

HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

MAC. APP. No.53 of 2021

The Oriental Insurance Company Limited, represented by the Divisional Manager, Agartala, Division Office, H.G.B. Road (Near Sarkar Nursing Home), Agartala, West Tripura.

.....Appellant(s)

V E R S U S

1. Smt. Aparna Deb (Saha), wife of late Ratan Kumar Saha alias Ratan Saha.

2. Smt. Arpita Saha, daughter of late Ratan Kumar Saha alias Ratan Saha.

Both are residents of Asram Chowmuhanu opposite to BOC, P.O. Dhaleswar, P.S. East Agartala, District- West Tripura.

.....Claimant-Respondent(s)

3. Sri Mintu Majumder, son of Sri Chitta Ranjan Majumder of Chandrapur (Near ISBT) P.S. East Agartala, District- West Tripura (Owner of TR-01-L-1831 TATA 207 D Pick up Van.

.....Respondent(s)

For Appellant(s) : Mr. Biswanath Majumder, Advocate.

For Respondent(s) : Mr. P.K. Pal, Advocate.

HON'BLE THE CHIEF JUSTICE (ACTING)

Date of hearing and Judgment : **9th January, 2023.**

JUDGMENT & ORDER(ORAL)

Heard Mr. Biswanath Majumder, learned counsel appearing for the appellant-insurance company and also heard Mr. P.K. Pal, learned counsel appearing for the claimant-respondents.

[2] The present appeal is directed against the award dated 16.04.2021 passed by the learned Member, Motor Accident Claims Tribunal, Court No.2, West Tripura, Agartala in T.S(MAC) No. 273 of 2016 whereby the Tribunal awarded compensation of Rs.30,24,000/- in favour of the claimants with interest @ 9% per annum from the date of filing of the claim petition.

[3] It is alleged that on 17.07.2015 in a motor vehicle accident at Koroiban on Assam-Agartala road, Sri Dilip Kumar Debbarma and deceased Ratan Kumar Saha sustained grievous injuries. When they reached at Koroiban on Assam-Agartala road, one TATA 207 DI Pick Up van bearing registration No.TR-01-L-1831 suddenly dashed the motorbike from behind as a result of which the motorbike fell down on the road and thereby the rider Dilip Kumar Debbarma and the deceased suffered multiple injuries. Deceased was a pillion rider in the motorbike. Immediately after the accident both of them were shifted to AGMC & GBP hospital where Ratan Kumar Saha succumbed to his injuries. The deceased was a Government employee under the Education Department and was posted at the office of Inspector of Schools, Jirania, Khumulwng, West Tripura.

[4] The respondent No.3 (owner of the offending vehicle) contested the claim petition by filing written statement and apart from denying all the allegations had contended that he was the owner of the offending vehicle and the said vehicle was insured with the Oriental Insurance Company Limited at the time of accident. On the other hand, the insurance company through their written statement apart from denying all the allegations put the claimants as well as the owner of the vehicle in strict proof of their respective claims.

[5] On the basis of the pleadings and after hearing the parties, the following issues were framed :

(i) Whether Ratan Kumar Saha sustained injuries in a vehicular accident on 17.07.2015 due to rash and negligent driving of TR-01-L-1831 and succumbed to his injuries on the same day?

(ii) Whether the claimant is entitled to compensation, if so, what should be the quantum of compensation and who shall be held liable for payment of the same?

[6] To establish the claim, the claimants examined two witnesses including the petitioner herself as P.W.1 and Sri Dilip Kumar Debbarma as P.W.2 and proved some documents produced by him.

[7] The learned Tribunal after framing the issues and appreciating the evidence on record, awarded a sum of Rs.30,24,000/-/- as compensation to the claimant. Since the deceased was a Government servant, he assessed

the income of the deceased at Rs.21,286/- per month. 30% of the above was added towards future prospect i.e. Rs.7095/-. Therefore, the amount worked out to Rs.28,400/- (rounded off). $\frac{1}{3}^{\text{rd}}$ of the amount was deducted as personal and living expenses of the deceased i.e. Rs. (28,400 - 9467) = Rs.18,933/-. After applying the multiplier of 13 as per the judgment of the Hon'ble Supreme Court in case of *National Insurance Company Limited versus Pranay Sethi and others* reported in AIR 2017 SC 5157 the compensation worked out to Rs.(18,933 x 12 x 13) = Rs.29,53,548/-, rounded off to Rs.29,54,000/- only. For loss of consortium, an amount of Rs.40,000/- was awarded, for loss of estate an amount of Rs.15,000/- and towards funeral expenses an amount Rs.15,000/- was awarded by the Tribunal. Thus, the total compensation awarded by the Tribunal worked out to Rs.(29,54,000 + 40,000 + 15,000 + 15,000) = Rs.30,24,000/-. The Tribunal while dealing with the question of liability observed that though the owner of the offending vehicle claimed that his vehicle was insured with the Oriental Insurance Company Limited but in support of his claim he failed to adduce any oral or documentary evidence and there was no evidence on record to show that the offending vehicle was not insured with the insurance company. However, the learned counsel for the insurance company contended that the offending vehicle was insured with them. The learned Tribunal, while dealing with the question of liability applied the

principle of "*pay and recover*" as held by Hon'ble the Supreme Court in case of *Manoara Khatun & others versus Rajesh Kumar Singh & others* (AIR 2017 SC 1204). The operative portion of the judgment is reproduced hereunder :

“(i) Claimant petitioners are entitled to get the award of Rs.30,24,000/- (Thirty lacs twenty four thousand) only in equal share with 9% Simple interest per annum from the date of registration of claim i.e. w.e.f. 16.12.2016 till the date of realization thereof.

(ii) 50% of the share each of the claimant petitioners in the award be invested by purchasing separate Fixed Deposit certificate from any Nationalized Bank at least for the next 5 years and no loan or advance or pre-mature withdrawal shall be allowed without prior sanction of this Tribunal. However, the claimant petitioners shall have the liberty to withdraw the monthly interest therefrom. Rest part of award be directly transferred to their individual bank account.

(iii) The claimant petitioner No.1 being the spouse of the deceased shall be entitled to the amount as awarded under the head loss of consortium.”

[8] Mr. Biswanath Majumder, learned counsel appearing for the appellant-insurance company contends that the learned Tribunal erred in deciding the issues involved and as such, the award is liable to be set aside. He further submits that the learned Tribunal also did not apply its judicious mind and has imposed the liability of payment of compensation of Rs.30,24,000/- on the appellant-insurance company and held the doctrine of ‘pay and recover’ that the owner of the vehicle was liable to pay the compensation to the claimants without proper appreciation of evidence.

Counsel also contends that learned Tribunal while awarding the total amount of compensation has wrongly calculated the amount at Rs.30,24,000/- instead of actual amount of Rs.29,47,867/- which needs to be rectified. He further submits that the interest @ 9% awarded by the learned Tribunal is on the higher side and it needs to be reduced.

[9] On the other hand, Mr. P.K. Pal, learned counsel for the claimant-respondents has strongly opposed the appeal contending that the learned Tribunal did not commit any error in passing the award. The learned Tribunal passed the award after appreciating the evidence on record. Accordingly, he prays for dismissal of the appeal filed by the appellant-insurance company.

[10] After hearing the learned counsel for the respective parties, this Court is of the considered view that the total amount of compensation awarded by the learned Tribunal needs to be interfered with and the interest awarded by the Tribunal @ 9% per annum is on the higher side. The learned Tribunal erred in calculating the amount and awarded compensation in favour of the claimants. Accordingly, the amount of compensation is hereby modified to the extent that the claimants are entitled to receive compensation of **Rs.29,48,000/-** and interest awarded by the learned Tribunal is reduced from 9% to 7.5% per annum which this

Court is uniformly fixing in all such matters. In that view of the matter, I now proceed to reassess the amount of compensation as follows:

- (i) Income of the deceased per month :-Rs.21,286/- only.
- (ii) 30% of the above income to be added as future prospect and by applying the same, now the modified income of the deceased would come to Rs. 27,672/-.
- (iii) One third (1/3) of the above is to be deducted for the personal and living expenses of the deceased and the loss of dependency comes to Rs.(27,672 - 9,224)=Rs.18,448/-.
- (iv) After applying the multiplier of 13 as per *Sarla Verma (Smt.) and others versus Delhi Transport Corporation and another* reported in (2009) 6 SCC 121, the compensation works out to Rs.(18,448 x 12 x 13)=Rs.28,77,888/- which is rounded off to **Rs.28,78,000/-**.

In addition thereto, as awarded by the learned Tribunal, the claimants are held entitled to **Rs.40,000/-** as loss of consortium, **Rs.15,000/-** towards loss of estate and **Rs.15,000/-** towards funeral expenses.

Therefore, the total amount of compensation is re-assessed at Rs.(28,78,000 + 40,000 + 15,000 + 15,000) = **Rs.29,48,000/-**.

[11] Accordingly, the award of the learned Tribunal is modified and the compensation is reduced from **Rs.30,24,000/-** to **Rs.29,48,000/-**. On

the amount of compensation so awarded, the claimants shall also be entitled to receive interest @ 7.5% per annum from the date of filing of the claim petition till deposit/payment of the awarded amount. The rest of the directions/orders passed by the learned Tribunal will remain the same.

[12] In view of the above, the appeal of the insurance company is partly allowed and disposed of to the extent as indicated above.

[13] Send down the lower court records forthwith.

Pending application(s), if any, also stands disposed of.

CHIEF JUSTICE (ACTING)

Pulak/Dipesh



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