

**HIGH COURT OF TRIPURA
AGARTALA**

MAC.App 01 of 2023

United India Insurance Co. Ltd.

Represented by the Divisional Manager,
RMS Chowmuhan, GRS Tower Agartala, District- West Tripura
(Insurer of AS-01-CC-1958, Truck)

---Appellant(s)

Versus

1. Smt. Manoara Begam

W/o Late Litan Miah alias Siraj,
Resident of Vill- Baishgharia, PO: Golabari,
PS: Teliamura, Dist: Khowai presently residing at C/O Abdul Rahim
Chowdhury, G/P+ PO- West Noabadi, PS: Bodhjungnagar, Dist: West
Tripura

2. Smt. Niharika Akter

D/o Late Litan Miah alias Siraj,
R/o village- Baishgharia, PO: Golabari, PS: Teliamura, District: Khowai,
presently residing C/o Abdul Rahim Chowdhury, G/P+PO- West
Noabadi, PS: Bodhjungnagar, Dist: West Tripura

3. Smt Rosana Begam,

W/o- Abdul Rahaman alias Rahaman Miah, R/o- Vill-Baishgharia, PO:
Golabari, PS: Teliamura, Dist: Khowai

4. Abdul Rahaman alias Rahaman Miah

S/o Late Surjat Ali, R/o Village- Baishgharia, PO: Golabari, PS:
Teliamura, Dist: Khowai, (Driver of AS-01CC-1958, Truck)

---Claimant Respondent(s)

5. Sri Pujan Bhowmik,

S/o Late Manimoy Bhowmik Resident of Jagannathbari Road, PS- West
Agartala, PO: Agartala, Dist: West Tripura (Owner of AS-01CC-1958,
Truck)

6. Sri Nikhil Dey

S/o Late Kanai Lal Dey Resident of Kashipur (Water supply), PS: East
Agartala, PO: Agartala, Dist: West Tripura.

---Opposite party Respondents.

For Appellant(s)	: Ms. R. Purkayastha, Advocate.
For Respondent(s)	: Mr. S. Lodh, Advocate. Mr. S. Rahaman, Advocate.
Date of hearing and date of delivery of judgment and order	: 05.10.2023
Whether fit for reporting	: No.

HON'BLE MR. JUSTICE T. AMARNATH GOUD

Judgment & Order (Oral)

This is an appeal against the impugned award dated 04.08.2022 passed by the Ld. Motor Accident Claims Tribunal No.2, West Tripura, Agartala, in TS(MAC) 152 of 2020 whereby the Ld. Tribunal below has awarded compensation of Rs.58,39,200/- only (Rupees Fifty eight lakhs thirty nine thousand two hundred) only to the claimant respondents to be paid by the opposite party No.3 appellant within a period of one month from the date of award along with a simple interest of 9% per annum from the date of registration of claim i.e. w.e.f. 12.10.2020 till the date of realization.

[2] Brief facts leading to this case is that on 27.06.2019 at about 10-30 p.m. when the deceased was returning home after completion of his work from Teliamura market by riding a bicycle through Assam-Agartala road, at that time a Truck bearing registration No. AS-01-CC-1958 (here-in-after called the offending vehicle) came there with excessive speed and in negligent manner dashed Litan Miah face to face and a serious accident occurred as a result Litan Miah had fallen on the road and the offending vehicle ran over the head and body of the deceased and he died on the spot. In this connection Teliamura PS Case No. 38 of 2019, dated 28.06.2019 u/s 279/304-A of IPC was also registered. Claimant petitioners 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.

[3] Claimant petitioners also stated that at the time of accident deceased was aged about 30 years and he was a Plumber by

profession and he used to earn Rs. 26,000/- per month before the accident.

[4] The claimant petitioners, therefore, approached the court below seeking compensation due to death of the deceased and quantified their claim to the tune of Rs.61,99,200/-.

[5] OP Nos.1 and 2 through their written statement apart from denying all the allegations in the claim petition contended, inter alia, that OP No.1 is the registered owner of the said offending vehicle and it was duly insured with the OP No.2(United India Insurance Co. Ltd.). OP No.1,therefore, urged for fixing the liability of his insurer to pay the compensation, if any.

[6] The case of OP No.2 is also of total denial and thereby put the claimant petitioners as well as OP No.1 in strict proof thereof.

[7] With a view to decide the claim of the claimant petitioners following issues were framed :-

ISSUES

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

(ii) If the death of the deceased was caused due on the alleged date, time and place due to road traffic accident on the rash and negligent driving of the driver of alleged vehicle ? If so, are the claimant petitioners entitled to get compensation ?

(iii) What should be the quantum of compensation and who shall be liable to pay the compensation?

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

"Claimant petitioners are entitled to get the award of Rs.58,39,200/- only (Rupees Fifty eight lakhs thirty nine thousand two hundred) only along with 9% simple interest per annum from the date of registration of claim i.e, w.e.f. 12-10-2020 till the date of realization thereof.

The petitioner No.1 exclusively shall be entitled to get the amount of Rs. 40,000/- as consortium. The claimant-petitioner No. 2 shall also be entitled to get the amount of Rs. 2,00,000/- towards love and affection. All the claimant petitioners shall have equal share on the rest amount.

(ii) 50% of the share of the claimant petitioner No.1 in the award be invested by purchasing separate Fixed Deposit certificate from any Nationalized Bank at least for the next 5 years and no loan or advance or premature withdrawal shall be allowed without prior sanction of this Tribunal.

75% of the share of the claimant-petitioner No. 2 shall also be invested by purchasing separate Fixed Deposit certificate from any Nationalized Bank at least for the next 5 years and no loan or advance or premature withdrawal shall be allowed till she attains the age of majority i.e. 21 years without prior sanction of this Tribunal.

Remaining amount of shares of the claimant petitioners shall be credited directly to their individual bank account.

However, the claimant petitioner No. 1 shall have the liberty to withdraw the monthly interest from the fixed deposit certificates to be purchased.

The OP No.3, i.e., the United India Insurance Company Limited shall deposit the awarded amount along with interest thereon within one month to this Tribunal."

[9] Aggrieved by the award delivered on 04.08.2022, the appellant herein has approached this court seeking the following reliefs:

- (1) Admit the appeal;*
- (2) Call for the records from the Ld. Tribunal below;*
- (3) Issue notice upon the respondents; and*
- (4) After hearing the parties would further be pleased enough to quash/set aside the impugned award dated 04.08.2022 passed by the Ld. Motor Accident Claims Tribunal No.2, West Tripura, Agartala in TS(MAC) 152/2020 whereby the Ld. Tribunal below has most illegally and arbitrarily awarded compensation of Rs.58,39,200/- only (Rupees Fifty eight lakhs thirty nine thousand two hundred) only to the claimant respondents to be paid by the opposite party No.3 appellant within a period of one month from the date of award along with a simple interest of 9% per annum from the date of registration of claim i.e. W.e.f. 12.10.2020 till the date of realization and further be pleased enough to stay the operation of the impugned award till final disposal of the appeal, otherwise the appellant would be highly prejudiced.*

[10] Mrs. R. Purkayastha, learned counsel appearing for the appellant has submitted before this court that claimants have miserably failed to prove the age and income of the deceased. The Ld. Tribunal most arbitrarily relied upon the income certificate issued by the PW3, who has himself admitted in cross examination that he has no authority to issue income certificate, and has considered Rs.26,000/- as monthly income which appears to be extremely

exorbitant. According to the counsel for the appellant, the Ld. Tribunal has considered one fourth to be deducted towards personal and living expenses taking into account the father as one of the dependent. But the Ld Tribunal had failed to consider that father is not treated as dependent. It is further submitted that the Ld. Tribunal has awarded compensation beyond the guidelines laid down by the Hon'ble Apex Court. The Ld. Tribunal has most arbitrarily awarded Rs. Two lakhs towards loss and love and affection. Moreover, the rate of interest awarded is also unreasonable and unjustified.

[11] On the other hand, Mr. S. Rahaman, learned counsel appearing for the claimant-respondents has submitted before this court that the impugned order dated 04.08.2022 is just and proper and needs interference from this court. He further prays to dismiss the instant appeal.

[12] Heard learned counsel appearing for the parties.

[13] Having perused the entire record, this Court is of the view that the learned Court below erroneously determined the monthly income of the deceased to the tune of 26,000/-, wherein from the claimants side, there is no such evidence to prove the monthly income of the deceased as such, this aspect of the matter must be interfered by this Court. This Court is of the view that the monthly income of the deceased shall be reduced to Rs.21,000/- in terms of the income certificate issued by PW-3, (Sri Sarbat Ali). The counsel for the claimant-respondents has failed to provide any document to support his contention with regard to additional monthly income of the deceased @Rs.5000/- by performing bamboo and cane works.

Therefore, the additional Rs.5000/- to his monthly income stands rejected.

[14] This Court is also of this view that the father of the deceased cannot be treated as dependent since he has already married for the second time and staying separately with the second wife and with major children. Accordingly, one fourth deduction is converted into one third deduction applying the principle as laid down in **National Insurance Co. Ltd vs Pranay Sethi** reported in **AIR 2017 SC 5157**.

[15] In so far as parental consortium with regard to love and affection is concerned, in terms of Hon'ble Apex Court Judgment reported in **(2018) 18 SCC 130** titled as **Magma General Insurance Company Ltd. Vs. Nanu Ram Alias Chuhru Ram and ors**, the dependents of the deceased are only entitled to a sum of Rs.40,000/- each.

Thus, the amount would come to

- (i) *Income per month = Rs.21,000/-*
- (ii) *40% of above to added as future prospect= Rs.8,400/-*
- (iii) *Total of Sl. Nos (i) and (ii) above comes to Rs.21,000/- + Rs.8400/- = Rs.29,400/-*
- (iv) *one third (1/3) of above to be deducted as personal and living expenses of deceased :- Rs.29,400/- minus Rs.9,800/- = Rs.19,600/-*
- (v) *compensation after applying multiplier of 17= Rs.19,600 x12 x 17 = Rs.39,98,400/-*
- (vi) *Loss of Estate= Rs.15,000/- only*
- (vii) *Funeral expenses = Rs.15,000/- only*
- (viii) *Loss of consortium = Rs.40,000/- only*
- (ix) *loss of love and affection = 1,20,000/- (i.e. Rs.40,000/- each)*
- (x) *Thus the total compensation stands at Rs.39,98,400/- + Rs.15,000/-+ Rs.15,000/- + Rs.40,000/- + Rs.1,20,000/- = Rs.41,88,400/-*

[16] This Court in all matters is fixing 7.5% interest and to maintain uniformity while comparing the bank rate of interest which is

also much less. Consequently, the total compensation as would be entitled by the claimant-respondents is Rs.41,88,400/- (Rupees Forty one lakhs eighty eight thousand and four hundred) only along with 7.5% interest per annum, as awarded by the learned tribunal with effect from the date of presentation of the claim petition till the date of actual payment. Thus, the insurance company i.e. United India Insurance Co. Ltd, is liable to pay the total amount as awarded by the Tribunal below in favour of the claimant-respondents within a period of 30 days from today. However, it is made clear that if the amount is already deposited, the claimant-respondents are at liberty to withdraw the same unconditionally.

[17] In view of the above, the award is modified and the appeal is allowed to the extent as indicated above. As a sequel, miscellaneous applications pending, if any, shall stand closed. Draw the decree accordingly and thereafter, send down the LCRs forthwith.

JUDGE

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