

**HIGH COURT OF TRIPURA
AGARTALA
MAC APP NO.96 OF 2022**

1. The Divisional Manager,

The United India Insurance Co. Ltd.,
Old R.M.S. Chowmuhani, Agartala, P.S.- West Agartala,
District- West Tripura(insurer of the vehicle bearing No.TR.-01-J-1537).

2. The Divisional Manger,

The United India Insurance, Co. Ltd,
Old RMS Chowmuhani, Agartala, P.S.- West Agartala,
District- West Tripura(Insurer of the vehicle bearing No.TR-01-U-8758, Motor Bike)

..... **Appellant(s)**

Vs.

1. Smt. Jyotsna Debnath,
W/o- Sri Shanti Debnath.

2. Sri Shanti Debnath,
S/o-Lt. Mukunda Debanth;

Both are resident of Vill- Brajapur, P.O- Bishalgarh, P.S.-
Bishalgarh, Dist- Sepahijala.

..... **Claimant Respondent(s)**

3. Sri Swapan Kr. Dey,

S/o- Nagendra Ch. Dey of Masjid Road,
Shibnagar, P.S.- East Agartala, District- West Tripura,
799001(Owner of the vehicle bearing No.TR.01-J-1537,
Tractor);

4. Sri Dijendra Debnath,

S/o- Lt. Rajendra Debnath of North Brajapur, P.S.- Bishalgarh,
P.O.- Bishalgarh, District- Sipahijala(Owner of the vehicle
bearing No.TR-01-U-8758, Motor bike.)

For the Appellant(s) : Ms. R. Purukayastha, Advocate.

For the Respondent(s) : Mr. P.S. Roy, Advocate.
Mr. S. Lodh, Advocate.
Mr. K. Roy, Advocate.

Date of hearing : 31.07.2023.

Date of delivery of
Judgment & Order : 01.08.2023

Whether fit for reporting : YES/NO.

HON'BLE MR JUSTICE T. AMARNATH GOUD
JUDGMENT AND ORDER(ORAL)

This present appeal has been filed against the impugned award dated 27.02.2020 passed by the learned Motor Accident Claims Tribunal No.2, West Tripura, Agartala in T.S.(MAC) No.183 of 216 whereby the learned Tribunal below awarded compensation of Rs.19,84,400/- to the claimant respondents to be paid by the Opposite Party No.2 i.e., the appellant herein within a period of 60 days from the date of presentation of the application i.e. w.e.f. 09.09.2016 to till payment.

2. The brief fact of this case is that on 16.08.2016 at about 7-30 p.m., victim-Sujit Debnath was proceeding towards Charilam from his residence at Brajapur by riding a Motor Cycle bearing registration No. TR-01-U-8758(Motor Cycle). When the said Motor cycle reached at Charilam Puran Bari at about 8 p.m. on Agartala-Chailam Road, at that time, one Mahindra Tractor bearing registration No. TR-01-J-1537 pushed the motorbike seriously with excessive speed in a rash and negligent manner due to which Sujit Debnath splashed upon the road with his motorcycle and met with an accident. The said Mahindra Tractor dragged the victim on the ground as a result of which he sustained serious bleeding injuries

on his person. Immediately after the accident, the victim was brought to Bishalgarh Hospital where the attending doctor of the said hospital referred the injured to AGMC & GBP Hospital, Agartala for better treatment. He was admitted there. During treatment on 17.08.2016 Sujit Debnath died in the GBP Hospital at about 4 a.m. As Sujit Debnath died in a vehicular accident, the petitioner being his legal heirs filed the claim petition before the Motor Accident Claims Tribunal.

3. The OP Nos.1 and 3 therein i.e., the owners of the vehicles, and OP Nos.2 and 4, therein i.e., the insurer of the offending vehicle contested the case and filed their written statements on 30.06.2017, 18.12.2017, and 23.02.2018 respectively denying and disputing the claim of the claimant petitioners.

4. For adjudication, the learned Tribunal framed the following issues:-

"1. Whether Sujit Debnath since deceased sustained injuries in a vehicular accident on 16.08.2016 due to rash and negligent driving of the offending vehicle bearing No. TR-01J-1537 and succumbed to his injuries on 17.08.2016?

2. Whether the claimants are entitled to get any compensation if so, up to what extent and who shall be held liable for payment of the same?"

5. To prove the claimant respondent's case, the claimant examined 2(two) witnesses including claimant No.1 as P.W.-1, and also exhibited certain documents.

6. The learned Tribunal after hearing both the parties, vide impugned Award dated 27.02.2020, disposed of the T.S.(MAC) No.183 of 2016 in the following terms:-

Sl. No.	Heads	Calculation
1	Wages	Rs. 12,000/-
2	40 percent added as future prospect and after calculation yearly loss of income comes	(Rs. 12,000/- + Rs. 12,000/- x 40 percent x 12)= Rs. 2,01,600/
3	50% has been deducted for his personal and leaving expenses and yearly it comes	(Rs. 2,01,600/minus 50%)= 1,00,800/
4	Compensation applied multiplier 18 considering the age of the deceased was 23 years at the time of accident	Rs. 1,00,800/- x 18)= Rs. 18,14,400/
5	Miscellaneous/conveyance	Nil.
6	Loss of love and affection	Rs. 1,00,000/
7	Loss of Estate	Rs. 15,000/
8	Funeral expenses	Rs. 25,000/
9	Cost of medicine and transportation	Rs. 30,000/
10	Total Compensation	Rs. 19,84,400/

15. In the result, the petition filed by the claimant petitioner u/s 166 of MV Act is hereby allowed on contest. The claimant petitioners namely, Smt Jyotsna Debnath and Sri Shanti Debnath being parents and legal heirs of the deceased are entitled to get Rs. 19,84,400/- (Rupees nineteen lacs eighty four thousand four hundred only) as compensation in this case.

Now, it is to be determined who shall be held responsible for making compensation in this case. It appears from the evidence of OPW3(insurer) that the offending Mahindra Tractor vehicle has valid insurance coverage and the accident occurred on the stipulated period. So, the OP No. 2 being the insurer of the aforesaid vehicle shall be solely responsible for making payment of compensation in this case to the claimant petitioners as per this judgment. This amount shall have to paid by the OP No. 2 within sixty days from today. This amount shall carry interest @ 9% per annum from the date of presentation of the application on 09.09.2016 before this Tribunal till payment is made.

The aforesaid amount of compensation, i.e., Rs. 19,84,400/- shall be distributed between the claimant petitioner Nos. 1 and 2 in equal share. 60% of amount of the share of the claimant petitioner No.1 and petitioner No. 2 with interest shall be kept in fix deposit account in the name of claimant petitioner Nos.1 and 2 for a period of five years in the UCO Bank, District Court Branch, Agartala and the rest amount (40%) of their share shall be released to the petitioner Nos. 1 and 2 by transmitting it directly from the court to the individual Bank account of the Petitioner Nos. 1 and 2. It shall not be transmitted to a joint bank account held by the petitioner Nos. 1 and 2 with any other family members or any other person. However, the petitioner Nos. 1 and 2 are entitled to withdraw monthly interest therefrom to meet their expenses.

The claimant petitioner Nos. 1 and 2 is directed to furnish a photocopy of the pass book duly certified by the bank having IFSC & MICR Code for opening of their F/D certificate.

No loan or withdrawal shall be permitted from the fixed deposit accounts without prior permission of the Tribunal in pursuance of

the judgment of our Hon'ble High Court dated 5.12.2013 passed in MAC Appeal No. 36 of 2006.

A copy of this judgment be furnished free of cost to the Petitioner and also to the Id. counsel representing the OPs.

With this observation the case is disposed of on contest."

7. Heard Ms. R. Purukayastha, learned counsel appearing for the appellants-Insurance Company as well as Mr. P.S. Roy, learned counsel for claimants-respondent and Mr. S. Lodh, learned counsel for respondent No.3.

8. Ms. R. Purukayastha, learned counsel appearing for the appellant-insurance Company submitted that from the charge sheet, it is evident that the driver of the offending tractor was in an intoxicated condition which amounts to violation of the policy condition of the insurance, hence the appellants are not liable to indemnify the owner-respondent. In the award passed by the learned Tribunal below, Rs.12,000/- per month has been awarded as the monthly income of the deceased. The same is on the higher side as the same has been assessed without any documentary evidence of proof of income. For loss of love and affection, the learned Tribunal has awarded Rs1,00,000/- only but in terms of ***National Insurance Company Ltd. Vs. Pranay Sethi and ors.***, reported in **(2017)16 SCC 680**, for loss of consortium, the mother of the deceased is only entitled to Rs.40,000/- and the father of the victim is not entitled to compensation for the head of loss of consortium. In terms of Pranay Sethi(supra) for funeral

expenses, Rs.15,000/- only is to be awarded but the learned Tribunal wrongly awarded Rs.25,000/- only for funeral expenses. Further the learned Tribunal below while passing the award imposed 9% per annum on the compensation amount, the same is on the higher side.

9. On the other hand, Mr. P.S. Roy, learned counsel appearing for the claimant-respondents submitted that the assessment of income of Rs.12,000/- per month for the deceased is on the lower side since the deceased was a mason and of 23 years of age and Hon'ble Supreme Court in catena of cases considered income of more than Rs.12,000/- per month for such category of workers.

10. Heard both sides and perused the evidence on record.

11. The appellants-Insurance Company has preferred this appeal on 2(two) points, namely:-

i) Fastening of liability of paying the compensation as awarded on the appellants-Insurance Company;

ii) Quantum of the compensation as awarded;

12. In so far as the fastening of liability of paying the compensation is concerned, the learned counsel appearing for the appellants-Insurance Company has submitted that the driver of the offending vehicle was in a drunken condition. To support his contention, he relied upon the charge sheet filed by the

investigating officer. On perusal of the charge sheet filed by the investigating officer, it does not indicate any sufficient investigation to the satisfaction of this Court except regarding the statements of the persons who were present there. No blood test or any other test as prescribed under the Act was conducted on the driver of the offending vehicle to determine whether the said person was in a drunken state at the time of the accident or not. In view of the same, the allegation against the driver of the offending vehicle stands unproven since the same was not proved before the Court below with proper evidence. Hence this present point stands rejected.

13. The 2nd point for the argument which fell before this Court is on the point of quantum.

13.1. The Tribunal below has considered an amount of Rs.12,000/- per month for the deceased as his monthly income, before the accident. According to the learned counsel appearing for the appellants-Insurance Company, the same is on the higher side, since, no documentary evidence has not been adduced to substantiate the monthly income of the accused.

Both the claimants in their depositions stated that the deceased used to earn Rs.12,000/- prior to the accident. The accident occurred in 2016 and at that time, the age of the deceased was 23 years and he was working as a mason. Though

there is lack of documentary evidence, but in terms of the principles laid down by the Hon'ble Apex Court on the lack of documentary evidence while determining the notional monthly income of Rs.10,000/- in **Sri Ramachandrappa vs The Manager, Royal Sundaram Alliance Insurance Company Limited** reported in **(2011) 12 SCC 236** and keeping in mind in present case, the evidence of claimants, the age, year of the accident i.e. 2016 and profession of the deceased at the time of the accident, this Court finds that assessment of Rs.12,000/- per month as monthly income of the deceased is just and proper and needs no further interference.

13.2 In column No. 6 of the award i.e. for loss of love and affection, the learned Tribunal below awarded Rs.1,00,000/- According to the appellant-counsel as per the Hon'ble Apex Court Judgment passed in **National Insurance Company Ltd. Vs. Pranay Sethi and ors** reported in **(2017) 16 SCC 680** the same is on the higher side and Rs.40,000/- only is to be awarded to the mother of the deceased for the said head. But in **Magma General Insurance Company Ltd. Vs. Nanu Ram Alias Chuhru Ram and ors** reported in **(2018) 18 SCC 130**, the Hon'ble Apex Court awarded Rs.40,000/- towards filial heads and this for Mother and Father. So, Rs.40,000/- x 2=Rs.80,000/- plus Rs.40,000/- for love and affection as situated supra. Total would be Rs.1,20,000/-.

Hence, lower Court awarded Rs.1,00,000/-. Thus the same requires no interference under above head.

13.3 In so far as column No.8 is concerned i.e., compensation awarded on the heading of Funeral expenses, the Hon'ble Apex Court in its catena decision awarded Rs.15,000/- for funeral expenses but the learned Tribunal has awarded Rs.25,000/- for the same. So, this Court in consonance with the decisions of Hon'ble Apex Court awards Rs.15,000/- for Funeral expenses i.e. for column No.8.

13.4. The learned Tribunal awarded interest @ 9% per annum for the compensation but this Court has taken interest @ 7.5% as its bench make while awarding compensation. So the interest @ 9% per annum is reduced to interest @7.5% per annum for the awarded compensation.

14. The remaining award as passed by the learned Tribunal stands undisturbed in respect of the compensation.

15. To the extent indicated above, the appeal stands partly allowed. Prepare the decree accordingly.

16. As a sequel stay if any stands vacated. Pending application(s), if any also stands closed.

JUDGE

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