

HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_
MAC. App. No.80 of 2022

The Oriental Insurance Co. Ltd.

.....Appellant

V_E_R_S_U_S

Smti. Sabana Debbarma & 3 Others.

.....Respondents

For Appellant(s)	:	Mr. P. Gautam, Advocate.
For Respondent(s)	:	Mr. P.S. Roy, Advocate. Mr. Alik Das, Advocate.
Date of hearing and delivery		
Of judgment and order	:	13.07.2023
Whether fit for reporting	:	YES/NO

HON'BLE MR. JUSTICE T. AMARNATH GOUD
_F_I_N_A_L_O_R_D_E_R_

Heard Mr. P. Gautam, learned counsel appearing for the appellant also heard Mr. P.S. Roy and Mr. Alik Das, learned counsel appearing for the respondents.

[2] This is an appeal filed under Section-173 of the Motor Vehicles Act, 1988 read with Section-168 of the Act ibide, against the impugned judgment and award dated 18.04.2022 passed by the learned Motor Accident Claims Tribunal, West Tripura, Agartala in connection with case No. T.S (MAC) 69 of 2019.

[3] Brief facts leading to this case is that on 23.9.2018 at about 4.30 p.m. Subodh Debbarma (deceased) was proceeding towards Agartala by riding a motor bike through Agartala – Bishalgarh Road and while reached near Tripura University, Surjyamaninagar and was getting down by the side of the road to attend nature's call at that time a maruti van bearing No. TR-01-AH-0224 coming from opposite direction with high speed in rash and negligent manner dashed and dragged him along with the motor bike. As a result, he sustained multiple grievous injuries on his person and instantly was taken to Dr. BRAM Hospital by another vehicle wherefrom he was referred to AGMC & GBP Hospital, Agartala on the same day where he succumbed to his injuries on 25.9.2018. It has been further contended that the accident occurred due to reckless and irresponsible driving of the offending maruti van by its driver. It is also pleaded that the deceased was at the age of 37 years and being a Govt. employee used to draw monthly salary of Rs.28,239/-.

[4] The 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 one Jewel Miah having valid driving licence and the vehicle was insured with the O.P. No.2, the Oriental Insurance Co. Ltd. Therefore, urged for fixing the liability on his insurer to pay the compensation, if any.

[5] After hearing the learned counsel appearing for the parties and after looked into the material evidence on record, the learned Court bellow has observed as under:

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

(i) Claimant petitioners are entitled to get the award of Rs.52,30,580/-(Rupees fifty two lacs thirty thousand five hundred and eighty) only along with 9% simple interest per annum from the date of registration of claim i.e. w.e.f. 29.03.2019 till the date of realization thereof from the O.P. No.2 the Oriental Insurance Co. Ltd.

The entire amount of compensation shall be divided in equal share amongst all the claimant-petitioners.

(ii) 30% of the share of claimant petitioner No.1 and 2 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 petitioners 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 whole share of minor claimant petitioner No.3 shall be invested by purchasing Fixed Deposit certificate from any Nationalized Bank at least for the next 5 years or her attainment of 21 years of age, whichever is later.

The O.P. No.2, i.e. the Oriental Insurance Co. Ltd. shall deposit the awarded amount along with interest thereon within one month from this day with this Tribunal.”

[6] Mr. P. Gautam, learned counsel appearing for the appellant-insurance company has submitted that the learned tribunal most illegally and in an arbitrary and mechanical manner by his own whims and fancies fastened the entire liability of compensation upon the appellant which does not stand in law and is liable to be interfered with for ends of justice. If the learned tribunal would have properly appreciated the law as laid down by the Apex Court in Pranay Sethi case, in that case the learned tribunal would not have imposed interest under the head of future prospect because of the reason that future prospect is with regard to the probable income to be received in future and as such, there is no requirement to compensate the claimants by way of future interest for the loss i.e. is to occur in the future as the future is yet to happen.

[7] Learned tribunal has miserably failed to understand that future prospect is given for the entire future and as such, the claimants is getting compensation in lumpsum under future prospects prior to the occurrence of the future events. Therefore the Hon'ble Gauhati High Court did not allow any interest on future prospect, as the same relates to an income to be given in future. The learned tribunal ought to have relied the judgment of the Hon'ble Gauhati High Court reported in MAC. App. No.378/2017 and if the learned tribunal would have considered the judgment of the Gauhati High Court in that event the learned tribunal would not have imposed any interest on future prospect because of the reason that future prospect is with regard to then probable income to be received in the future as the future is yet to happen.

[8] Further, it has been contended that the learned tribunal erred in law in imposing 9% interest instead of 6% interest inasmuch as with the change in economy and the policy of the reserve bank of India, the interest rate has been lowered. Imposition of 9% interest by the tribunal below instead of 6% is absolutely illegal because of the reason the Apex Court in (2001) 2 SCC 9 has categorically decided that with a change in economy and the policy of the Reserve Bank of India the interest rate would be decided but the learned tribunal utterly failed to understand this judgment of the Apex Court. In any view of the matter, the judgment and award dated 18.04.2022 passed by the learned tribunal does not stand in law and is liable to be quashed and set aside by this Court for ends of justice, otherwise, there would be unnecessary drainage of public exchequer.

[9] During argument learned Counsel appearing for the claimant-respondents submitted that Subodh Debbarma died in the road traffic accident which occurred only due to rash and negligent driving of the offending vehicle and hence, the claimant-respondents 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 37 years and being Govt. employee used to draw salary of Rs.28,239/- per month, so, adequate compensation may be awarded.

[10] In view of above discussions, this Court is of the opinion that for substantial ends of justice we may relook into the matter once again. As per the claim petition victim Subodh Debbarma died in the road traffic accident occurred on 23.09.2018 at about 4.30 p.m. near Tripura University, Surjyamaninagar while suddenly the offending maruti van bearing No. TR-01-AH-0224 coming from opposite direction with high speed in rash and negligent manner dashed the victim

causing fatal injury. Thereafter the injured was taken to Dr. BRAM Hospital wherefrom he was referred to GBP Hospital, Agartala on the same day but in course of treatment on 25.09.2018 he succumbed to his injuries. The version of the claim petition has been corroborated by the evidence of PW1 namely, Smt. Sabana Debbarma and PW2 Sri Joymangal Debbarma who was the eye witness of the incident. The opposite parties failed to extract anything contrary during the cross examination of those petitioner witnesses.

[11] It has been established by the claimant that the death of deceased was caused due to rash and negligent driving of the driver of the offending vehicle. Therefore, the claimants being the wife, mother and minor daughter of the deceased are entitled to have the compensation under the beneficial legislation, namely the M.V. Act as the claimant petitioners were dependent / legal heirs of deceased Subodh Debbarma.

[12] Now, it has to be considered 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 judgment of the Hon'ble 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:

“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 an addition of 50 percent 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 percent where the deceased was between the age of 40 to 50 years and 10 percent 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 percent in every 3 years.”

[13] As per the claim petition supported by the oral evidence of petitioner witnesses the deceased was a Govt. employee having monthly salary of Rs.28,239/-. From the Ext.5 i.e. salary certificate dated 31.10.2018 it appears that Lt. Subodh Debbarma was a graduate teacher earning gross salary of Rs.28,239/- per month and so being a substantive piece of evidence we are to rely on said salary certificate issued by Inspector of Schools, Bishalgarh, Sepahijala District. It is an admitted fact that being a scheduled tribe of Tripura the deceased was exempted from paying income tax. But he was charged professional tax of Rs.208/- only per month and so applying the formula that the established income means the income minus the tax component, the actual income of deceased at the time of his death stands Rs.28,031/- only.

[14] 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 of the deceased and each of the parents and children is entitled to get compensation for loss of consortium besides the spouse at the rate of Rs.40,000/- with increased amount of 10% as per Pranay Sethy case. (This Court also relied on the case between Magma General Insurance Co.Ltd. Vs. Nanu Ram @ Chuhru Ram and others reported in 2018 SCC Online SC 1546 and the case law of our own High Court between Smt. Namita Sarkar and Ors. Vs. Sri Santalal Debbarma, judgment delivered on 3.7.2020 in MAC Appeal No.17 of 2019).

[15] Now coming to the question of liability, it appears that the owner of the offending vehicle claimed that his vehicle was insured with the the Oriental Insurance Co. Ltd. In support of such claim he has proved the insurance policy No. 322795/31/2018/773 (Ext.C) which was valid at the time of accident. It is also not the case of the appellant that the vehicle was not insured with them. The Ext.D i.e. driving licence of the driver of the offending vehicle shows that at the time of accident the driver had valid licence. It is, therefore, held that the insurer is liable to satisfy the award.

[16] It has been contended that the learned tribunal erred in law in imposing 9% interest instead of 6% interest inasmuch as with the change in economy and the policy of the reserve bank of India, the interest rate has been lowered. The learned tribunal has imposed 9% interest but, this Court is of the view that rate needs to be reduced from 9% to 7.5% and accordingly the same is ordered. But, the rest of the award shall remain unaltered. In view of above modification, the present appeal stands partly allowed. The appellant-insurance company shall deposit the awarded amount as assessed by the learned tribunal within a period of one month, if not already deposited from the date of receipt of the copy of this order. Consequently, the claimants are at liberty to withdraw the same unconditionally as per procedure as decided by the learned Court below.

[17] In the result, the appeal stands partly allowed to the extent as indicated above. 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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Date: 2023.07.25
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