

HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_
MAC. App. No.95 of 2022

Smti. Pranati Majumder Chowdhury and 2 Others

.....Appellants

V_E_R_S_U_S

Sri Swapan Das and Another

.....Respondents

For Appellant(s)	:	Mr. M.S. Dey, Advocate.
For Respondent(s)	:	Mrs. S. Deb (Gupta), Advocate.

HON'BLE MR. JUSTICE T. AMARNATH GOUD
_F_I_N_A_L_O_R_D_E_R_

02/05/2023

Heard Mr. M.S. Dey, learned counsel appearing for the appellants and Mrs. S. Deb (Gupta), learned counsel appearing for the respondents.

[2] This is an appeal filed under Section-173 of the Motor Vehicles Act, 1988 by the appellant, challenging the judgment and award and final order dated 19.08.2019 in favour of the claimant-appellants for death of late Bikram Chowdhury passed by the learned Motor Accident Claims Tribunal, No.3, West Tripura, Agartala, in connection with T.S. (MAC) 210 of 2017 under Section-166 of the Motor Vehicles Act, 1988 for granting compensation of Rs.16,03,000/-.

[3] The fact of the case in the version of claimant appellants in short is that on 25.10.2017 at about 5/5-15 p.m. victim Bikram Chowdhury was proceeding towards Nandannagarat his house by riding a motor bike bearing registration No. TR-01AH-6374 from Banikya Chowmuhan and when he reached at West Noabadi near Amtali Hospital suddenly one Truck vehicle bearing No. TR-01-1798 coming from the opposite direction with high speed and in rash and negligent manner dashed the victim a result of which the victim fell down on the spot and his bike was fully damaged. Immediately after the accident local people shifted the victim to GBP Hospital

here the attending doctor declared him as dead. It is further stated in the claim petition that deceased was a bachelor and the family members were fully dependent on him and at the time of accident deceased was 25 years of age. At the time of accident deceased was a driver by profession and his monthly income was Rs.15,000/- per month. As the victim died due to a vehicular accident, claimant petitioners being her parents and brother filed the instant claim petition.

[4] An FIR was lodged by the appellant No.2 i.e. the brother of the victim and accordingly a case was registered at Bodhjunnagar P.S. and same was numbered as Case No.047 of 2017 dated 25.10.2017 under Sections-279/304(A) of IPC the police conducted the investigation and consequently, filed a charge sheet against one Sri Shyamal Debbarma, the driver of the offending vehicle under Sections-279/337/304(A) of IPC and Section-187 of the Motor Vehicles Act, 1988.

[5] On 06.12.2017 the appellants herein approached before the Motor Accident Claims Tribunal under Section-166 of the MV Act for adequate compensation. The victim was sole bread winner of the family and died at the young age of 25 years. He was a driver by occupation and his monthly salary was Rs.12,000/- along with other expenditure such as fooding and commutation of Rs.3,000/- which comes to Rs.15,000/- per month.

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

“18. In the result, the petition filed by the claimant petitioners u/s 166 of MV Act is hereby allowed on contest. The claimant petitioner Nos. 1, 2 and 3 being mother, brother and father of the deceased are entitled to get Rs. 16,03,000/- (Rupees sixteen lacs three thousand only) as compensation in this case.

Now, it is to be determined who shall be held responsible for making compensation in this case. It reveals from

the case record that on the relevant date of accident the offending vehicle was insured with OP No.2, the New India Assurance Company Ltd. and the insurance policy coverage was also within the stipulated period.

The OP No. 1 being the owner of offending vehicle has exhibited some document, i.e., Driving license standing in the name of Shyamal Debbarma (Ext.A), Registration certificate of the vehicle bearing No. TR 01-1798, Truck (Ext.B), Insurance policy two sheets [Ext.C to C(i)], Tax token (Ext.D), Fitness certificate (Ext.E), Route permit (Ext.F).

So, OP No.2, the New India Assurance Co. Ltd. is liable to indemnify the compensation being the insurer of the vehicle of the OP No.1 vide No. TR-01-1798. So, the OP No.2 being the insurer of the aforesaid vehicle shall be solely responsible for making payment of compensation in this case to the claimant petitioner No.1 as per this judgment. This amount shall have to be paid by the OP No.2 within sixty days from today. This amount shall carry interest @ 9% per annum from the date of presentation of the application on 06.12.2017 before this Tribunal till payment is made.

Out of total awarded amount, Rs. 1,00,000/- as loss of love and affection is given to petitioner No. 1 and 3 equally. So this amount of Rs. 1,00,000/- be released directly to the bank account of the claimant petitioner Nos. 1 & 3. Rest awarded amount of compensation, i.e., Rs. 15,03,000/- (Rs. 16,03,000/- - Rs. 1,00,000/-) inclusive of interest shall be divided equally among the claimant petitioner Nos. 1, 2 and 3. Out of the share of the petitioner Nos. 1, 2 and 3, 50% each of their share shall be kept in fixed deposit in their respective name at the UCO Bank, District Court Branch, Agartala for a period of five years and the balance amount shall be paid to their individual bank account.

However, the petitioner No.1, 2 and 3 are entitled to withdraw monthly interest therefrom to meet their expenses, if needed.

The claimant petitioner No.1, 2 and 3 are directed to furnish a photocopy of the pass book duly certified by the bank having IFSC & MICR Code for opening of their F/D certificates.

No loan or withdrawal shall be permitted from the fixed deposit accounts without prior permission of the Tribunal in pursuance of the judgment of our Hon'ble High Court dated 5.12.2013 passed in MAC Appeal No. 36 of 2006."

[7] Being aggrieved by and dissatisfied with the impugned judgment and award dated 19.08.2019, passed by the learned Motor Accident Claims Tribunal, Court No.3, West Tripura Agartala in T.S.(MAC) 210 of 2017, the present appeal has been preferred by the appellants herein.

[8] Mr. M.S. Saha, learned counsel appearing for the appellants has submitted that the learned Motor Accident Claims Tribunal misconceived the scope of Section-166 of the MV Act and ignoring the above crucial consideration by directing its attention to irrelevant factors where the accident case was covered by Section-166 of the MV Act. The learned tribunal ought to have considered the salary certificate of the deceased and considered his monthly income accordingly. The quantum of amount as awarded by the learned tribunal was not adequate enough nor could have compensated the wholesome earning which would have been earned by the deceased. The appellants have no other alternative remedy and the remedy sought for in the present appeal is completely justifiable.

[9] Learned tribunal has failed to make proper appreciation of the matter that the appellants herein are the only dependents of the deceased and as such the learned tribunal's decision to consider only 50% of the deceased's salary to calculate the compensation is arbitrary and hackneyed. It has also been failed to appreciate that the MV Act itself is a beneficial legislation and has been brought into force relaxing several stringencies of procedural law only for the benefit of the victims. The learned tribunal has failed to understand the decision of the Hon'ble Apex Court on the matter of compensation under the MV Act.

[10] After hearing the learned counsel appearing for the parties and after gone through the observation made by the learned tribunal, now, the main crucial point is that whether the present appellants are entitled to get compensation and if so what would be the amount of compensation and who shall be held responsible for making compensation in this case.

[11] The claimant appellants in their claim petition stated that the deceased was 25 years at the time of his death and he used to earn Rs. 15,000/- per month by driving. From the evidence of PW-2, Dr. Saibal Kanti Nandi it revealed that he issued a salary certificate to the deceased that his monthly income was Rs. 15,000/-. From the Exhibit 3 it appears that the deceased was 23 years old at the time of his death. PW-1 has exhibited a salary certificate issued in the name of deceased by him. But PW-1 has not filed any document in form of ITR deduction or monthly pay slip issued in the name of deceased. So, Exhibit-1 cannot be taken into consideration in full but Exhibit 5 driving licence of deceased proves that deceased was a skilled labour. So, this court can presume the deceased as a skilled labour. Accordingly, his income is assessed as Rs. 9,000/- per month.

[12] Now, considering the future prospects in pursuance of the judgment of the Hon'ble Supreme Court of India in Special leave petition Civil No. 25590 of 2014 dated 31.10.17, this Court like to add 50% of the income as future prospect with his monthly earning. So, the yearly loss of income of the deceased comes to Rs. 9,000/- + 50% of Rs. 9,000/- X 12 which comes to Rs.1,62,000/- per annum. Deceased Bikram Chowdhury died bachelor and the 50% would be deducted from the said amount on calculation which comes to Rs. 81,000/- (Rs. 1,62,000/- – Rs. 1,62,000/- x 50%). So, after deduction yearly income of the deceased comes to Rs. 81,000/-. Deceased Bikram Chowdhury died at the age of 23 years. So, here in this case multiplier will be 18 in pursuance of the judgment of the Hon'ble Supreme Court of India in ***Civil Appeal No. 3483 of 2008 (arising out of SLP (C) No.8648 of 2007) in Sarala Verma & Ors. vs. Delhi Transport Corporation & Anr. Dated 15.04.2009***). So, after calculation it comes to Rs. 81,000/- x 18= Rs. 14,58,000/-.

[13] The claimant appellants must have expended some amount for transportation of deceased in emergency section. So, the Tribunal awards Rs 5,000/-to the claimant appellants. Further, with the aforesaid amount , this Court also add an amount of Rs. 15,000/-towards loss of estates and further Rs.

25,000/- towards funeral expenses in pursuance of the judgment of the Hon'ble Supreme Court of India in *Special Leave Petition Civil No. 25590 of 2014 (National Insurance Co. Ltd. vs. Pronoy Shetty & Ors. Dated 31.10.17)*. The Tribunal also awards Rs. 1,00,000/- for loss of love and affection of their son to his parents. Thus, in total the claimant appellants are entitled to get Rs. 16,03,000/- (14,58,000/- + Rs. 5,000/- + Rs. 15,000/- + Rs. 25,000/- + 1,00,000/-) as compensation for the death of the deceased.

[14] Hence, this Court is of the considered view that the order passed by the learned Court below needs no interference. Thus, the present appeal stands dismissed consequently, the judgment and award as passed by the learned tribunal stands affirmed. As a sequel, miscellaneous applications pending, if any, shall stand closed.

JUDGE

A. Ghosh



सत्यमेव जयते