

HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A
MAC. App. No.94 of 2022

1. 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

-VERSUS-

1. Smti. Subala Debbarma, wife of Sri Budhia Debbarma.
2. Sri Budhia Debbarma, son of late Purna Chandra Debbarma,

Both are the residents of village Binan Kobra Para, P.O. Burakha, P.S. Mandwai, District: West Tripura.

.....Claimant-respondents

3. Sri Babul Debbarma, son of Sri Surjya Debbarma, resident of Ramnath Kobra Para, P.O. Ramchandra Nagar, P.S. Mandwai, District: West Tripura.

(Owner of the vehicle bearing No.TR-01-A-1572, Truck).

4. Sri Khalendra Debbarma, son of Rabindra Debbarma, resident of village Ramdaual Bari, P.O. Baramaidhan, P.S.Kalyanpur, District: Khowai Tripura.

(Owner of the vehicle bearing No.TR-01-S-6595, Bike)

5. The Divisional Manager, National Insurance Company Ltd., 42 Akhaura Road, Agartala, P.S. West Agartala, District: West Tripura.

(Insurer of vehicle bearing No.TR-01-S-6595).

.....-Respondents

B_E_F_O_R_E
HON'BLE MR. JUSTICE T. AMARNATH GOUD

For Appellant(s)	:	Mr. B. Majumder, Advocate.
For Respondent(s)	:	Mr. T. D. Majumder, Sr. Advocate. Mr. R. Datta, Advocate. Mr. T. Halam, Advocate.
Whether fit for reporting	:	YES/NO

Judgment and order dated 2nd May, 2023

JUDGMENT & ORDER [ORAL]

Heard Mr. B. Majumder, learned counsel appearing for the appellant-insurance company also heard Mr. T. D. Majumder, learned senior counsel assisted by Mr. T. Halam, learned counsel as well as Mr. R. Datta, learned counsel appearing for the respondents.

[2] By means of filing this appeal under Section-173 of the MV. Act, 1988 along with its up to date amendments against the impugned judgment and award dated 22.06.2022 passed by the learned Member, Motor Accident Claims Tribunal, Court No.2, West Tripura, Agartala rendering in Case No. T.S. (MAC) 04 of 2017.

[3] Brief facts, leading to this case is that on 14.07.2015 at about 7.00 a.m. one Apollo Debbarma has find his motor bike was not taking start due to some mechanical problems. Accordingly, Apollo Debbarma at the instance of his friend Ashit Debbarma arranged one motor mechanic namely; All India Debbarma (now deceased). The motor mechanic, i.e., the deceased had removed the mechanical disorder in the motor bike of Apollo Debbarma. Immediately after removal of such disorder All India Debbarma received injuries on his right wrist due to fall of repaired motor bike upon his hand. Thereafter, Apollo Debbarma accompanied with his friend Ashit Debbarma were taking AllIndia Debbarma with the motor bike of Ashit Debbarma for treatment.

[4] On the way, when they reached Rajchantai on Binan Cobra to Rajchantai road at that time one truck bearing registration No. TR01-A-1572, herein-after referred as the offending vehicle, loaded with sand dashed the motor bike resulting which three of them received severe injuries. Immediately three of them were taken to GB Hospital where All India Debbarma was declared dead. Post Mortem examination was also done over the body of deceased. In this connection Bodhjunnagar PS Case No. 27 of 2015 u/s 279/304(P-II) of IPC and Section-184 of MV Act was also registered. Claimant

respondents further stated in their claim petition that the accident occurred due to rash and negligent driving on the part of the driver of the offending vehicle.

[5] In compliance with the notice issued by the learned tribunal, the Oriental Insurance Company having appeared before it filed written statement denying the statements, and allegations made in the claim petition. It was also contended that the claimant-respondents may be strictly asked to prove their case. It was further stated that the claim of the respondents is not maintainable and as such, the respondents, herein are not entitled to get any compensation.

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

“In the result, claim is awarded in following terms:-

(i) Claimant petitioners are entitled to get the award of Rs.16,18,016/- (rupees sixteen lacs eighteen thousand one hundred sixteen) only along with 6% simple interest per annum from the date of registration of claim i.e, w.e.f. 09.01.2017 till the date of realization thereof.

50% share of the awarded amount be invested in favour of Claimant petitioner Nos. 1 and 2 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 petitioners.

The OP No.2, i.e., the Oriental Insurance Company Limited shall deposit the awarded amount along with interest thereon within one month to this Tribunal.”

[7] Being aggrieved by and dissatisfied with the judgment and award passed by the learned Motor Accident Claims Tribunal, Court No.2, West Tripura, Agartala in T.S. (MAC) 04 of 2017 dated 22.06.2022, the appellant-insurance company has preferred the present appeal.

[8] Mr. B. Majumder, learned counsel appearing for the appellant-insurance company has submitted that the learned tribunal ought to have understood that it was a case of composite negligence as because there was a direct collision in between the two vehicles i.e. bike

and truck but, neither Shri Apollo Debbarma, nor Shri Amit Debbarma who were pillion riders of the offending vehicle bike nor the driver namely, Shri Tapan Debbarma of the truck has been made party in this claim proceeding, who could precisely tell the real story.

[9] On the basis of deposition of Smti. Subala Debbarma, the learned tribunal has awarded the liability of payment of compensation upon the appellant. In this regard, there is no any whisper in the impugned judgment and award under what manner and what is the basis of such belief, the learned tribunal has been inspired to rely upon the deposition rendered by only the witness without any corroboration of any other witnesses and what had been stated in her evidence on affidavit that has been vividly accepted and appreciated as a real truth by the learned tribunal.

[10] The learned tribunal has miserably failed to understand the fact that the deceased was 2nd pillion rider of the vehicle TR-01-S-6595 which met an accident with the truck and the rider of the said Apollo Debbarma who had no valid driving licence drove the motor cycle TR-01-S-6595. As per Section-181 of the MV. Act, driving vehicles in contravention of Sections-3 & 4 is a punishable offence and there is a provision of imprisonment which was ignored by the learned tribunal while deciding the issues and has miserably failed to frame certain vital issues which were essential in deciding the case on merit.

[11] It has been further contended that the learned Court below incorrectly awarded Rs.2,00,000/- under the head of love and affection inasmuch as, the Constitution Bench in **Pranay Sethi** has recognized only three conventional heads under which compensation can be awarded viz. loss of estate, loss of consortium and funeral expenses. The learned tribunal ought to have understood that further imposing interest on future prospect is a misconceived concept. The future prospect is with regard to

the probable income to be received in the future and as such, there is no requirement to compensate the claimant by way of future interest, for loss that is incur in the future as the future is yet to happen. Claimant is getting compensation in lump-sum under the future prospect prior to the occurrence of the future events.

[12] In view of above arguments advanced by the learned counsel appearing for the appellant, this Court is of the view that the learned Court below has assessed the compensation in a reasonable and justifiable way. But towards the head of love and affection, the learned Court below has awarded Rs.2,00,000/- which is not reasonable. Since, Hon'ble Apex Court has settled this issue by quantifying compensation under the head of loss of care and dui-dance/loss of love and affection under the head of loss of consortium but, in the present case the learned tribunal has awarded an amount of Rs.2,00,000/- as compensation for the parents under the head of love and affection instead of granting Rs.40,000/- each under the head of loss of love and affection which comes to Rs. 80,000/- altogether.

[13] Accordingly, only under the heads of love and affection the amount as assessed by the learned tribunal would be changed i.e. Rs.80,000/- for the parents and rest of the award as awarded by the learned tribunal shall remain unchanged. In view of above discussion and observation, the present appeal stands allowed and disposed of to the extent as indicated above. The insurance company shall deposit the awarded amount within one month from today and on such deposit, the claimants 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 thereafter.

JUDGE