

HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_
MAC. App. No.90 of 2022

The Oriental Insurance Company Limited

.....Appellant

V_E_R_S_U_S

Smti. Pratima Nath & 3 Others

.....Respondents

For Appellant(s)	:	Mr. B. Majumder, Advocate.
For Respondent(s)	:	Mr. S. Lodh, Advocate.
Date of hearing and delivery		
Of judgment and order	:	21.07.2023
Whether fit for reporting	:	YES/NO

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 also heard Mr. S. Lodh, learned counsel appearing for the respondents.

[2] This application 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 05.08.2022 passed by the learned Member, Motor Accident Claims Tribunal, Court No.4, West Tripura, Agartala in connection with case No. T.S. (MAC) 50 of 2019.

[3] Brief facts leading to this case is that on 25.2.2018 victim Suranjan Debnath (now deceased) along with others boarding in the vehicle bearing No. TR-02-E-0231 (Alto Car) was proceeding towards Agartala airport from Panisagar and at about 1245 hrs. while reached at Santipara on Agartala-Simna Road a truck bearing No. TR-01-G-1889 coming from opposite direction with high speed in rash and negligent manner dashed the vehicle of the victim. As a result the victim along with other passengers of that vehicle sustained multiple grievous injuries on their persons. Instantly the victim was taken to AGMC & GBP Hospital where on the same day after few hours the victim succumbed to his injuries. Hence, the claimants being the parents of deceased Suranjan Debnath filed this suit seeking compensation to the tune of Rs.34,30,000/-. It is further contended that the accident occurred due to reckless and irresponsible driving of the offending truck by its driver. It is also pleaded that the deceased was of the

age of 22 years and being a day labourer used to earn about Rs.15,000/- per month.

[4] The owner of the offending vehicle has contested the suit by filing written statement and apart from denying all the allegations has contended that he is the owner of the offending truck and at the time of accident the driver drove the truck having valid driving licence and the vehicle was insured with the Oriental Insurance Co. Ltd. Therefore, urged for fixing the liability on his insurer to pay the compensation, if any. The insurance company through their written statement have denied all the allegations and thereby put the claimants as well as the owner in strict proof of their respective claims.

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

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

(I) Claimant petitioners are entitled to get the award of Rs.23,99,000/- (Rupees twenty three lakhs ninety nine thousand) only along with 9% simple interest per annum from the date of registration of claim i.e, w.e.f. 07.03.2019 till the date of realization thereof from the O.P. No.3 the Oriental Insurance Co. Ltd. in equal share.

(ii) 40% of the award of the claimants be invested by purchasing separate Fixed Deposit certificates in the name of claimant petitioners from any Nationalized Bank at least for the next 5 years with a liberty to the claimant petitioners to withdraw the monthly interest from their own accounts and no loan or advance or pre-mature withdrawal shall be allowed without prior sanction of this Tribunal.

The O.P. No.3, i.e. the Oriental Insurance Company Limited shall deposit the awarded amount along with interest thereon within one month from this day with this Tribunal.”

[6] 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. The tribunal 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.23,99,000/- upon the appellant insurance company and as such, it is not only sustainable and tenable in the eye of law but, of excessive and harsh and as such, the is liable to be dismissed.

[7] He has further contended that the tribunal below ought to have understood that it was a case of composite negligence as because there was a direct collision in between two vehicles but, neither the owner nor the driver and the insurer of the vehicles has been made party in this claim proceeding. Even though, the learned tribunal also did not take any endeavor to cause enquiry under Section-169 of the MV. Act, which gives the tribunal below ample power for such investigation. The learned tribunal believed the depositions of PW-1 i.e. the claimant-respondent. The other claimant-respondent No.2 though filed the claim case but, did not turn up before the tribunal to depose his evidence.

[8] Neither he neither filed his affidavit nor was he cross-examined. Solely basing on the deposition, 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 the affidavit that has been vividly accepted and appreciated as a real truth by the tribunal below.

[9] The learned tribunal has perversely determined Rs.15,000/- towards loss of estate as well as funeral expenses and Rs.80,000/- for loss of consortium and further enhanced 10% in every 3 years for loss of estate funeral expenses and loss of consortium, the compensation amount has been awarded at Rs.1,21,000/- the learned tribunal very illegally awarded loss of consortium and the interest on future prospects and as such, the award to that effect is superfluous and therefore, it requires interference by this Court. The tribunal has awarded Rs.80,000/- for loss of consortium which is not as per the settled proposition of law as laid down by the Apex Court in AIR 2017 SC 5157.

[10] The tribunal has fixed a very high rate of interest @9% on the awarded sum wherein, the Apex Court held that with a change in economy and the policy of Reserve Bank, the rate of interest is required to be lowered. At present bank is providing interest on the fixed deposit for 1 year @5% only. The learned tribunal ignoring the existence of valid driving license inspite of the pleading in the written stated fixed the liability upon the insurance company. The

alleged accident was not established by cogent evidence. Alto car was proceeded towards Agartala Airport from Panisagar at about 12.45 hours while reached at Shantipara on Agartala-Simna road, the accident occurred resulting of which he died but the profession of the deceased as alleged by the claimants was a day labour. It is very much astonishing and surprising that how a day labourer by hiring a vehicle was going towards Agartala Airport to Panisagar whose income has been assessed by the learned tribunal at Rs.15,000/- per month.

[11] The tribunal below 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 that the expression which appears to be just in Section-168 vests a wide discretion in the tribunal 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, this Court has come to a conclusion that the death of deceased Suranjan Debnath has not been disputed by either side, so, further proof in respect to the death is not necessary in view of Section-58 of Indian Evidence Act. As per the claim petition, victim Suranjan Debnath died in the road traffic accident occurred on 25.02.2018 at about 1245 hrs. while he along with others was proceeding to Agartala Airport from Panisagar boarding in the vehicle bearing No.TR-02-E-0231 and reached at Santipara on Simna-Agartala Road, the offending truck bearing No. TR-01-G-1889 coming with high speed in rash and negligent manner dashed their vehicle causing fatal injuries to some passengers including the victim, thereafter the victim was brought to AGMC & GBP Hospital where after few hours he succumbed to his injuries.

[13] It has been established by the claimants that the death of deceased was caused due to rash and negligent driving of the offending truck by its driver. Therefore, the claimants being the parents of the deceased are entitled to have the compensation under the beneficial legislation, namely the M.V. Act. Now, this Tribunal is to consider what should be the quantum of compensation and who is liable to pay the same. In order to decide and calculate the amount of compensation we find it apposite to have a reference to a judgment of the Hon'ble Supreme Court reported in AIR 2017 SC 5157 (National Insurance Company Limited Vs Pranay Sethi and others) wherein In Para-61 of that Judgment it was observed:

“61. In view of the aforesaid analysis, we proceed to record our conclusions:

(i) The two Judge Bench in Santosh Devi (AIR 2012 SC 2185) should have been well advised to refer the matter to a larger bench as it was taking a different view then what has been stated in Sarla Varma (AIR 2009 SC 3104) a Judgment by a coordinate Bench. It is because a co-ordinate bench of the same strength cannot take a contrary view then what has been held by another co-ordinate bench.

(ii) As Rajesh has not taken note of the decision in Reshma Kumari (AIR) 2013 SC (Supp) 474, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.

(iii) While determining the income and addition of 50 percent of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30 percent, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15 percent. Actual salary should be read as actual salary less tax.

(iv) In case that deceased was self - employed or on a fixed salary, an addition of 40 percent of the establish income should be the warrant where the deceased was below the age of 40 years. An addition of 25 percent where the deceased was between the age of 40 to 50 years and 10 percent where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and court shall be guided by paragraphs 30 to 32 of Sarla Varma which we have reproduced herein before.

(vi) The selection of multiplier shall be as indicated in the table of Sarla Varma read with paragraph - 42 of that Judgment.

(vii) The age of the deceased should be the basis for applying the multiplier.

(viii) The reasonable figures on conventional heads, namely loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10 percent in every 3 years.”

[14] In the claim petition it has been contended that age of deceased Suranjan Debnath at the time of death was 22 years. But from Ext.2 series i.e. the post mortem report issued by the AGMC & GBP Hospital it is found that age of deceased was 23 years. However, multiplier shall remain same for the age group of 21 to 25 years in view of Sarala Varma case. Thus, we are to calculate the quantum of compensation considering the fact that at the time of death deceased was at the age of 23 years. In view of the law laid down in Sarla Varma's case (AIR 2009 SC 3104) for the age group of 21 to 25 the appropriate multiplier is M-18. Besides where the deceased was a bachelor and claimants are the parents, the deduction follows a different principle i.e. in case of bachelors 50% is deducted as personal and living expenses because it is assumed that a bachelor would tend to spend more on himself.

[15] Now coming to the question of liability, it appears that the owner of the offending vehicle claimed that his vehicle was insured with the Oriental Insurance Co. Ltd. In support of such claim he has proved the insurance policy No. 322700/31/2018/1111 (Ext.D) covering the period from 10.5.2017 to 09.5.2018 that means it was valid at the time of accident dated 25.2.2018. It is also not the case of the insurance company that the vehicle was not insured with them. The Ext.A i.e. driving licence of the driver of the offending vehicle shows that at the time of accident the driver had valid licence. Registration certificate (Ext.B), route permit (Ext.C), fitness certificate (Ext.E) of the offending vehicle also reflect that at the time of accident the vehicle was driven with valid documents. It is, therefore, held that the O.P. No.3 being insurer is liable to satisfy the award. 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%.

[16] 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

ANJAN
GHOSH

Digitally signed by
ANJAN GHOSH
Date: 2023.08.01
18:00:13 +05'30'

