

HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_
MAC. App. No.79 of 2022

The Divisional Manager, New India Assurance Company Ltd.

.....Appellant

V_E_R_S_U_S

Smti. Kulu Rani Debbarma & 3 Others

.....Respondents

For Appellant(s)	:	Mr. Alik Das, Advocate.
For Respondent(s)	:	Mr. S. Lodh, Advocate.
		Mr. R. Datta, Advocate.
Date of hearing and delivery		
Of judgment and order	:	19.07.2023
Whether fit for reporting	:	YES/NO

HON'BLE MR. JUSTICE T. AM ARNATH GOUD
_F_I_N_A_L_O_R_D_E_R_

Heard Mr. Alik Das, learned counsel appearing for the appellant-insurance company also heard Mr. S. Lodh, learned counsel and Mr. R. Datta, learned counsel appearing for the respondents.

[2] This application has been filed under Section-173 of the Motor Vehicles Act against the judgment and award dated 24.06.2022 passed by the learned Member, Motor Accident Claims Tribunal, Court No.2, West Tripura, Agartala in connection with case No. T.S. (MAC) 133 of 2019.

[3] Brief facts leading to this case is that on 05.11.2018 the deceased was proceeding towards Agartala from Jirania as a pillion rider in a motor bike bearing registration No. TR-01-AD-5413. In course of proceeding as such when the motor bike reached in front of Ranirbazar Vidya Mandir H. S. School on Assam-Agartala road, at that time the offending vehicle proceeding from same direction dashed the motor bike from back side as a result, the deceased sustained grievous injuries on the various parts of his body including head, chest, left upper limb etc. Immediately after the occurrence deceased was taken to AGMC & GBP Hospital where he was declared dead by the attending Medical officer. It is alleged that the accident occurred due to rash and negligent driving on the part of the driver of offending vehicle. In this connection Ranirbazar PS Case No. 73 of 2018 u/s 279/338/304(A),IPC and 184 of the MV Act was regarded.

[4] The owner of the offending vehicle through his written statement apart from denying all the allegations in the claim petition contended, inter alia, that he is the registered owner of the said offending vehicle and it was duly insured

with the appellant insurance company, therefore, urged for fixing the liability of its insurer to pay the compensation, if any. The appellant through their written statement denied the strict proof of their respective claim. It is also specific claim of the appellant that at the time of alleged accident driver of the offending vehicle was not the holder of valid driving license and as such the owner has violated the condition of insurance policy and, therefore, the insurer is not liable to pay the compensation as claimed.

[5] After hearing the learned counsel appearing for the parties and having gone through the material evidence on record, the learned Court below has observed as under:

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

(i) Claimant petitioners are entitled to get the award of Rs.56,50,660/- (Rupees fifty six lacs fifty thousand six hundred sixty) only with 9% Simple interest per annum from the date of registration of claim i.e, w.e.f. 26.06.2019 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 and 3 exclusively shall also be entitled to get the amount of Rs. 3,00,000/- in equal share as awarded under the head loss of love and affection. The claimant petitioners Nos. 1,2 and 3 shall have equal share on the rest amount.

(ii) 50% of the share of the claimant petitioner No.1 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 pre-mature withdrawal shall be allowed without prior sanction of this Tribunal.

75% of the share of the claimant petitioner No.2 and 3 in the award be invested by purchasing separate Fixed Deposit certificate from any Nationalized Bank at least for the next 5 years or till attaining the age of 21 years whichever is applicable and no loan or advance or pre-mature withdrawal shall be allowed without prior sanction of this Tribunal.

Remaining part of the shares of claimant petitioners shall be paid to them directly to their individual bank accounts.

Claimant petitioners shall have the liberty to withdraw the monthly interest from the amount to be kept under fixed deposit.

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 herself.

The OP No.2, i.e., the New India Assurance Co. Ltd. shall deposit the awarded amount along with interest thereon within one month to this Tribunal.”

[6] Mr. Alik Das, learned counsel appearing for the appellant-insurance company has contended that from the side of the insurance company evidence was produced regarding the issue of driving license. On the date of accident, the driver of the offending vehicle Sri Samprai Debbarma had no valid driving license, but,

the learned tribunal did not consider the issue saying that the issuing authority i.e. the Transport Authority was not examined as a witness, though the report was obtained from the Transport Department. The report was also exhibited as Exbt.F.

[7] The learned tribunal though discussed the issue of pay and recovery as the owner violated the condition of policy but, in the operative portion of the judgment, the learned tribunal did not give any verdict of any pay and recovery and as such, the judgment and award is liable to be set aside. The tribunal below assessed the income of the deceased person more than that of actual salary and as such calculated the compensation on the higher side. The tribunal has awarded compensation towards love and affection is highly excessive and beyond the guideline of the Apex Court.

[8] It has been further averred that the driving license of the offending was fake but the learned tribunal did not consider the fact, though in support of that, evidence was also adduced from the side of the appellant insurance company. The learned tribunal has awarded interest in the higher side, than that of normal bank interest, and as such, the judgment and award is liable to be set aside or modified.

[9] In view of above submissions and having gone through the evidence on record it reveals that there is no dispute between the parties that the death of deceased Ashrai Debbarma was caused as a result of road traffic accident. Save and except simple denial at the time of cross examination, no material came out which may qualify rejection of the evidence of PWs 1 and 2. In support of the oral evidence the claimant respondents have also proved the charge sheet [Exbt 3(1) to 3(viii)] in connection with said police case from where it revealed that the accident occurred due to rash and negligent driving on the part of the driver of offending vehicle. This Court, therefore, left with no option but to conclude that the accident occurred due to rash and negligent driving on the part of driver of the offending vehicle.

[10] It has been established beyond any shadow of doubt that the death of deceased was caused due to rash and negligent driving of the rider of offending motor bike. Therefore, the claimant respondents being the legal heirs of deceased entitled to have the compensation under the beneficial legislation, namely the M.V. Act. Now the question arises is what should be the quantum of compensation and who is liable to pay the same. In order to decide and calculate the amount of compensation we find it apposite to have a reference to a recent judgment of the Honble Supreme Court reported in *AIR 2017 SC 5157 (National Insurance*

Company Limited Vs Pranay Sethi and others) wherein In Para-61 of that Judgment it was observed thus:

”61. In view of the aforesaid analysis, we proceed to record our conclusions :-

(i) The two Judge Bench in Santosh Devi (AIR 2012 SC 2185) should have been well advised to refer the matter to a larger bench as it was taking a different view then what has been stated in Sarla Varma (AIR 2009 SC 3104) a Judgment by a coordinate Bench. It is because a co-ordinate bench of the same strength cannot take a contrary view then what has been held by another co-ordinate bench.

(ii) As Rajesh has not taken note of the decision in Reshma Kumari (AIR) 2013 SC (Supp) 474), which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.

(iii) While determining the income and addition of 50% of actual salary to the income of the deceased towards future prospects where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30 percent, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15 percent. Actual salary should be read as actual salary less tax.

(iv) In case that deceased was self -employed or on a fixed salary, an addition of 40 percent of the establish 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.

(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and court shall be guided by paragraphs 30 to 32 of Sarla Varma which we have reproduced herein before.

(vi) The selection of multiplier shall be as indicated in the table of Sarla Varma read with paragraph-42 of that Judgment.

(vii) The age of the deceased should be the basis for applying the multiplier.

(viii) 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% in every 3 years.”

[11] PW-1 in her examination in chief stated that at the time of death her husband was 38 years of age and he used to earn Rs. 29,337/- per month. As per Post mortem report [Exbt.2(i) to 2(ii)] at the time of death deceased was at this age of 38 years. The Salary certificate of the deceased so proved vide Exbt.7 shows that the deceased used to draw an amount of Rs.29,337/- as a permanent employee in the GA(S.A.) Department, Govt. of Tripura. Indisputably the deceased was at his age group of 36 to 40 years at the time of his death. So, applying the ratio of law as declared by the Hon'ble Supreme Court in Pranay Sethi's case (Supra) an addition to the extent of 50 percent should be added to the income of the deceased.

In view of the law laid down in Sarla Varma's case (AIR 2009 SC 3104) for the age group of 36 to 40 the appropriate multiplier is M-15. Besides where the number of dependent family members are less than 4 (three in the case at hand), deduction towards personal and living expenses would be one third (1/3).

[12] In the case at hand, the evidence as to driving the offending vehicle without valid driving license by the driver Sri Samprai Debbarma. Such evidence stands beyond pleading since no averment in this regard was made in the written objection. That apart, the appellant has proved a copy of letter dated 01.09.2020 (Exbt.E) which was supplied from the office of Joint Transport Commissioner, Govt. of Tripura, Agartala on an application under RTI Act. Information furnished under RTI Act meant for information only. Since the author of such letter was not produced to prove it, this Court declines to place reliance on it to hold that the driving license was fake. It is, therefore, held that the appellant being the insurer of the offending vehicle is liable to pay the compensation.

[13] The learned tribunal under the head of love and affection has awarded Rs.3,00,000/-, to which learned counsel appearing for the appellant has rightly averred that tribunal has awarded compensation towards love and affection is highly excessive and beyond the guidelines of the Apex Court. As such, this amount should be reduced into Rs.40,000/- following the principle laid down in *Magma General Insurance Co. Ltd v. Nanu Ram Alias Chuhru Ram*, equally distributed to the claimants i.e. $40,000 \times 3 = \text{Rs.}1,20,000/-$ therefore, under the head of love and affection instead of Rs.3,00,000/- as awarded by the Court below, it would be computed as Rs.1,20,000/- others shall remain unaltered.

[14] Accordingly, the present appeal stands partly allowed with the above modification. The insurance company shall deposit the awarded amount as assessed by the learned tribunal within a period of one month, from the date of receipt of the copy of this order, if not already deposited. Consequently, the claimant is at liberty to withdraw the same as per procedure. As a sequel, miscellaneous applications pending, if any, shall stand closed. Draw the award accordingly and thereafter, send down the LCRs forthwith.

JUDGE

A. Ghosh

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