

**HIGH COURT OF TRIPURA
AGARTALA
MAC APP NO.89 OF 2022**

The National Insurance Company Ltd.
Vs.
Smti Bitu Rani Saha and ors.

HON'BLE THE CHIEF JUSTICE (ACTING)

Present:

For the Appellant(s) : Mr. A.K. Deb, Advocate.
For the Respondent(s) : Mr. S. Datta, Advocate.

22.03.2023

Order

This present appeal has been filed under Section 173 of the M.V. Act against the award dated 03.08.2022 passed in T.S.(MAC)54 of 2019 by Member, Motor Accident Claims Tribunal, Court No.4, Agartala, West Tripura.

The brief fact leading to this instant appeal is that on 20.11.2018 at about 5 p.m. victim Akash Chandra Saha was proceeding on foot with his mother i.e. the claimant petitioner towards their home and when they reached Rajapur market the commander jeep bearing No. TR-03-2429 coming from the back side at high speed in a rash and negligent manner dashed the victim causing grievous injuries on his person. The victim succumbed on the spot. Thereafter post mortem examination was done on his body and, accordingly, Santir Bazar P.S. case No.87 of 2018 under Section 279/304A IPC and Section 187 of M.V. Act

dated 23.11.2018 was registered. It is also contended in the claim petition that the victim died at the age of 12 years and the accident occurred due to reckless and irresponsible driving of the offending commander jeep by its driver. Thus, the claimant petitioner thereby quantified her claim to the tune of Rs. 12,85,000/-.

The O.P. No.1, the owner of the offending vehicle through his written statement apart from denying all the allegations in the claim petition contended, inter alia, that he was the registered owner of the offending vehicle which was duly insured with the O.P. No. 3 National Insurance Co. Ltd. therefore, urged for fixing the liability upon the insurer to pay the compensation, if any. The O.P. No.3 the National Insurance Company through their written statement have denied all the allegations and thereby put the claimant petitioner as well as the O.P. No.1 in strict proof of their respective claim.

With a view to decide the claim petition, the learned Member framed 3(three) issues which are as follows:-

"1) Whether Akash Ch. Saha died in a vehicular accident which alleged to have been took place on 20.11.2018 at Rajapur market under Santirbazar P.S. South Tripura District due to rash and negligent driving of vehicle bearing No.TR-03-2429 (commander jeep) by its driver.

2) Whether the claimant petitioner, being the mother of the deceased, is entitled to get compensation, if so, upto what extent and who shall be liable to paythe same.

3) Reliefs."

After hearing the parties and perusing the evidence, the learned Member decided all the issues in favour of the claimant-respondents in the following terms:-

"In the result, compensation of Rs.7,38,000/- is awarded with the following terms :-

(i) Out of total compensation the claimant petitioner Smt. Bitu Rani Saha is entitled to get an amount of Rs.6,38,000/- (Rupees six lacs thirty eight thousand) only along with 9% simple interest per annum from the date of registration of claim i.e. w.e.f. 13.03.2019 till the date of realization thereof.

(ii) O.P. No.2 Sri Krishna Saha shall get an amount of Rs.1,00,000/- awarded for the purpose of loss of consortium along with 9% simple interest per annum w.e.f. 13.03.2019 till the date of realization thereof. If said amount is not claimed by the O.P. No.2 within a period of one year from this day, the claimant petitioner shall have the right to claim the same after expiry of one year. Said amount shall be invested by purchasing fixed deposit certificate from any Nationalised Bank for one year or till the date of claim by O.P. No.2 whichever is less.

(iii) 40% of the share of the claimant petitioner be invested in favour of claimant petitioner by purchasing 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. Rest amount shall be transferred to the individual bank account of the claimant petitioner.

The O.P. No. 3 the National Insurance Company Limited shall deposit the awarded amount along with interest thereon within one month to this Tribunal.

Supply a copy of this award free of cost to the parties by not later than 15 days from the date of the award."

Being aggrieved and dissatisfied with the impugned award dated 03.08.2022 passed in T.S.(MAC) No.54 of 2019, by learned Member, Motor Accident Claims Tribunal, Court No.4 Agartala, West Tripura, District, the O.P. respondent No.3, the National Insurance Company Ltd as appellant has preferred this appeal for modifying the amount of compensation towards just and proper compensation after setting aside the impugned award.

Heard Mr. A.K. Deb, learned counsel appearing for the appellant-Insurance Company as well as Mr. S. Datta, learned counsel for the respondents, and perused the evidence on record. The compensation of Rs. 1,00,000/- (Rupees one lakh only) per parent i.e. for mother and father each under the head of Loss of Consortium provided by the Member, Motor Accident Claims Tribunal in the impugned award is reduced to Rs.40,000/- each. Further according to this Court, 9% simple interest per annum as given by the Member, Motor Accident Claims Tribunal in the impugned award is excessive. This Court is following a uniform interest of 7.5 % per annum and accordingly, the same is reduced to 7.5% simple interest per annum.

The respondent-Insurance Company shall deposit the amount within 1(one) month from today and on such deposit, the claimants are at liberty to withdraw the same unconditionally as proportionate by the Court below.

With the above observation and direction, the appeal is allowed to the extent indicated herein-above. As a sequel, pending application(s) if any, also stands closed.

CHIEF JUSTICE (ACTING)

suhanjit