

HIGH COURT OF TRIPURA

A_G_A_R_T_A_L_A_

MAC.App. No.82 of 2022

The Oriental Insurance Company Limited

.....Appellant

_V_E_R_S_U_S_

Smti. Gita Debnath & 2 Others

.....Claimant-respondents

For Appellant(s)	:	Mr.B. Majumder, Advocate.
For Respondent(s)	:	Mrs. S. Deb (Gupta), Advocate.
Date of hearing and delivery of judgment and order	:	20.07.2023
Whether fit for reporting	:	YES/NO

_B_E_F_O_R_E_

HON'BLE MR. JUSTICE T. AMARNATH GOUD

_F_I_N_A_L_O_R_D_E_R_

Heard Mr. B. Majumder, learned counsel appearing for the appellant and Mrs. S. Deb (Gupta), learned counsel appearing for the respondents.

[2] This appeal has been filed under Section-173 of the Motor Vehicles Act, 1988 along with its up to date amendments against the impugned judgment and award dated 07.05.2022 passed by the learned Member, Motor Accident Claims Tribunal, Dhalai Judicial District, Ambassa rendering in case No. T.S. (MAC) 04 of 2020.

[3] The factual background of the claim as appears from the claim petition is that on 13-07-2019 the deceased Ashim Debnath along with two other persons boarded the vehicle bearing registration No. TR-04-B-0779 (Hyundai Xcent) on request of Shri Liton Das, driver of the said vehicle who was previously known to the deceased and proceeded towards Salema from Kamalpur and while reached at Errerpar suddenly the vehicle hit a road side tree taking the wrong side of the road and fell into the drain due to rash and negligent driving of the vehicle with excessive speed by its driver and as a result deceased Ashim Debnath along with two other persons received grievous injuries on their persons and soon after the accident injured Ashim Debnath along with two other persons were removed to Kamalpur BSM Hospital by the Fire Service vehicle where Ashim Debnath succumbed to his injuries while undergoing treatment there. It is also stated in the

claim-petition that deceased Ashim Debnath was an able bodied person of 27 years and he was unmarried at the time of his death. It is further stated that deceased Ashim Debnath the only son of his old aged parents and their livelihood were fully depended upon the income of the deceased who had poultry farm business and owner of twenty seven numbers of poultry sheds and used to earn Rs. 60, 000/- per month from the said business.

[4] After registration of this case, notices were issued upon the opposite parties and the registered owner of the offending vehicle namely, Shri Sushanta Debnath, Son of Mahesh Debnath of Salema, Police Station-Salema, District Dhalai, Tripura appeared before this Tribunal and contested the suit by filing one written statement on 05-05-2021 wherein he denied all the allegations and averments made in the petition and stated that the claim is barred under the principle of waiver, estoppel and acquiescence and not maintainable and also stated that during the relevant period of alleged accident, the offending vehicle was covered by valid registration, road tax etc. and the driver of the offending vehicle had also valid driving license. Accordingly, it is stated by the opposite party No.1, respondent No.2 herein, that if any liability is fixed upon him for payment of compensation for death of Ashim Debnath out of the alleged road traffic accident, that liability should be discharged by the opposite party No.3, insurance company herein, in terms of the insurance policy certificate issued in favour of the opposite party No. 1 by the opposite party No. 3.

[5] The Opposite Party No. 2, the respondent No.3 herein, also contested the claim by filling written statement on 22-01-2021 wherein he also denied all the allegations and averments made in the petition and stated that at the relevant time of accident he was not the driver of the offending vehicle and that the claim of the claimant is exorbitant and based on imaginary income and age of the deceased suppressing the truth and actual facts.

[6] The insurance company also appeared before this Tribunal and contested the suit by filing one written statement on 24-03-2021. In its written statement, the opposite party No. 3 has pleaded that the claim-application filed by the claimant under Section-166 of the MV Act is not at all maintainable in its present form and nature and that the claimant have got no cause of action for filing her claim-application against the opposite party No. 3. Moreover, the case of the

claimant is bad for suppression of material facts by the claimant. It is further stated by the opposite party No. 3 that the claimant is bound to prove each and every averments made in her claim-application strictly and that the opposite party No. 3 would no way be considered responsible for payment of any compensation to the claimant if the opposite parties No. 1 and 2 are failed to submit the relevant documents of the involved vehicle and the driving license of the opposite party No. 2 before this Tribunal. Accordingly, opposite party No. 3 has prayed for dismissal of the instant claim petition filed by the claimant under Section 166 of the M.V. Act.

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

“Resultantly, the application under Section 166 of the Motor Vehicles Act, 1988 filed by the claimant-petitioner is allowed on contest. A sum of Rs. 51,43,000/- (Rupees Fifty one lakhs forty three thousand) only is awarded in favour of the claimant-petitioner. The opposite party no. 3 i.e. the Branch Manager, Oriental Insurance Company Limited, Dharmanagar Branch, Rajbari, Dharmanagar, North Tripura shall pay the compensation of Rs. 51,43,000/- (Rupees Fifty one lakhs forty three thousand) only to the claimant-petitioner within a period of 30 days from this day of award. This award of compensation shall carry interest at the rate of 9% per annum from the date of presentation of the claim petition before this Tribunal till the realization.

24. Any amount of compensation, if received by the claimant on the principle of No Fault Liability as contemplated under Section 140 of the M.V. Act, shall be adjusted to the compensation so finally awarded.

25. Supply a copy of the judgment to the claimant petitioner and a copy of the judgment shall also be communicated to the Branch Manager, Oriental Insurance Company Limited, Dharmanagar Branch, Rajbari, Dharmanagar, North Tripura to facilitate the payment of the awarded compensation in time. Thus, the instant claim petition is disposed of on contest.”

[8] Mr. B. Majumder, learned counsel appearing for the appellant has submitted that the learned tribunal has erred in law as well as in facts in deciding the issues involved thereto and as such, the impugned judgment and award is liable to be dismissed. The Court below did not apply its judicious mind and with flagrant disregard of law and justice in a pervasive manner has imposed the liability of payment of compensation of Rs.51,43,000/- upon the appellant insurance company. The learned Court below has perversely determined the monthly income of the deceased was at Rs.35,000/- at the time of accident which

is absolutely arbitrary. It does not have any evidentiary value but, went on to accept the accident information report submitted by the police authority indicated the monthly income of the deceased was Rs.35,000/-.

[9] The learned tribunal ought to have understood that the occupation and income of the deceased remained not proved but, the learned tribunal accepted the income of the deceased to be Rs.35,000/- per month. This is not as per the settled proposition of law as decided by the Apex Court in ***Rani & Ors. V. NIC & Others (Civil Appeal Nos.9078-9079 of 2017)***. The learned tribunal quite mechanically has awarded Rs.1,00,000/- in favour of the parents of the deceased under the ground of loss of love and affection as the Apex Court had already disapproved to grant any compensation under this head.

[10] It has been further contended that the tribunal has failed to understand that as per provision of Section-158(6) of the M.V. Act it is stated that as soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under this section is completed by a police officer, the officer in charge of the police station shall forward a copy of the same within thirty days from the date of recording information or as the case may be on completion of such report to the claim tribunal having jurisdiction and a copy thereof to the concerned insurer and where a copy made available to the owner he shall also within thirty days of receipt of such report, forward the same to such claim tribunal and insurer due to non-compliance of the above statutory provision of MV. Act.

[11] The learned tribunal has erred in law with defiance of guidelines as enunciated by the Apex Court in ***2009 AIR SCW 493*** allowed the compensation as a source of profit and a punitive one which is not at all a just compensation as decided by the Apex Court wherein, the Court held the expression which appears to be just in section-168 vests a wide discretion in the tribunal in the matter of determination of compensation. Nevertheless, the wide amplitude of such power does not empower the tribunal to determine the compensation arbitrarily, or to ignore settled principles relating to determination of compensation. Similarly, although the Act is a beneficial legislation, it can neither be allowed to be used as source of profit nor as a windfall to the persons affected nor should it be punitive to the persons liable to pay compensation. The determination of compensation

must be on certain data, establishing reasonable nexus between the losses incurred the dependants of the deceased and the compensation to be awarded to them.

[12] In view of above discussion and after observing the findings of the learned tribunal, this Court thinks it fit to revisit the evidence once again. It is revealed from the filing endorsement on the case record by Sheristedar of this Court that the suit is in form, within time and duly stamped. This Court also verifies the same and being satisfied accepted the report of the Sheristedar. Moreover during the course of argument nothing contrary to the claim of the claimant has come out so as to render this suit as not maintainable. Hence, this Tribunal is of the opinion that the suit is very much maintainable in its present form. So, issue no. (i) is decided in affirmative and in favour of the claimant

[13] Claimant Smti. Gita Debnath in her examination-in-chief has stated in the same tune of her claim petition that on 13-07-2019 her son Ashim Debnath along with two other persons boarded the vehicle bearing registration No. TR-04-B-0779 (Hyundai Xcent) on request of Shri Liton Das, driver of the said vehicle who was previously known to her son and proceeded towards Salema from Kamalpur and while reached at Errerpar suddenly the vehicle hit a road side tree taking the wrong side of the road and fell into the drain due to rash and negligent driving of the vehicle with excessive speed by its driver and as a result her son Ashim Debnath along with two other persons received grievous injuries on their persons and soon after the accident her injured son Ashim Debnath along with two other persons were removed to Kamalpur BSM Hospital by the Fire Service vehicle where her son Ashim Debnath succumbed to the injuries while undergoing treatment at Kamalpur BSM Hospital.

[14] It is also deposed that her deceased son Ashim Debnath was an able bodied person of 27 years and he was unmarried at the time of his death and that deceased Ashim Debnath was her only son and their livelihood were fully depended upon the income of her deceased son who had poultry farm business and owner of twenty seven numbers of poultry sheds and used to earn Rs. 60, 000/- per month from the said business.

[15] Similarly PW-2 Shri Samir Debnath and PW-3 Shri Arjun Namasudra deposed in the same tune in their examination-in-chief as that of PW-

1 and as such there is no need to discuss the evidence of PW- 2 and PW-3 due to similarity in the statements of the witnesses. The OPW No. 1 Shri Sushanta Debnath and OPW No. 2 Shri Litan Das in their examination-in-chief have admitted that on 13-07-2019 at about 1630 hours the vehicle bearing registration No. TR-04-B-0779 (Hyundai Xcent) met with an accident at Errarpar on Kamalpur-Ambassa road at a distance of 7 KM South East from Kamalpur Police Station and as a result of the said accident Ashim Debnath, Son of Shri Adhir Debnath of Salema, PS- Salema, District- Dhalai and two other persons were received grievous injuries on their persons and subsequently Ashim Debnath, Son of Shri Adhir Debnath of Salema, PS- Salema, District- Dhalai and the co-passengers succumbed to their injuries at BSM Hospital, Kamalpur during their treatment.

[16] the certified copies of FIR and Ejahar in connection with Kamalpur PS case No. 2019 KMP 061, dated 13-07-2019 under Sections 279/338/ 304(A) of the Indian Penal Code under Exhibits- 1(i) to 1(iii), it is revealed that Md. Jakir Hossain, Sub-Inspector of Kamalpur Police Station lodged a *suo-moto* complaint with the Officer-In-Charge of Kamalpur Police Station to the effect that on 13-07-2019 at about 1717 hours Sub-Inspector Sujit Rudrapaul of Kamalpur Police Station received an information over telephone from an unknown caller that a road traffic accident was occurred at Erarpar on Ambassa-Kamalpur road. Accordingly, Sub-Inspector Jakir Hossain along with other staff of the Police Station rushed to Erarpar to verify the information and on reaching the spot found one vehicle bearing registration No. TR-04-B-0779 (Hyundai Xcent) lying in the drain of the right side of the road and also noticed that the Fire Service were trying to bring out the passengers from the said vehicle who were received grievous injuries on their persons over the said road traffic accident. Thereafter the fire service team removed three persons including deceased Ashim Debnath and the driver of the said vehicle to Kamalpur BSM Hospital from Erarpar and on the way to BSM Hospital, Kamalpur injured Ashim Debnath, son of Shri Adhir Debnath of East Singinala, PS- Salema succumbed to his injuries. In course of enquiry it was learnt that on 13-07-2019 at 1630 hours the vehicle bearing registration No. TR-04-B-0779 (Hyundai Xcent) driven by one Litan Das suddenly met with an accident at Erarpar under Kamalpur Police Station when the said vehicle hit a road side tree

taking the wrong side of the road and fallen in the drain due to rash and negligent driving of the vehicle with excessive speed by its driver.

[17] So, oral evidence of the Claimant and her witnesses is duly supported by the documentary evidence as proved by her. On scrutiny of the evidence of the witnesses which were elicited from the cross examination of the witnesses it is revealed that no contrary evidence could be brought by the opposite parties to discredit the evidence of the Claimant. The evidence of the Claimant could not be rebutted and shaken by any cogent and/or any contrary evidence. The opposite parties did not adduce any evidence in rebuttal of the incident. So, until contrary is proved, this Tribunal shall continue to believe the evidence adduced by the Claimant.

[18] It is now well settled that the standard of proof in a claim case under Motor Vehicles Act is not as rigid as in a criminal case. The claimant does not require to prove his/her case beyond reasonable doubt. The claimant is merely to establish his/her case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. On perusal of the oral as well as documentary evidence including the mechanical inspection report of the involved vehicle under Exhibit- 4, this tribunal is satisfied that the rash and negligent driving of vehicle bearing registration No. TR-04-B-0779 (Hyundai Xcent) by its driver was the proximate cause of the accident and consequential death of Ashim Debnath and two other passengers over the said accident. This Tribunal is also of the opinion that the accident would not have occur if the driver of the offending vehicle would have been more cautious and also satisfied that the vehicle bearing registration No. TR-04-B-0779 (Hyundai Xcent) met with an accident on 13- 07-2019 at about 1630 hours at Erarpar on Kamalpur-Ambassa road due to rash and negligent driving of the vehicle bearing registration No. TR-04-B-0779 (Hyundai Xcent) by its driver namely, Litan Das and as a result of the said accident deceased Ashim Debnath received grievous injuries over his head and other parts of his person which resulted his death at BSM Hospital, Kamalpur subsequently.

[19] Now it is to be decided what should be the quantum of compensation and who shall be held liable to make payment of the same. It is stated by the claimant that the deceased Ashim Debnath was aged about 25 years at the time of

his death. The claimant also in her examination-in-chief stated that the age of her son at the time of the accident was about 25 years. In this case police submitted the AIR (accident information report) [Exhibits- 8(i) to 8(xv)] from which it also reveals that police mentioned the age of the deceased as 27 years. From the certified copy of post mortem examination report proved as Exhibit-5(i) to 5(iii) it reveals that the age of the deceased Ashim Debnath was mentioned as 27 years. Moreover, the opposite party could not shake the evidence of the claimant regarding the age of the deceased during their cross-examination. So, in this case the age of the deceased is assessed as 27 years at the time of the accident which was found to be in the range of 25-30 years and the multiplier 17 would apply in this case according to the formula given in *Sarala Verma v. DTC* reported in *2006(6) SCC*.

[20] It was mentioned by the Claimant in the claim petition as well as in her examination-in-chief duly supported by an affidavit that the deceased had a business of poultry farm and owner of twenty seven numbers of poultry farm sheds from which he used to earn Rs. 60,000/- per month. In this case police submitted the accident information report [Exhibits- 8(i) to 8(xv)] from which it also reveals that police mentioned that the deceased used to earn Rs. 35, 000/- per month from his business. In this case no cogent documentary evidence is adduced for proving the income of the deceased. On the other hand, the opposite parties had discharged their duties by giving suggestions to the witnesses of the claimant that deceased Ashim Debnath had no source of independent income. In this case since no document is proved in respect of the income of the deceased, the income of the deceased should be determined basing on the oral evidence on record and also considering the accident information report submitted by the Police. So, considering all aspects the monthly income of the deceased is assessed at Rs. 35,000/- for the purpose of this claim. Since the deceased was 27 years old at the time of his death, 40% of his income be added as future prospects. So, the monthly income of the deceased for the purpose of the claim case is stands at (Rs. 35,000/- + Rs. 14,000/-) = Rs. 49,000/-. In that ratio the yearly income of the deceased is assessed at Rs. 49,000/- x 12 = Rs. 5,88,000/-. Now since the deceased was an unmarried person and so after deducting half of his yearly income, his yearly contribution to his family is assessed at Rs. 2,94,000/- which he would have contributed to his family had he been alive. Since one year's family contribution

of the deceased is assessed at Rs. 2,94,000/- that amount should be multiplied by multiplier 17 since the deceased was at the age group of 25-30 years at the time of his death and on calculation it comes to Rs. 49,98,000/- (Rupees Forty nine lakhs ninety eight thousand) only and that amount is the actual loss of income of the legal heirs of the deceased owing to the death of the Ashim Debnath (Now deceased). So, in this claim petition under the head of loss of income an amount of Rs. 49,98,000/- (Rupees Forty nine lakhs ninety eight thousand) only is awarded.

[21] Now, it is to be determined who shall be held liable to pay the compensation so awarded. It is already pointed out that the opposite party No. 2 i.e. driver of the offending vehicle bearing registration No. TR-04-B-0779 (Hyundai Xcent) was responsible for the cause of accident. Thus, definitely the claimant is entitled to be compensated by the registered owner of the vehicle bearing registration No. TR-04-B-0779. From the registration certificate of the vehicle bearing registration No. TR-04-B-0779 proved as Exhibit-A (as a whole) it reveals that the registration is valid up to 21-12-2013. From the copy of insurance certificate of vehicle bearing No. TR-04-B-0779 vide policy no. 322790/31/2019/1650 proved as Exhibit- B (as a whole) it reveals that the insurance was valid from 00:00 on 30-11- 2018 to Midnight of 29-11-2019 and from the copy of driving license of Litan Das vide No. TR04 20080007633 it reveals that the date of issue was on 07-08-2008 and it valid up to 08-02-2025 proved as Exhibit-D (as a whole). The date of accident was on 13-07-2019. So, the date of accident is squarely covered by the insurance policy of the offending vehicle and the opposite party No. 3 i.e. the Branch Manager, Oriental Insurance Company Limited, Dharmanagar Branch, Rajbari, Dharmanagar, North Tripura is liable to make the payment of the compensation to the claimant.

[22] However, it is made clear that the interest rate as imposed by the learned tribunal is on the higher side and the same needs be reduced. Accordingly, the rate of interest as imposed i.e. 9% it would be reduced into 7.5%. In view of above modification, the present appeal stands partly allowed. 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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