

HIGH COURT OF TRIPURA

A_G_A_R_T_A_L_A

MAC. App. No.87 of 2022

1. The Oriental Insurance Co. Ltd. B.C. Ambassa, TRTC Complex, Ambassa, Tripura, 799289, represented by its Divisional Manager, Agartala Divisional Office, Central Road, P.S. West Agartala, District: West Tripura.
(Insurer of vehicle No. TR-04-A-7044 Yamaha R-15)

..... Appellant

-VERSUS-

1. Sri Ajudhya Kumar Jamatia, son of Sri Nolini Kishore Jamatia.
2. Smti. Puspa Devi Jamatia, wife of Sri Ajudhya Kumar Jamatia,

Both are resident of Pabitraram Bari, P.S. Killa, Gomati Tripura, presently residing at Quarter Complex, Chailengta College, P.O. & P.S. Chailengta, District: Dhalai Tripura.

.....Claimant-respondents.

B_E_F_O_R_E

HON'BLE MR. JUSTICE T. AMARNATH GOUD

For Appellant(s)	:	Mr. P. Gautam, Advocate.
For Respondent(s)	:	None.
Whether fit for reporting	:	YES/NO

Judgment and order dated 2nd May, 2023

JUDGMENT & ORDER [ORAL]

Heard Mr. P. Gautam, learned counsel appearing for the appellant-insurance company.

[2] This appeal has been 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 15.07.2022 passed by the learned Motor Accident Claims Tribunal, Dhalai Judicial District, Abmassa in connection with T.S. (MAC) 06 of 2018.

[3] The brief fact of the claimant-respondent's case, inter-alia, is that on 05.11.2016 at about 1445 hours deceased along with his friend was proceeding towards Manu by riding his motor bike bearing registration No.TR-

04-A-7044 (Yamaha R-15) and while they reached at S. K. Para under Manu police station t that time one unknown truck which was proceeding towards same direction dashed the motor bike directly from behind. As a result, Albert Kumar Jamatia died on the spot and the dead body was shifted to Manughat PHC, LTV, Dhalai, Tripura for post mortem examination and after post mortem examination the dead body was handed over to his family member for cremation. The accident and death of Albert Kumar Jamatia was caused out of use of the vehicle bearing registration No.T R-04-A-7044 (Yamaha R-15).

[4] Due to the said vehicular accident a police case was registered with the Manu police station vide Manu P.S. Case No.36 of 2016 under Sections-279/304(A)/338/427 of IPC and Sections-184/187 of M.V. Act. The claimant-respondents in their claim petition stated that at the time of accident the deceased was a private tutor and by this way he used to earn Rs.10,000/- per month and that he was 27 years old. They also stated that due to untimely death of the deceased, they are passing their days in financial crisis. So they claimed compensation to the tune of Rs.16,90,000/- from the opposite party with interest.

[5] Initially, notice was issued to the opposite party, insurer of the vehicle bearing registration No.T R-04-A-7044 (Yamaha R-15) and the insurer had appeared before the tribunal to contest the suit and by filing written statement strongly denied and disputed the averments of the claimant-respondents made in the petition. The answering opposite party by filing written statement stated that the claim petition is based on some imaginary facts and it is nothing but a gambling in litigation for illegal gain. They also denied and disputed that the alleged offending vehicle was having any valid insurance policy with them at the relevant date and time of accident and hence, the answering opposite party is in no way liable to pay any compensation to the claimant respondents. So, the claim of the claimant respondents is liable to be dismissed.

[6] The learned Tribunal after hearing the parties and on perusal of the material evidence on record has observed as under:

“In the result, claimant-petitioners are entitled to get Rs.5,00,000/- (Rupees Five Lakh) only as compensation along with interest.

The opposite party i.e. the Oriental Insurance Company Limited, BC Ambassa, TRTC Complex, Ambassa Tripura shall make payment of the awarded amount of compensation to the petitioners along with interest at the rate of 9% per annum from the date of filing of the claim petition i.e. on 15.02.2018 within a period of 45 days from today failing which the rate of interest will be 12% per annum from the date of filing of the claim petition i.e. on 15.02.2018 till date of realization.

Awarded amount of compensation with interest shall be divided equally between the claimant petitioners and shall be paid to them directly to their individual accounts.

Furnish a copy of this award to the claimant-petitioners and the opposite party free of cost for compliance.

The award is delivered in the open tribunal.

The case is, disposed of on contest.”

[7] Being aggrieved by and dissatisfied with the impugned judgment and award dated 15.07.2022 passed by the learned Motor Accident Claims Tribunal, Dhalai Judicial District, Abmassa in connection with T.S. (MAC) 06 of 2018, the present appeal has been preferred by the appellant-insurance company.

[8] Mr. Gautam, learned counsel appearing for the appellant-insurance company has submitted that the 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 insurance company which does not stand in law and is liable to be interfered with. The learned tribunal committed a serious error of law and by misreading, misconstruing the law laid down in Section-163A of the MV Act most illegally and in a perverse and arbitrary manner decided the instant case of the claimant-respondents awarding compensation of Rs.5,00,000/- to the claimant-respondents along with interest and penal interest beyond the jurisdiction of the tribunal in contrary of Section-163A of the MV. Act.

[9] The learned tribunal while considering the case of the claimant-respondents ought to have considered that the present claim petition filed by the claimant respondents under Section-163A of the MV Act which deals with third party risk only and the deceased owner of the motor bike is not a third party as such he is not covered by the policy and only third party is covered by

the policy and for this reason the claimant-respondents are not entitled to get any compensation from the appellant insurance company for the death of their son being the owner rider of the alleged bike.

[10] Section-163A of MV. Act is not for self accident but for third party risk who has to prove negligence of insured vehicle and further the annual income of the deceased owner is limited to the extent of Rs.40,000/- under structured formula of the MV Act, and as such, the learned tribunal is legally liable to decide the compensation under Section-163A of the MV. Act. Under the structured formula and beyond that the learned tribunal can in no way decide the present case of the claimant-respondents by his own whims and fancies.

[11] He has further contended that the learned tribunal has grossly erred in law in giving compensation under Section-163A of the MV. Act beyond the limits of liability as mentioned in the policy copy of package policy in the instant case wherefrom the policy it transpires that personal accident cover under Section-III for registered owner cum driver is limited to Rs.1,00,000/- and as such, the claimant-respondents are only entitled to compensation of Rs.1,00,000/- for the death of deceased insured i.e. late Albert Jamatia being the owner of the alleged bike and beyond that liability of compensation of Rs.1,00,000/- the appellant insurance company is not at all liable to pay any compensation.

[12] The learned tribunal was totally oblivious in awarding compensation of Rs.5,00,000/- against the appellant insurance company beyond the limits of liability as mentioned in the policy copy of package policy in the present case wherefrom the policy it transpires that personal accident cover under Section-III for registered owner cum driver is limited to Rs.1,00,000/- and as such, the claimant-respondents are only entitled to compensation of Rs.1,00,000/- for the death of deceased insured i.e. late Albert Jamatia being the owner of the alleged bike and beyond that liability of compensation of Rs.1,00,000/- the appellant insurance company is not at all liable to any compensation and for this reason the judgment and award dated

15.07.2022 passed by the tribunal does not stand in law and is liable to be quashed and set aside.

[13] Regarding imposition of 9% interest by the tribunal instead of 6% is absolutely illegal because of the reason that the Apex Court categorically decided that with a change in economy and the policy of the Reserve Bank of India, the interest rate would be decided by the learned tribunal utterly failed to understand this judgment of the Apex Court and most illegally imposed 9% interest instead of 6% which does not stand in law.

[14] It appears from the oral evidence of the petitioner No.1 (PW-1) and petitioner No. 2 (PW-2) that on 05.11.2016 at about 1445 hours their son, i.e., the deceased Albert Kumar Jamatia along with his friend was proceeding towards Manu by riding motor bike bearing registration No. TR04-A-7044 (YAMAHA R-15) and while they reached at S. K. Para under Manu PS at that time one unknown truck which was proceeding towards same direction dashed the motor bike bearing registration No. TR04-A-7044 (YAMAHA R-15) directly from behind. As a result, Albert Kumar Jamatia died on the spot and the dead body was shifted to Manughat PHC, LTV, Dhalai, Tripura for post mortem examination and the death of Albert Kumar Jamatia was caused out of use of the vehicle bearing registration No. TR04-A-7044 (YAMAHA R-15). It also appears that due to the said vehicular accident a police case was registered with the Manu Police Station vide Manu P.S. Case No. 36 of 2016 under Sections 279/304(A)/338/427 of I.P.C. and Section 184/187 of M.V. Act. It further appears from the evidence of the Claimant Petitioners that at the time of accident the deceased was a Private Tutor and by this way he used to earn Rs.10,000/- per month and he was 27 years old.

[15] It appears from the materials available on record that the death of the deceased Albert Kumar Jamatia has been confirmed by the post mortem examination report under Exbt. 3(xiv) to 3(xvi) which was caused due to road traffic accident. It also appears from the oral and documentary evidence that the accident had occurred due to rash and negligent driving by the rider of the motor bike bearing registration No. TR-04-A-7044 (YAMAHA R-15) and as a

result of that accident the deceased Albert Kumar Jamatia died who was the rider of the said motor bike when the vehicle was in use.

[16] Section 163A is meant for a special provision as to the payment of compensation on structured formula basis. It provides that notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorized insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as Indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

[17] Admittedly, the quantum is to be decided on the basic principle laid down in the Sarla Verma Case reported as 2009 ACJ 1298 (SC), Santosh Devi vs. National Insurance Company Ltd. And Others [(2012)6 SCC 421] and Rajesh & others Vrs. Rajbir Singh & Others reported as 2013 ACJ 1403 (SC). For the purpose, it is necessary to know the age and income of the deceased at the time of accident. Claimant respondents in their Claim petition stated that the age of the deceased was 27 years at the time of accident.

[18] In support of their claim they have not submitted any document to prove the age of the deceased at the time of death. However, a photocopy of admit card of deceased has been filed by the claimant petitioners but the admit card could not be exhibited being photocopy. In such a situation, the learned court below had taken help of public documents such as Post Mortem Report under Exhibit 3 (xiv) to 3(xvi). On perusal of the Exhibit 3 (xiv) to 3(xvi) (Post Mortem Report) it is found that at the time of death the age of the deceased was mentioned as 24 years. So, I find and hold that the age of the deceased was 24 years at the time of accident. So, multiplier 18 will apply in this case. Claimant respondents in their claim petition as well as in their evidence have alleged that at the time of accident the deceased was a Private Tutor and by this way he used to earn Rs. 10,000/- per month.

[19] In support of their claim they have not submitted any document to prove the monthly income of the deceased. On the other hand, the opposite

party by filing their written statement has opposed about the monthly income of the deceased but they did not adduce any evidence in support of their claim and also to controvert the claim of the claimant respondents regarding the income of the deceased. In absence of any cogent evidence, the tribunal decided Rs. 200/- per day. So in that ratio the monthly income of the deceased comes at Rs.6,000/-. At this rate, annual income comes to Rs. 72,000/-. The learned tribunal, considering the number of the dependents, 1/3rd shall be deducted towards the personal and living expenses of the deceased which comes to Rs. 24,000/-. After the deduction, we are left with Rs. 48,000/- which the deceased would have contributed to the family annually. Multiplying this, by the multiplier 18, we get Rs. 8,64,000/-.

[20] This is the compensation to which the claimant is entitled for the death of the victim which is allowed. A further sum of Rs.25,000/- is allowed as the funeral expenses. In the light of *Rajesh & others Vrs. Rajbir Singh* (Supra), Rs.50,000/- is allowed exclusively to claimant as compensation for loss of consortium. Total amount of compensation thus comes to Rs.9,39,000/-. According to the Second Schedule of the MV Act for third party fatal accident, the compensation is prescribed at Rs.5,00,000/-. In the instant case the amount of compensation, on calculation, comes to Rs. 9,39,000/-. As the compensation comes above the amount prescribed in Second Schedule of the M.V. Act, the claimant is entitled Rs. 5,00,000/- as per Second Schedule of the M.V. Act.

[21] Now, it is to be determined who shall be held responsible to pay the amount. It is already decided that the accident had occurred due to rash and negligent riding by the rider of the motor bike and as a result of that accident the deceased Albert Kumar Jamatia who was the owner cum rider of the offending vehicle died in course of use of the said vehicle. As such the claimant-respondents are entitled to get compensation. The claimant respondents submitted one policy of insurance stating that the motor bike bearing registration No. TRO4- A-7044 was insured with the OP. i.e. The Oriental Insurance Company Limited, B. C. Ambassa, TRTC Complex, Ambassa Tripura, covering the period from 10.02.2016 to 09.02.2017.

But the insurance policy could not be exhibited being photocopy of the same. On perusal of the final report submitted by investigating officer, it appears that during investigation the investigating officer seized the original driving licence of deceased, original certificate of registration cum smart card of motor bike bearing registration No. TR04-A-7044 (YAMAHA R-15), original emission test certificate and original insurance cum policy certificate of motor bike bearing registration No. TRO4-A-7044 (YAMAHA R-15) with valid date.

[22] On perusal of the Accident Investigation Report (AIR), it appears that the motor bike bearing registration No. TR04-A-7044 (YAMAHA R-15) was insured with Opposite Party No. 2, i.e. the Oriental Insurance Company Limited, BC Ambassa, PO-TRTC Complex Ambassa, period of insurance from 13:29 on 10.02.2016 to midnight of 09.02.2017, in the present case the accident had occurred on 05.11.2016. On perusal of the final report and Accident Investigation Report, the learned tribunal observed that the motor bike was insured with opposite party and the policy of the vehicle was valid at the time of accident. More-over, the driving licence of the deceased Albert Kumar Jamatia was also valid at the time of accident. As such, the Oriental Insurance Company Limited, BC Ambassa, TRTC Complex, Ambassa, Tripura, the insurer of the motor bike bearing registration No. TRO4-A-7044 (YAMAHA R-15) is liable to make the payment of compensation to the claimant-respondents.

[23] The judgments as relied upon by Mr. P. Gautam, learned counsel appearing for the appellant-insurance company have already been dealt with in the cases of *Sarla Verma* and subsequently, in *Pranay Sethi* and accordingly, the award of compensation has been awarded by the learned tribunal. Though, it has been filed under Section-163A of the MV. Act, since it is a package policy, the liability is fastened on the insurance company under the package policy and awarded the amount of compensation by the learned tribunal below which is, according to this Court, just and proper. There is no restriction in awarding compensation.

While placing reliance on the judgments of the Apex Court, Mr. Gautam, learned counsel for the appellant contended that since it is package policy, the claimant-respondents would be entitled only for Rs.1,00,000/- and since the application has been filed under Section-163A of the MV. Act, the award of compensation cannot be increased the sum-assured of Rs.1,00,000/-.

[24] In the light of the above, this Court is of the view that the learned Court below has assessed the compensation in a reasonable and justifiable way. In view of above discussion and observation, the present appeal stands dismissed consequently, the award of compensation as assessed by the learned tribunal stands affirmed. The insurance company shall deposit the awarded amount within one month from the date of receipt of the copy of this order and on such deposit; the claimant-respondents are at liberty to withdraw the same unconditionally. As a sequel, miscellaneous applications pending, if any, shall stand closed. Draw the decree accordingly and thereafter, send down the LCRs.

JUDGE

A.Ghash

