

**HIGH COURT OF TRIPURA
AGARTALA**

MAC.App 3 of 2023

United India Insurance Co. Ltd.

---Appellant(s)

Versus

Miss Muskan Debbarma and Anr.

---Respondent(s)

For Petitioner(s)	: Ms. R Purkayastha, Advocate.
For Respondent(s)	: Mr. A. Bhowmik, Advocate.
Date of hearing and date of judgment and order	: 24.11.2023
Whether fit for reporting	: No

**with
MAC.App 43 of 2023**

Agartala Municipal Corporation

---Appellant(s)

Versus

Miss Muskan Debbarma and Anr.

---Respondent(s)

For Petitioner(s)	: Mr. A. Bhowmik, Advocate.
For Respondent(s)	: Mr. S. Lodh, Advocate.
Date of hearing and date of judgment and order	: 24.11.2023

HON'BLE MR. JUSTICE T. AMARNATH GOUD

Judgment & Order (Oral)

Both these appeals are heard and taken up together for disposal since similar questions of facts and law are involved.

[2] Both these appeals are filed under Section 173 of the Motor Vehicles Act, 1968.

(i) MAC App No. 03 of has been filed against the impugned award dated 23.09.2022 passed by the Ld. Motor Accident Claims

Tribunal No.5 in TS (MAC) 85 of 2018 awarding compensation Rs.37,84,800/- to the claimant respondent only within 30 days from 23.09.2022 with interest at the rate of 8% per annum with effect from the date of filing of the claim application from 05.06.2018 to till realization of the full.

(ii) MAC.App No. 43 of 2023 has been filed challenging the Judgment and award dated 23.09.2022 passed in Title Suit (MAC) 85/2018 by the Ld. Motor Accidents Claim Tribunal, West Tripura, Agartala (Court No.5) whereby the Ld. Tribunal below directed the respondent No.2 to pay compensation to the respondent No.1 and thereafter to recover the same from the appellant.

[3] The brief fact of the claimant's case is that on 11.08.2018 at 9.30 am the claimant was proceeding towards fire service chowmuhan from boys Budhjung School chowmuhan by scooty TR01-W-6465 as a pillion rider and when reached at Colonel chowmuhan near Priya Motors at that time offending truck TR01-F-1049 came from the back side with rash and negligent driving and dashed the scooty from the back side and as a result claimant sustained grievous injury on her head, waist, chest, right leg and other parts of her body. Immediately claimant was taken to AGMC and GBP hospital, Agartala and was admitted there as an indoor patient but on 12.01.2018 for better treatment claimant was taken to Kolkata, Medica Superspeciality hospital and remained admitted therein from 12.01.2018 to 13.02.2018. Thereafter, she was again admitted in the said hospital from 12.03.2018 to 16.03.2018 and during treatment operation was done on her right leg and till date she is under treatment. At the time of accident claimant was 15 years old and was a student of class-IX of Sushubihar H. S. School, Agartala. Due to the accident,

claimant became unable to perform any work. In connection with the accident West Agartala Police Case No.06 of 2018 under section 279/338 of IPC is registered. The accident occurred due to the rash and negligent driving of offending truck. It was also pleaded that Rs.18,00,000/- was spent for medical treatment of claimant and for future medical treatment a sum of Rs.5,00,000/- is required. Therefore, a case was listed before the Motor Accident Claims Tribunal, West Tripura, Court No.5

[4] The case of the claimant is contested by OP No.1, the AMC, the owner of the offending truck by filing written statement denying the plea of the claimant and *interalia* pleaded that to get compensation the truck of AMC is falsely implicated in this case and at the time of accident the truck was insured with United India Insurance company Limited and driver had valid driving licence. Thus, OP No.1 prayed for dismissal of the case of the claimant.

[5] The case of claimant is contested by Op No.2, the Insurance company by filing written statement denying the plea of the claimant and *interalia* pleaded that claimant is to prove her case by producing documents and insurance company is not liable to pay any compensation unless valid driving licence, insurance certificate, registration certificate and other documents of the truck is produced by the owner. It is further pleaded that any breach of conditions specifically those relating to the driving licence and use of the truck may entitle the Op No.2 to avoid liability. Thus, OP No.2 prayed for dismissal of the case of the claimant.

[6] On the basis of the pleadings and documents, following issues were framed:

(i) Is the claim petition maintainable in its present form and nature?

(ii) Had the claimant- petitioner sustained injuries on 11.01.2018 at about 09.30 hours at Colonel Chowmuhanu due to rash and negligent driving of the driver of a vehicle bearing Registration No. TR01-F-1049? If so, is the claimant petitioner entitled to get compensation as prayed for?

(iii) Who shall be liable for payment of compensation to the claimant petitioner?

[7] After considering all these aspects and materials available in the record, this Tribunal finally observed in the following manner:

The OP No.2, The Divisional Manager, United India Insurance Co. Ltd. is directed to deposit the awarded compensation of Rs.37,84,800/- (Rupees Thirty seven lakhs eighty four thousand eight hundred) only within 30 days from today with interest thereon at the rate of 8% per annum with effect from date of filing of the claim application i.e., from 05.06.2018 to till realization of the full.

[8] Aggrieved by the award delivered on 23.09.2022, the appellant herein has approached this court seeking the following reliefs:

- (1) Admit the appeal;
- (2) Issue Notice upon the respondents;
- (3) Call for records;
- (4) And after hearing the parties be pleased to set aside the Judgment and award dated 23.09.2022 passed in Title Suit (MAC) 85/2018 by the Ld. Motor Accident Claims Tribunal, West Tripura, Agartala (Court No.5)

And/Or

Pass any other order/Orders as deemed fit and proper.

[9] Ms. R. Purkayastha, learned counsel appearing for the appellant-Insurance Company has submitted before this court that the claimant is a school going student, yet the Ld. Tribunal has most arbitrarily considered the monthly income of the claimant to the tune of Rs.15000/- per month. It is further represented by the counsel for the appellant-Insurance Company that the claimant had sustained 40% locomotor disability to her right leg, but that did not amount to any loss of earning on the part of the claimant. But the Ld. Tribunal had failed to consider the same. It is also submitted by the counsel for the appellant

that the learned Tribunal has also awarded Rs.3,00,000/- under the head of future treatment which is also not supported by any evidence.

[10] On the other hand, Mr. S. Lodh, learned counsel appearing for the claimant-respondents has submitted before this court that the impugned order dated 23.09.2022 is just and proper and needs no interference from this court. He further prays to dismiss the instant appeal. Since this is an appeal filed by the appellant-Insurance Company to reduce the awarded compensation, Mr. S. Lodh, learned counsel, with regard to the notional income of the victim girl, has placed his reliance on a judgment of the apex court in **Meena Devi versus Nunu Chand Mahto Alias Nemchand Mahto** reported in **(2023) 1 SCC 204** where the apex court has observed as under:

16. Thus applying the ratio of the said judgments, looking to the age of the child in the present case i.e. 12 years, the principles laid down in the case of Kishan Gopal (supra):(2014) 1 SCC 244 are aptly applicable to the facts of the present case. As per the ocular statement of the mother of the deceased, it is clear that deceased was a brilliant student and studying in a private school. Therefore, accepting the notional earning Rs. 30,000/- including future prospect and applying the multiplier of 15 in view of the decision of this Court in Sarla Verma (supra), the loss of dependency comes to Rs. 4,50,000/- and if we add Rs. 50,000/- in conventional heads, then the total sum of compensation comes to Rs.5,00,000/-. As per the judgment of MACT, lump sum compensation of Rs. 1,50,000/- has been awarded, while the High Court enhanced it to Rs. 2,00,000/- up to the value of the Claim Petition. In our view, the said amount of compensation is not just and reasonable looking to the computation made hereinabove. Hence, we determine the total compensation as Rs. 5,00,000/- and on reducing the amount as awarded by the High Court i.e. Rs. 2,00,000/-, the enhanced amount comes to Rs. 3,00,000/-.

[11] According to Mr. S. Lodh, learned counsel appearing for the claimant-respondent, since the notional income of the deceased in **Kishan Gopal** (supra) was set to the tune of Rs.30,000/- per annum, where the accident took place in 1992, the notional income of the present victim girl shall be awarded to the tune of Rs.60,000/- per annum which roughly comes to Rs.5000/- per month. The said hike may

be awarded taking into consideration the hikes in essential commodities in recent years. To this proposition, learned counsel for the appellant-insurance company has not raised any objection.

[12] During the pendency of this appeal, one interlocutory application being IA No.4 of 2023 arising out of MAC.App 43 of 2023 is filed by the Agartala Municipal Corporation for adducing of evidence of registration certificate and also policy insured for the offending vehicle. This court having perused the contention as assigned in the accompanying affidavit has allowed the interlocutory application for adducing evidence.

[13] In view of the order passed today in IA No.4 of 2023 arising out of MAC.App 43 of 2023 and having considered the rival submissions as led by the learned counsel for the respective parties, this court is of the view that certain things still need consideration of the learned court below. The matter, as it appears, cannot be adjudicated at this juncture without giving a reasonable opportunity to the parties to adduce their additional evidence with regard to the registration certificate, validity of insurance policy and thereafter fastening of the liability and fixing the quantum of the compensation that would be so awarded by the learned court below after giving adequate opportunity to both sides.

[14] Since the accident occurred in the year 2018 involving the grievous injuries amounting to disability of the minor child, this court feels that the matter to be decided as expeditiously as possible.

[15] Before parting with records, it is made clear that the learned counsel for the parties have agreed on certain aspects before this court. The notional income of the victim girl to be set to the tune of Rs.5000 per month and the total award of compensation be awarded @ 7.5% per

annum instead of 8% per annum. An amount of Rs.3,00,000/- was awarded under the head of future treatment by the learned Tribunal, which according to this court is given without any basis and which is also not supported by any evidence. Hence, this court is inclined to delete that amount under the head of future treatment out of the total compensation. In so far as the other issues are concerned, the court below is at liberty to look into the matter in support of the evidence that would be adduced and after hearing both sides decide the case in passing a fresh award in terms of quantum as well as fastening of the liability.

[16] With the above observation both the appeals are accordingly remanded back and thus disposed of. As a sequel, stay, if any, stands vacated. Pending application(s), if any, also stands closed.

JUDGE

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