

**HIGH COURT OF TRIPURA
AGARTALA
MAC APP. NO.81 OF 2022**

1. **Sri Babulal Chakraborty,**
S/o. Late Chhaya Kanta Chakraborty,

2. **Sri Kishan Acharjee,**
S/o. Sri Madhu Acharjee,
(Being minor represented by his natural guardian i.e. Appellant No.1)

Both are resident of village-Jangalia, Bishalgarh
P.S.- Bishalgarh, Dist- Sepahijala.

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

Vs.

1. **Sri Paltu Saha,**
S/o Late Dinabandhu Saha,
Village- Bishalgarh Madhyabazar
P.S.- Bishalgarh, Dist- Sepahijala Tripura
(Owner of TR 01 2777- Commandar Jeep)

2. **The Divisional Manager,**
The Oriental Insurance Company Ltd.,
HGB Road, Agartala, Near Sarkar Nursing Home,
P.S. West Agartala, Dist- West Tripura
(Insurer of TR-01-2777 Commander Jeep)

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

For the Appellant(s) : Mr. P.S. Roy, Advocate.

For the Respondent(s) : Mr. B. Majumder, Advocate.
Mr. S. Bhattacharjee, Advocate.

Date of hearing and delivery of
Judgment & Order : 25.09.2023.

Whether fit for reporting : YES.

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

This present appeal has been filed under Section 173 of the Motor Vehicle Act, 1988 against the Judgment and Award dated 06.04.2022 passed by the learned Motor Accident

Claims Tribunal, Sepahijala District, Bishalgarh, in the case No.T.S(MAC)06 of 2018.

2. The brief fact of this case is that on 17.09.2016 at about 11.15 p.m., one Mamata Chakraborty (Acharjee) boarded a Commander Jeep bearing No. TR-01-2777 from Brajapur with a view to reach her residence at Jangalia. When the commander jeep reached at Jangalia near Maa Kali Indane Agency on Agartala-Bishalgarh Road at about 11.30/12.00 p.m., near a curb, suddenly the Commander Jeep turned over on the road. As such, said Mamata Chakraborty (Acharjee) sustained grievous multiple injuries on various parts of her body. Immediately the injured was taken to Bishalgarh Hospital for treatment from where, seeing her serious condition, she was referred to Dr. BRAM Hospital, Hapania, and from there she was shifted to GBP Hospital where she took admission. She was treated there till 20.09.2016 when she died at the said hospital at about 14.15 hours.

3. It was stated that the said accident occurred due to high speed, rash, and negligent driving of the driver of the offending Commander Jeep. It has been asserted that the deceased Mamata Chakraborty (Acharjee) was only 25 years old at the time of the accident/death and she was a Milk Seller by profession and she used to rear 5 cows. The claimant appellants are totally dependent upon the income of the deceased.

4. On 04.01.2018, the claimant-appellants filed a claim petition under Section 144 of the Motor Vehicle Act, 1988 before the learned Motor Accident Claims Tribunal, West Tripura Agartala claiming compensation of Rs.42,95,000/- along with 15% interest from the date of the accident.

5. The learned Tribunal after hearing the parties and perusing the evidence passed the Judgment and Award dated 06.04.2022 awarding Rs.17,04,000/- only in favour of the claimant appellants along with 6% per annum from the date of presentation of the claim petition and shifted the liability of the paying the said compensation to the owner of the offending vehicle and directed the owner to make payment of the said amount to the claimant appellants within a period of 30 days from the date of filing the claim petition till the date of actual payment.

6. Being aggrieved by and dissatisfied with the impugned Judgment and Award dated 06.04.2022 passed by the learned Motor Accident Claims Tribunal, Bishalgarh, Tripura, the claimant-Appellants have preferred this appeal to set aside the impugned Judgment and Award passed in case No.T.S(MAC)06/2018 and enhance the quantum of compensation awarded by the learned Tribunal below.

7. Heard Mr. P.S. Roy, learned counsel appearing for the claimant-appellants as well as Mr. Biswanath Majumder, learned counsel appearing for respondent No.2 i.e. the respondent-

Insurance Company and Mr. S. Bhattacharjee, learned counsel appearing for respondent No.1 i.e., the owner-respondent.

8. Mr. P.S. Roy, learned counsel appearing for the claimant-appellants submits that considering of Rs.8,000/- per month as the monthly income of the deceased is on the lower side and the same needs to be enhanced to Rs.10,000/- per month as the deceased was doing milk business and earning about Rs.10,000/- per month. Learned counsel appearing for the appellants further contended that as the insurance policy of the offending vehicle is valid, the liability of paying the compensation is to be fastened on the respondent insurance company. The interest of 6% given by the Tribunal below is on the lower side and this ought to have been enhanced. Further, for personal expenses of the deceased, the Tribunal below has deducted 2/3rd of the monthly income but the learned Tribunal below ought to have deducted 1/3rd as personal expenses. Stating thus, learned counsel urged to allow this appeal by enhancing the compensation accordingly by modifying the impugned Judgment.

9 On the other hand, Mr. Biswanath Majumder, learned counsel appearing for the respondent-Insurance Company submits that they have filed written statement and have not lead evidence and the arguments were advanced before the learned Tribunal below and the same proceeded ex-parte against the

Insurance Company. In this present appeal, they have not filed any cross objection or any other pleadings.

He further submits that the case was originally filed under Section 166 of the M.V. Act but later, it was converted under Section 163A of the M.V. Act, and thereafter, the liability of paying compensation has been fastened on the owner of the vehicle and the amount has been fixed and in no way the respondent-insurance company is liable to pay the compensation. He also pointed out that the owner of the vehicle has produced the driving license for marking it as an exhibit but the driver of the vehicle has not produced the same. Further, he contended that the driver of the offending vehicle was none other but the husband of the deceased who was driving the vehicle and the deceased was accompanying him in the said vehicle and prayed to dismiss the appeal.

10. Mr. S. Bhattacharjee, learned counsel appearing for the owner of the vehicle i.e. respondent No.1 submits that the owner has not expressly given the said vehicle to the driver for using the vehicle on the fateful day. He used the vehicle for his personal purpose and deceased is the wife of the driver i.e., Sri Madhu Acharjee. However, he claims that the accident has taken place due to the rash and negligent driving of the driver of the vehicle who is not party to the proceeding, and the liability of

paying the compensation should not be fastened on him and prays to dismiss the appeal.

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

12. The learned counsel appearing for the appellants pleads before this Court that the first appellant is the father of the deceased and the 2nd appellant is the 6(six) years old minor son of the deceased. Then on the strength of the evidence, it is submitted that P.W.-1 is the claimant and P.W.-2 is the eye witness. Both of them together has filed an identical examination-in-chief before the Tribunal below indicating that the deceased had 5(five) cows and used to earn Rs.10,000/- per month by way of milk vending. On the point of deduction on personal expenses, learned counsel appearing for the appellants submits that the Court below has deducted 2/3rd instead of 1/3rd following the Judgment of the Hon'ble Apex Court reported in **(2009) 6 SCC 121** titled as **Smt. Sarla Verma & Ors vs Delhi Transport Corp.& Anr.** He further claimed that the liability fastened by the Tribunal below ought to have been on the respondent-Insurance Company not on the owner-respondent. Finally 6% interest awarded on the compensation according to the claimant-appellants is on the lesser side and it could be on the higher side.

13. On fair perusal of the Judgment of the Court below, this Court feels that nowhere neither in the pleadings nor in the evidence, the P.W.-1/appellant No.1 justified his claim that he is dependent on his daughter i.e., the deceased herein and he has no other means to survive. He has not stated in his pleadings that since how long he is staying with his daughter and whether he has any other family members to look after him and about his source of income. He has not produced any evidence to prove that he is entitled to claim the compensation. Further, appellant No.1 has not placed any documentary evidence before the Court(s) to say that he has filed the claim petition as he is legally authorized to represent the minor child (*claimant appellant No.2*) before the Court as natural guardian. It is settled law that either the natural parents i.e., mother or father of the minor child would represent the minor child or in the event, that the mother or father of the minor child are not there, any competent person contemplated under the Act or by virtue of order obtained from the competent Court, a person would be authorized to represent the minor child. The appellant-claimant No.1 has not placed any such record before the Court.

In so far as parental consortium with regard to love and affection is concerned, in terms of Hon'ble Apex Court Judgment reported in **(2018) 18 SCC 130** titled as **Magma**

General Insurance Company Ltd. Vs. Nanu Ram Alias Chuhru Ram and ors, the father of the deceased is only entitled to a sum of Rs.40,000/- only. In this matter, if the claim is to be decided in favour of claimant No.1, as he failed to establish the dependency, he would be entitled to only Rs.40,000/-. It is to be noted that the legal heir who is supposed to be the husband of the deceased is expected to file the appeal seeking claim but for the reasons best known the husband of the deceased has not preferred any claim or appeal nor he is made a party to the claim indicating that he was the driver. This Court draws an adverse inference that in order to avoid the complication, the concerned parties might have been advised not to bring him on record either in the capacity of the appellant-claimant or in the capacity of the respondent.

14. However, this Court finds that the Court below has not gone into these issues and has straight away awarded the compensation amount. Since this appeal is filed by the claimants and no such appeal is preferred by the insurance company and also the owner of the vehicle, this appeal could be dismissed without going into the aspect of enhancement. But when it came to the knowledge of this Court that the impugned Judgment and Award passed by the learned Tribunal below is *per incuriam*, and

this Court is of the view that the same needs and requires re-consideration.

15. Hence in view of the above and for the reasons stated herein, this Court is inclined to take a decision that the matter needs reconsideration before the learned Tribunal below.

16. Accordingly, the present appeal claiming enhancement is dismissed, and also the impugned award dated 06.04.2022 passed by the learned Tribunal below in awarding compensation is liable to be quashed and set aside and the matter needs to be remanded back for reconsideration to the learned Tribunal below in view of the rare circumstance as stated herein above.

17. Further with regard to entitlement of their respective claims and shares, if required, the learned Tribunal below shall give an opportunity to both sides to adduce their evidence and after hearing both sides shall pass an order afresh. Claims under M.V. Act is a beneficial legislation but it cannot be a bonanza and an unauthorized person cannot claim any compensation and an authorized person cannot claim more than what is settled by the Hon'ble Apex Court.

18. Accordingly, the impugned award dated 06.04.2022 passed by the Court below is set aside and the present appeal is also dismissed and the matter is remanded back to the Court below for fresh adjudication.

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

JUDGE

suhanjit

RAJKUMAR
SUHANJIT
SINGHA

Digitally signed by
RAJKUMAR
SUHANJIT SINGHA
Date: 2023.09.27
14:46:56 +05'30'



सत्यमेव जयते