

**HIGH COURT OF TRIPURA
AGARTALA**

Mac.app 9 of 2023

The State of Tripura and Others

---Appellant(s)

Versus

Smt. Arati Sarkar and 04 Ors.

---Respondent(s)

For Appellant(s)	:	Mr. P. Maishan, Advocate.
For Respondent(s)	:	Mr. A. De, Advocate.
Date of hearing and date of judgment and order	:	26.06.2024
Whether fit for reporting	:	No

CO(FA) 03 of 2023

Smt. Arati Sarkar and 04 Ors.

---Appellant(s)

Versus

The State of Tripura and Others

---Respondent(s)

For Appellant(s)	:	Mr. A. De, Advocate.
For Respondent(s)	:	Mr. P. Maishan, Advocate.

HON'BLE MR. JUSTICE T. AMARNATH GOUD

Judgment and Order (Oral)

Heard P. Maishan, learned counsel for the appellants also heard Mr. A. De, learned counsel for the respondents.

[2] This is an appeal under Section 173 of the Motor Vehicles Act, 1988 by the appellant/respondents/opposite party No.1 and No.2 herein, against the impugned Award dated 04.08.2022 passed by the Ld. Member, Motor Accident Claims, Tribunal, No.2, West Tripura, Agartala in Case No.TS(MAC) 130 of 2018.

[3] The appellant has prayed for the following reliefs:

- (i) Admit the instant appeal filed under Section 173 of the Motor Vehicles Act, 1988, by the Appellants/Opposite parties No.1 and No.2 against the impugned Award dated 04.08.2022, passed by the ld. Member Motor Accident claims, Tribunal, Court No.2 West Tripura, Agartala in Case No.TS(MAC)-130 of 2018 on the ground that the Ld.

Tribunal has awarded excess amount of Rs.3 lakhs exceeding more than three conventional heads, so, only on the point of granting of Rs.3 lakhs, towards loss of love and affection the award is challenged under appeal.

- (ii) *Issue notice upon the claimants.*
- (iii) *Call for the records of TS(MAC) 130 of 2018, from the file of the Ld. Member , Motor Accident Claims Tribunal, Court No.2, West Tripura, Agartala.*
- (iv) *The Hon'ble High Court may also pass any other or further order/orders as may be considered fit and proper.*

[4] Brief facts leading to this case is that on 24.07.2017 at about 5-30 a.m. the deceased Sajal Sarkar was proceeding towards Salema from his house at Nayanpur, Teliamura by riding a Motor bike of one Sri Indrajit Sarkar bearing registration No. TR-06-A-5084 accompanied by his friend Kanu Sarkar through Ambassa-Kamalpur road and at about 7-30 a.m. when they reached at Bhatkhaori near East Daluchara PHC, at that time one Canter Truck which was used as police van bearing registration No. TR-01-1149 (here-in-after called the offending vehicle) came there from the same direction with excessive speed and in negligent manner suddenly hit the motor bike of deceased Sajal Sarkar as a result of which the motor bike capsized besides the road and a serious accident occurred and deceased along with his friend sustained grievous injuries. Deceased sustained injury on his head and other parts of his body. Immediately after the accident deceased was taken first to Kulai District Hospital by the help of Fire Service vehicle but as his condition was precarious, he was referred to AGMC & GBP Hospital from where he was referred to ILS Hospital for his better treatment and he was treated there up to 29.07.2017. But as his condition was deteriorating so he was taken to Appollo Hospital, Kolkata on 30.07.2017 and subsequently to AMRI Hospital succumbed to his injuries and he took treatment from the said hospital till 02.08.2017 and succumbed to his injuries on the same day. In this connection Salema PS Case No. 20 of 2017 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. Claimant petitioners also stated that deceased Sajal Sarkar was aged

about 44 years and he was a daily labourer and he used to earn Rs. 10,000/- per month before the accident. The claimant petitioners, therefore, approached this court seeking compensation due to death of the deceased and quantified their claim to the tune of Rs.27,55,000/-.

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

“(i) Claimant petitioners are entitled to get the award of Rs.20,13,145/- (Twenty lacs thirteen thousand one hundred forty five) only along with 9% simple interest per annum from the date of registration claim i.e, w.e.f. 10.08.2018 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 petitioner Nos. 2 and 3 exclusively shall also be entitled to get the amount of Rs. 3,00,000/- as awarded under the head loss of love and affection. The claimant petitioners Nos. 1,2 and 3 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 pre- mature withdrawal shall be allowed without prior sanction of this Tribunal.

75% of the shares of the claimant petitioner Nos. 2 and 3 shall be invested by purchasing separate Fixed Deposit certificates from any Nationalized Bank at least for the next 5 years with auto renewal facility and no loan or advance or pre-mature withdrawal shall be allowed without prior sanction of this Tribunal.

Remaining amount of shares of the claimant petitioner Nos. 1,2 and 3 shall be credited directly to their individual bank account.

The claimant petitioner No.1 shall have the liberty to withdraw the monthly interest therefrom including from the account of her minor son and daughter.

Needless to say that the amount so ordered to be paid to the minor claimant petitioners shall be incurred only for the welfare and benefit of themselves.

The OP Nos.1 and 2, shall deposit the awarded amount along with interest thereon within one month to this Tribunal.

[6] Being aggrieved by and dissatisfied with the judgment and award dated 04.08.2022 passed in connection with T.S.(MAC) 130 of 2018 by the learned Member, Motor Accident Claims Tribunal No.2, West Tripura Agartala, the present appeal has been preferred by the appellant.

[7] The learned Court below has assessed the monthly income of the deceased as Rs.9180/- being a daily labour. But this Court following the notification dated 4th

August, 2023 framed by the High Court, wherein no income of proof of the injured/deceased issued by the competent authority is submitted, notional wages for determination of compensation in the claim cases/appeals involving accidents which has taken place on or before 31.12.2015 shall be Rs.10,000/- for a unskilled worker and in the present case accident had taken place in 2020. After taking consent from both sides and as per schedule of the notification of this Court, the income of the deceased is considered as Rs.10,000/-. Hence, Rs.9180/- is increased to Rs.10,000/-. As per the judgment passed by the Hon'ble Supreme Court of India in ***Magma General Insurance Company Limited vs Nanu Ram alias Chuhru Ram and Others*** reported in (2018) 18 SCC 130 an addition of 10% of the income should be added towards future prospects. Thus the computation would be as follows:

- (i) Medical expenses = Rs.3,57,945/-
- (ii) Income per month Rs.10,000 only + 25% of the income towards future prospect Rs.2500/- = Rs.12500/-
- (iii) One third of Rs.12500/- 4166/- = Rs.8334/-
- (iv) Compensation after applying multiplier of 14 = Rs.8334/- x 12 x 14 = Rs.14,00,112/-
- (v) Loss of Estate Rs.15000/- + 10% = Rs.16,500/-
- (vi) Funeral Expenses Rs.15000/- + 10% = Rs.16,500/-
- (vii) Loss of consortium = Rs.40,000/- + 10% = Rs.44000/-
- (viii) Loss of love and affection for the two children- 40000/- each + 10% (Rs.40000x2= Rs.80000+Rs.8000)=Rs.88000/-

[8] Thus, the total compensation stands as Rs/14,00,112/- + Rs.16,500/- + Rs.16,500/- + Rs.44,000/- + 88,000/-+ Rs.3,57,945/- = Rs.19,23,057/-

[9] This Court in all matters fixing 7.5% interest and to maintain uniformity while comparing the bank rate of interest which is also much less. Consequently, the claimants would be entitled compensation as indicated above along with 7.5% interest per annum instead of 9% as awarded by the learned tribunal below, with effect from the date of presentation of the claim petition till the date of actual payment. The awarded amount shall be deposited by the insurance company along with 7.5% interest from the date of registration of claim i.e. 10.08.2018 till the date of realization thereof within a period of one month from the date of receipt of the copy of this order, if not deposited. However, it

is made clear that on such deposit, the claimants are at liberty to withdraw the same unconditionally as per procedure.

[10] In the light of the above, the present appeal and the cross objection being CO(FA) 03 of 2023 stands disposed of with the above observation and modification. 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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