

**HIGH COURT OF TRIPURA
AGARTALA**

MAC App 78 of 2022

National Insurance Company Ltd.

---Appellant(s)

Versus

Sri Babul Bhowmik & 3 Ors.

---Respondent(s)

For Appellant (s)	: Mr. S. Lodh, Adv.
For Respondent(s)	: None.

HON'BLE MR. JUSTICE T. AMARNATH GOUD

ORDER

29.05.2023

This is an appeal under Section 173 of the Motor Vehicles Act, 1988 against the impugned judgment & award dated 06.07.2022 passed by the Member, Motor Accident Claims Tribunal, West Tripura, Agartala, Court No.2 in T.S. (MAC) 62 of 2017.

[2] For the sake of brevity the parties hereinafter are referred to as in the cause title of T.S. (MAC) 62 of 2017. Brief facts leading to this case is that on 11.10.2016 at about 10.30 pm the claimant petitioners along with their daughter and neighbour Smt. Susmita Saha and her minor child Smt. Ankita Saha were travelling. For this they boarded an auto bearing registration No.TR-01-E-3481 for visiting Durga puja pandal at Agartala. At about 10.30 pm, when the said auto reached at Badharghat near BOC on Agaratla Udaipur National Highway, suddenly another auto rickshaw bearing registration No.TR-01-E-2617 coming from the opposite direction in high speed, rash and negligent manner collided with their auto rickshaw. Due to the collision, claimant-petitioners along with their daughter and others sustained grievous injuries on their persons. Local people shifted them to IGM Hospital out of which claimant-petitioners and their minor daughter were referred to GBP Hospital as their condition was serious. On reaching there, the minor daughter of the claimant petitioners was declared dead by the doctor. In this connection a specific case vide Amtali PS case No.2016/AMP/145 dated

12.10.2016 under Sections 279/338/304(P-II) and Section 184/187 of MV Act was also registered. The claimant petitioners thereby quantified their claim to the tune of Rs.30,80,000/-.

[3] The OP Nos. 1 and 3 owners of the offending vehicles through their written statement apart from denying all the allegations in the claim petition contended, inter alia, that they are the registered owners of the offending vehicles and both the vehicles were duly insured with the OP no.2 (National Insurance Co. Ltd) OP No.1 and 3, therefore, urged for fixing the liability of their insurer to pay the compensation.

[4] The OP Nos. 2 and 4 through written statement have denied all the allegations and thereby put the claimant petitioner as well as the OP No.1 in strict proof of their respective claim.

[5] The tribunal below framed the following issues for consideration:

- I. Is the claim application filed by the claimant petitioners under section 166 of the MV Act maintainable in its present form and nature?**
- II. Whether on 11.10.2016 Antara Bhowmik, the minor daughter of the claimant petitioners suffered death out of a road traffic accident occurred on 11.10.2016 at about 10.30 pm at Siddhi Ashram, Badharghat near BOC on Agartala Bishalgarh Road?**
- III. Whether the accident occurred due to rash and negligent driving of the auto-rickshaws bearing registration No.TR 01 E 3481 and TR 01 E 2617 by the drivers of those auto-rickshaws?**
- IV. Are the claimant petitioners entitled to get compensation under Section 166 of MV Act? If yes, then to what extent and who shall be held liable for payment of compensation money?**
- V. What other relief/reliefs the parties to this case are entitled to get?**

[6] It is evident from the records that out of the total compensation of Rs.10,05,000/- as awarded by the learned Tribunal, Rs.5,00,000/- was awarded to the claimants under the head of loss of love and affection by the claimants. This has caused the appellant herein to approach this court for setting aside the order dated 06.07.2022 and fixing the awarded amount of Rs.5,00,000/- in accordance with law.

[7] After dealing with all the issues, the learned tribunal by the order dated 06.07.2022 has observed as follows:

"Claimant petitioners are entitled to get the award of Rs.10,05,000 (Rupees ten lacs five thousand) only along with 9%

simple interest per annum from the date of registration of claim i.e. w.e.f. 28.03.2017 till the date of realization thereof.

The OP Nos. 2 and 4, i.e. the National Insurance Company Limited shall deposit the awarded amount along with interest thereon within one month to this Tribunal."

[8] Aggrieved by the said impugned order dated 06.07.2022, the appellant insurance company has approached this court. It is submitted by the appellant that tribunal below has committed serious error in awarding Rs.5,00,000/- under the head of loss of love and affection. It is further submitted by the appellant that the said awarded amount was passed without any cogent reason.

[9] It is represented by Mr. S. Lodh, learned counsel appearing for the appellant that excessive amount of Rs.5,00,000/- under the head of love and affection needs to be reconsidered. He further submits before this court that the present case in hand is covered by the judgment and order passed by this court in **MAC. APP 40 of 2022** dated 20.04.2023 wherein the court was pleased to grant only Rs. 1,00,000/- under the head of loss of love and affection to the claimant.

[10] Heard Mr. S. Lodh, learned counsel appearing for the appellant. It is evident from the records that Mr. Lodh has not disputed any other aspect of the impugned order dated 06.07.2022. Therefore, this court is not inclined to interfere with the rest of the part of the impugned order dated 06.07.2022. In view of the judgment passed in **MAC. APP 40 of 2022**, the amount of Rs.5,00,000/- is reduced to the tune of Rs.1,00,000/- under the head of loss of love and affection to the claimants.

[11] With the above observation, this application stands allowed to the extent as indicated above.

JUDGE