

**HIGH COURT OF TRIPURA
AGARTALA**

MAC App.8 of 2023

The Oriental Insurance Company Limited

..... Appellant(s)

Versus

Smt. Supriya Guha (Patari) and others

..... Respondent(s)

For Appellant(s) : Mr. P. Gautam, Advocate.

For Respondent(s) : Mr. S. Lodh, Advocate.

Date of hearing and
delivery of judgment & Order : 14.08.2024.

Whether fit for reporting : Yes/No.

HON'BLE MR. JUSTICE T. AMARNATH GOUD

Judgment and order (Oral)

The present appeal is filed under Section 173 of the Motor Vehicles Act, 1988 read with Section 168 of the Act against the impugned judgment and award dated 17.08.2022 passed by the learned Motor Accident Claims Tribunal, West Tripura, Agartala passed in case No. T.S.(MAC) 134 of 2016.

[2] Brief facts of the case as enumerated in the impugned order passed by the Tribunal below is that on 19.10.2015 at about 11/11.15 p.m. deceased Sanjoy Patari was proceeding towards Belonia town by a motor bike(Bajaj Pulsar) bearing registration No. TR-03/D-6685 and when he reached at Bidyapith corner on Belonia-Bankar Road at that time one Motor Bike(Hero Honda) bearing registration No. TR-01-E-8725 (the offending vehicle) came with excessive speed from the opposite direction in negligent manner and dashed the vehicle of the deceased. As a result, the deceased sustained multiple grievous injuries. Soon after the accident, deceased was sent to Belonia Hospital where from he was

referred to AGMC & GBP Hospital, Agartala where he succumbed to his injuries. Post Mortem examination was also done over the body of deceased. In this connection, Belonia PS Case No. 139 of 2015 u/s 279/337/304(Part-II) 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 rider of the offending vehicle.

[3] It was contended by the Claimant petitioners that at the time of death deceased Sanjoy Patari was aged about 29 years and he was a govt. employee as Constable of police attached with the office of the Superintendent of Police, South Tripura District, Belonia who used to earn Rs. 20,165/- per month. The claimant petitioners, approached learned Tribunal seeking compensation due to death of the deceased and quantified their claim to the tune of Rs.45,61,112/-.

[4] The OP No.1, owner of the offending Maruti has not contested the suit by filing written statement and hence, case runs ex parte against the OP No.1. The OP No.2 by filing written statement denied all the allegations and contended that on the relevant date of accident the offending vehicle was insured with the Noticee (Oriental Insurance Co. Ltd.) and put the claimant petitioners in strict proof of their respective claim. Noticee through his written statement apart from denying all the allegations also put the claimant petitioners as well as the OP No.2 in strict proof of their respective claim.

[5] The learned Tribunal after hearing the parties and on perusal of relevant evidence on record, vide judgment and award dated 17.08.2022 disposed the case of the claimants in the following manner:

"....9(a). In view of the law laid down in Sarla Varma's case (AIR 2009 SC 3104) for the age group of 26 to 30 the appropriate multiplier is M-17.

Besides where the number of dependent family members are not less than 4 (four in the case at hand), deduction towards personal and living expenses would be one fourth (1/4).

9(b). Now, in view of the aforesaid principles of law I proceed to calculate the appropriate compensation in the present case as under:-

(I) Income per month = Rs.,20,165/- only.

(II) 50% of above to be added as future prospect :- Rs.10,082/- only.

(III) Total of Sl Nos. I and II above comes to Rs.20,165/- + Rs. 10,082/- =Rs.30,247/- only.

(IV) one fourth (1/4) of above to be deducted as personal and living expenses of deceased :- Rs.30,247/- minus Rs.7,561/- = Rs.22,686/- only.

(V) compensation after applying multiplier of 17:- Rs. 22,686 x 12 x 17=46,27,944/- only.

(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 for the minor son=Rs. 2,00,000/- only.

9(c). Thus, total compensation stands at Rs.46,27,944+15,000 +15,000+ 40,000/- + 2,00,000/-= Rs.48,97,944/- only.

Now coming to the question of liability, it appears that the OP No.2 rider of the offending vehicle proved the insurance policy(Exbt.C) that his vehicle was insured with the Noticee, Oriental Insurance Co. Ltd. Accordingly the OP insurer shall satisfy the award. Issue under consideration accordingly stands answered to the extent as indicated above.

In view of the issue wise discussion as we had here-inabove, I order as follows:-

10. ORDER

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

(i) Claimant petitioners are entitled to get the award of Rs.48,97,944/-(rupees forty eight lacs ninety seven thousand nine hundred forty four) only along with 9% simple interest per annum from the date of registration of claim i.e, w.e.f. 04.07.2016 till the date of realization thereof.

The petitioner No.1 exclusively shall be entitled to get the amount of Rs. 40,000/- as consortium. Similarly, the claimant-petitioner No. 2 being minor shall also get the amount as awarded under the head loss of love and affection. The claimant petitioners shall have equal share on the rest

amount.

The Noticee, i.e., the Oriental Insurance Company Limited

shall deposit the awarded amount along with interest thereon within one month

to this Tribunal.

Supply a copy of this award free of cost to the parties by not

later than 15 days from the date of the award.

The case stands disposed off on contest....."

[6] Being aggrieved by the aforesaid impugned judgment and award dated 17.08.2022, the appellant Insurance company has preferred the instant appeal.

[7] Mr. P. Gautam, learned counsel appearing for the appellant insurance company submits that learned Tribunal below committed a serious error of law and mechanically awarded Rs.2,00,000/- under the head of love and affection for the minor son of the deceased which is not defined in accordance with law. He further submits that learned Tribunal erred imposing 9% interest which is very much higher than the existing bank rate. He, therefore, urges this Court to set aside the impugned award passed by the learned Tribunal below.

[8] To support his contention, Mr. Gautam, learned counsel for the appellant has placed reliance on the Judgment of Hon'ble Supreme Court in ***United India Insurance Company Limited v. Satinder Kaur Alias Satwinder Kaur and others*** reported in ***(2021) 11 SCC 780***. The relevant contents of the said judgment as referred by the learned counsel, read as under:

".....(e) Three Conventional heads

28. In *Pranay Sethi*, the Constitution Bench held that in death cases, compensation would be awarded only under three conventional heads viz. loss of estate, loss of consortium and funeral expenses. The Court held that the conventional and traditional heads, cannot be determined on percentage basis, because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified, which has to be based on a reasonable foundation. It was observed that factors such as price index, fall in bank interest, escalation of rates, are aspects which have to be taken into consideration. The Court held that 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 Court was of the view that the amounts to be awarded under these conventional heads should be enhanced by 10% every three years, which will bring consistency in respect of these heads.

a) Loss of Estate – Rs. 15,000 to be awarded

b) Loss of Consortium.

29. Loss of Consortium, in legal parlance, was historically given a narrow meaning to be awarded only to the spouse i.e. the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads for

awarding compensation in various jurisdictions such as the United States of America, Australia, etc. English courts have recognised the right of a spouse to get compensation even during the period of temporary disablement.

30. In *Magma General Insurance Co. Ltd. v. Nanu Ram* this Court interpreted "consortium" to be a compendious term, which encompasses spousal consortium, parental consortium, as well as filial consortium. The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse.*****

34. At this stage, we consider it necessary to provide uniformity with respect to the grant of consortium, and loss of love and affection. Several Tribunals and High Courts have been awarding compensation for both loss of consortium and loss of love and affection. The Constitution Bench in *Pranay Sethi (supra)*, has recognized only three conventional heads under which compensation can be awarded viz. loss of estate, loss of consortium and funeral expenses. In *Magma General (supra)*, this Court gave a comprehensive interpretation to consortium to include spousal consortium, parental consortium, as well as filial consortium. Loss of love and affection is comprehended in loss of consortium.

35. The Tribunals and High Courts are directed to award compensation for loss of consortium, which is a legitimate conventional head. There is no justification to award compensation towards loss of love and affection as a separate head.

(c) Funeral Expenses – Rs. 15,000 to be awarded....."

[9] On the contrary, Mr. S. Lodh, learned counsel appearing for the claimant respondents opposes the submission made by the learned counsel for the appellant. He submits that only 40,000/- as consortium has been awarded to the claimants which is contrary to law. He further submits that if it is assumed that Rs. 40,000/- as consortium is awarded to the spouse, the child and parents of the deceased are also entitled to get Rs.40,000/- each towards filial and parental consortium. To support his contention, he placed reliance on the judgment of the Hon'ble Supreme Court in ***Harpreet Kaur v. Mohinder Yadav*** reported in ***AIR 2023 SC 111***. The relevant contents of the said judgment as referred by the learned counsel read as under:

".....14. In view of the above findings, the appeal deserves to be allowed. The appellants are entitled to Rs. 25,20,000/- towards loss of dependency; and the three appellants being the children and mother of

the deceased, are entitled to Rs.40,000/- each towards filial and parental consortium. The impugned judgment is modified to the above extent; the rate of interest, and the other components, directed to be payable, are left undisturbed. The appeal is allowed in these terms, without order on costs.....”

[10] Heard the submissions made at the Bar. Perused the evidence on record.

[11] Upon hearing the submissions made by the parties and on perusal of record, this Court is of the opinion that learned Tribunal below awarded Rs.200,000/- under the head of love and affection for the minor son of the deceased which is not tenable in the eye of law and the same is liable to be deleted. Moreover, the interest imposed by the learned Tribunal @9% per annum, is obviously on the higher side. This Court in all matters is fixing 7.5% per annum interest to maintain uniformity while comparing the bank rate of interest which is also much less.

[12] However, this Court has further observed that the child and parents of the deceased are also entitled to get Rs.40,000/- each towards filial and parental consortium.

Now, if the award of Rs.200,000/- under the head of love and affection for the minor son of the deceased is deleted and the award of Rs.40,000/- each towards spousal, filial and parental consortium is added with 10% enhancement, then the compensation awarded to the claimant respondents stands as under:

RE-CALCULATION

(I) Income per month = Rs.,20,165/- only.

(II) 50% of above to be added as future prospect :- Rs.10,082/- only.

(III) Total of SI Nos. I and II above comes to Rs.20,165/- + Rs. 10,082/- =Rs.30,247/- only.

(IV) one fourth (1/4) of above to be deducted as personal and living expenses of deceased :- [Rs.30,247/- minus Rs.7,561/-] = Rs.22,686/- only.

(V) compensation after applying multiplier of 17:- Rs. 22,686 x 12 x 17=46,27,944/- only.

(VI) Loss of Estate = Rs.15,000/-only.

(VII) Funeral expenses = Rs.15,000/- only.

(VIII) Loss of spousal consortium=Rs. 40,000/- only.

(IX) Loss of filial consortium = Rs.40,000/- only.

(X) Loss of parental consortium = Rs. (2 X 40,000) = Rs. 80,000/- only.

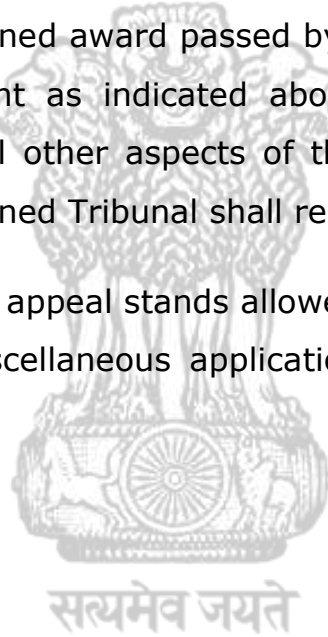
(XI) 10% enhancement on the heads of consortium= Rs.[(4 X 40,000) X 10% = Rs. (1,60,000 X 10%) = Rs.16,000/-

Thus, total compensation stands at Rs.46,27,944+15,000 +15,000+ 40,000/- + 40,000/- + 80,000/- + Rs.16,000/-=
Rs.48,33,944/- only.

[13] In view of the above, the compensation to be awarded to the claimants stands at **Rs.48,33,944/- (Forty-eight lakh Thirty-three thousand Nine hundred forty-four only)** along with interest @ **7.5% per annum** instead of 9% per annum as fixed by the learned tribunal with effect from the date of presentation of the claim petition till the date of realization.

Hence, the impugned award passed by the learned Tribunal below is modified to the extent as indicated above. Apart from the above-indicated observation, all other aspects of the impugned judgment and award passed by the learned Tribunal shall remain unaltered.

Thus, the present appeal stands allowed to the extent as indicated above. As a sequel, miscellaneous application(s) pending, if any, shall stand closed.



JUDGE

Sabyasachi G.

RAJKUMAR SUHANJIT SINGHA
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