in the vehicle bearing no. TR-01-Z-0607 (TATAIndigo CS).

[25] Sri Joydeep Ghosh as OPW-4 deposed that he is the Divisional Manager of National Insurance Company Ltd. and he is acquainted about the facts and circumstances of the case. He also deposed that he collected the charge-sheet in connection with the East Agartala P.S. Case No.36 of 2012 under Sections 279/335/304(A) of IPC and on perusal of the chargesheet he found that the deceased Swagatam Ghosh drove the vehicle

in drunken condition and the claimant appellants have no relation with the deceased Swagatam Ghosh as they are not dependent upon the deceased. During examination he exhibited three documents namely, certified copy of Ejahar in connection with East Agartala P.S. Case No.36 of 2012 as well as printed FIR form in connection with the said case as Exbt.K, certified copy of two seizure lists in connection with the aforesaid case as Exbt.L and certified copy of charge-sheet in connection with the aforesaid case as Exbt.

[26] In his cross examination by O.P. No.1, 3 and 4 stated that he did not witness the accident and did not submit any medical document as proof that the deceased was driving the vehicle in drunken condition at the time of accident and also did not cite any doctor as witness to establish that the deceased was in drunken condition.

[27] From the certified copy of Judgment dated 27.08.2016 passed in T.S.(MAC) 305 of 2012 by the Learned Member, Motor Accident Claims Tribunal No.4, West Tripura, Agartala under Exbt.3 it is found that the Learned Tribunal came to the finding that the accident had occurred due to rash and negligent driving of the vehicle bearing No. TR-01-Z-0607(TATA Indigo CS). Similarly, from the certified copy of Judgment dated 16.01.2017 passed in T.S.(MAC) 20 of 2014 by the Learned Member, Motor Accident Claims Tribunal No.1, West Tripura, Agartala under Exbt.6 it is also found that the Learned Tribunal came to the finding that the TATA Indigo CS bearing registration No.TR-01-Z-0607 was solely responsible for the accident. From certified copy of Charge-sheet under Exbt.'M' it is found that the Investigating Officer after investigation came to the finding that the accident had occurred due to rash and negligent driving of the vehicle by its driver namely Swagatam Ghosh and a prima facie charge under Sections 279/338/304(A) of I.P.C. was well established

against the driver of the vehicle bearing No. TR-01-Z-0607 (TATA Indigo CS).

[28] Certified copy of ejahar under Exbt.2, certified copy of Judgment dated 27.08.2016 passed in T.S.(MAC) 305 of 2012 by the Learned Member, Motor Accident Claims Tribunal No.4, West Tripura, Agartala under Exbt.3, certified copy of Judgment dated 16.01.2017 passed in T.S.(MAC) 20 of 2014 by the Learned Member, Motor Accident Claims Tribunal No.1, West Tripura, Agartala under Exbt.6, certified copy of charge-sheet under Exbt.M concerning the East Agartala P.S. Case No.36 of 2012 under Sections 279/338/304(A) of I.P.C. and written statement of O.P.1 corroborate with each other about the accident and death of the deceased Swagatam Ghosh arising out of and in course of his employment under the O.P. No.1. In the Charge-sheet it is mentioned that all of them were allegedly in drunken condition but specifically there is no mention whether the driver of the vehicle was in drunken condition or not at the time of accident and the OPW4 in his cross examination by O.P. Nos.1, 3 and 4 stated that no medical document was submitted by him as proof of the same and also did not cite any doctor as witness to establish that the deceased was in drunken condition.

[29] Considering the above discussion, it is established that the accident had occurred due to rash and negligent driving of the vehicle bearing registration No. TR-01-Z-0607 (TATA Indigo CS) by its driver Swagatam Ghosh and the said accident had occurred arising out of and in course of his employment under the O.P. No.1 as a driver of the said vehicle. As such the legal heir(s) is/are entitled to get some compensation. On perusal Survival Certificate dated 16.05.2018 issued by the Sub-Divisional Magistrate, Mohanpur, West Tripura District under Exbt.E, it is found that Sri Goutam Ghosh is shown as surviving member on the death

of deceased Swagatam Ghosh and as such Sri Goutam Ghosh is only entitled to get compensation.

[30] As per Exbt.5 (Insurance policy), the vehicle bearing No. TR-01-Z-0607 (TATA Indigo CS) was insured with the National Insurance Company Ltd. for the period from 14.02.2012 to 13.02.2013 and the accident had occurred on 28.02.2012 i.e. within the period of policy. As per driving licence of the deceased (Exbt.4) he was authorized to drive 3W-NT and LMV-NT and the validity of the non transport vehicle was w.e.f. 13.07.2010 to 12.07.2030 though the accident had occurred on 28.02.2012. So, the Driving Licence of the deceased was valid at the time of accident. There is no evidence adduced from the side of Insurance Company that the insurer had violated any terms of policy. Thus, liability of payment of compensation is fixed upon O.P. No.2, National Insurance Insurance Co. Ltd. Thus, liability of payment of compensation on behalf of O.P. No.1 is saddled upon O.P. No.2, National Insurance Company Ltd.

[31] In the backdrop of above analysis, this Court is of the view that the findings as arrived at by the learned Court below vide its judgment and award dated 06.07.2022 passed in T.S. (EC) 05 of 2015, needs no interference and thus, the same stands affirmed. Consequently, the present appeal filed by the appellants, stands dismissed. As a sequel, miscellaneous applications pending, if any, shall stand closed. Send down the LCRs forthwith.

**CHIEF JUSTICE [ACTING]**