

**HIGH COURT OF TRIPURA
AGARTALA**

MAC APP No.10 of 2023

The National Insurance Company Limited,
(to be represented by Senior Divisional Manager),
Agartala Divisional Office, 42, Akhaura Road,
P.O. Agartala, District: West Tripura,
PIN: 799 001

----Insurer-Appellant (s)

Versus

- 1. Sri Supriya Podder,**
Son of late Santi Bhusan Podder
- 2. Smt. Suchitra Podder (Saha) @ Sucharita Podder,**
D/O. Late Santi Bhusan Podder,
both are residents of Raghunathpur,
P.S. Bishalgarh, District: Sepahijala
- 3. Billal Hossain,**
Son of Rahim Miah,
Resident of Charilam, Uttarmura,
P.S. Bishalgarh, District: Sipahijala,
P.S. East Agartala, P.O. Agartala,
Owner of Bike No.TR-01-Q-5148

---- O.P. Owner-Respondents (s)

For Appellant(s)	:	Mr. A. K. Deb, Adv.
For Respondent(s)	:	None
Date of Hearing	:	11.01.2024
Date of delivery of Judgment and Order	:	25.01.2024

Whether fit for
Reporting : NO

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This appeal under Section 173 of M.V. Act is filed by the appellant, the National Insurance Company Limited which was arrayed at respondent No.2 in the claim case, challenged the judgment and award dated 02.11.2022

passed by the Learned Single Member, Motor Accident Claims Tribunal, West Tripura, Agartala (Tribunal No.4) in connection with Case No. T.S.(MAC) 26 of 2018.

02. The facts of the case in short is that on 18.09.2014 at about 1715 hours the victim Santi Bhusan Podder (since dead) was proceeding from his house riding his bicycle and while he reached at Karaimura pucca road at Bishalgarh, a motor bike bearing No.TR-01-Q-5148 coming from Karaimura side with high speed in rash and negligent manner dashed the victim. As a result of which he fell down on the road and sustained multiple grievous injuries on his person. Immediately the victim was taken to Bishalgarh Hospital by the local people wherein on the same day at about 1800 hours he succumbed to his injuries. After his death the claimant-respondents being the son and daughter of the deceased filed the suit seeking compensation for an amount of Rs.16,80,000/-. It was the further case of the respondent-petitioners that initially the claim petition was filed by their mother. But later on, due to her death the respondent-petitioners were substituted as claimants. Further, it was asserted that the accident occurred due to reckless driving of the rider of the offending motor bike and the deceased was at the age of 64 at the time of accident and being a pensioner as well as businessman he used to earn Rs.12,000/- per month.

03. The owner respondent No.3 as OP No.1 contested the suit by filing written statement and denied all the assertions leveled against him that he was the owner of the offending bike rather it was his further defence that at the time of accident the motor bike was driven by one Araber Rahaman having valid driving licence and the vehicle was insured with the present appellant, the respondent No.2, the National Insurance Company Limited. So the owner of the vehicle urged for fixing the liability of compensation to the insurer if awarded. The appellant as OP No.2 in the written statement denied all the assertions made in the claim petition and submitted that the parties are to proof their respective claims. But the insurance company did not deny the fact of insurance of the vehicle covering the risk on the date of accident.

04. Considering the pleadings of the parties, the Tribunal framed the following issues:

- (i) **Is the claim application filed by Smt. Sandhya Rani Podder under Section 166 of M.V. Act maintainable in its present form and nature?**
- (ii) **Had the husband of the claimant petition namely, Late Santi Bhusan Podder suffered death out of a road traffic accident alleged to have been occurred on 18th September, 2014 at Raghunathpur on Bishalgarh-Karaimura Road at about 5.15 p.m. under the territorial jurisdiction of Bishalgarh Police Station?**
- (iii) **Was the accident occurred due to rash and negligent riding of a motor cycle bearing registration No.TR-01-Q-5148 by its rider?**
- (iv) **Are claimant petitioners entitled to get compensation as prayed for? If yes, then to what extent and who shall be held liable to pay the compensation money?**

05. To substantiate the claim the respondent-petitioner No.2, Smt. Suchitra Podder has examined herself as PW-1 and also relied upon some documentary evidences which were marked as Exhibits as under:

- (i) **certified copies of FIR, ejahar, seizure list and final report- Exbt.1;**
- (ii) **P.M. Report – Exbt.2.**

The owner of the offending vehicle the motor bike has examined himself as OPW-1 and relied upon the following documents as Exhibits:

- (i) **copy of driving licence of Araber Rahaman- Exbt. A;**
- (ii) **copy of registration certificate of vehicle bearing No.TR-01-Q-5148- Exbt.B;**
- (iii) **copy of insurance certificate – Exbt.C.**

But the insurance company i.e. the present appellant adduced no oral/documentary evidence.

06. Considering the material evidence on record, the Tribunal taking into account the monthly income of the deceased @ Rs.10,000/- and determined the compensation in total of Rs.7,46,972/- and directed the insurance company to make payment of the compensation with 9% interest from the date of registration of the claim i.e. with effect from 20.02.2018 to till the date of realization.

07. The appellant insurance company being aggrieved and dissatisfied with the judgment and award passed by the Tribunal filed the present appeal on different grounds. Heard Learned counsel Mr. A. K. Deb for the

appellant. But none appeared on behalf of the respondents inspite of receipt of the notice.

08. Learned counsel Mr. Deb appearing for the appellant, insurance company in course of hearing assailed the judgment and award passed by the Tribunal on the grounds that the Tribunal in deciding the issue No.4 decided that as per claim petition supported by the oral evidence of the claimant-petitioner the deceased was a pensioner as well as the businessman having monthly income of Rs.12,000/-. But in this regard no documentary evidence was produced and proved by the claimants. But just on the basis of oral testimony of witness the Tribunal determined the monthly income of the deceased @ Rs.10,000/- per month at the time of his death and thereafter the Tribunal determined to add 10% addition in his income of the last age group i.e 50-60 years which according to Learned counsel was beyond the principle of law laid down by the Hon'ble Supreme Court in **Oriental Insurance Company Limited vs. Meena Variyal & Others** reported in **AIR 2007 SC 1609** in para-9 as under:

"9. * * *Secondly, the deceased was employed in a limited company. It was necessary for the claimants to establish what was the monthly income and what was the dependency on the basis of which the compensation could be adjudged as payable. Should not any Tribunal trained in law ask the claimants to produce evidence in support of the monthly salary or income earned by the deceased from his employer Company? Is there anything in the Motor Vehicles Act which stands in the way of the Tribunal asking for the best evidence, acceptable evidence? We think not. Here again, the position that the Motor Vehicles Act vis-a-vis claim for compensation arising out of an accident is a beneficent piece of legislation, cannot lead a Tribunal trained in law to forget

all basic principles of establishing liability and establishing the quantum of compensation payable. The Tribunal, in this case, has chosen to merely go by the oral evidence of the widow when without any difficulty the claimants could have got the employer-company to produce the relevant documents to show the income that was being derived by the deceased from his employment. Of course, in this case, the above two aspects become relevant only if we find the insurance company liable. If we find that only the owner of the vehicle, the employer of the deceased was liable, there will be no occasion to further consider these aspects since the owner has acquiesced in the award passed by the Tribunal against it."

09. It was further asserted that from the cross-examination of PW-1 Smt. Suchitra Podder it appears that she did not submit any document showing that her father was a pensioner or he had any other source of income and the claimants also could have examined the employer of the authority of any company or department from which company/department her father was superannuated. So according to the appellant in absence of any cogent documentary evidence on record the deceased would be treated as non-income group and monthly income should be assessed to Rs.6,000/- only and furthermore since the deceased was 65 years of age as determined by the Tribunal. So in view of the judgment of the **Pranay Sethi** (supra) in paragraph No.61 point No.4, no future prospect can be granted in favour of the deceased as he was 65 years old but the Learned Tribunal at the time of calculation ignored the principle of the said judgment and added 10% about his future prospect along with the monthly income of the deceased @Rs.10,000/-.

10. Learned counsel for the appellant further submitted that the Learned Tribunal awarded consortium @ Rs.40,000/- to the respondent-claimants misinterpreting the principles of law as laid down by the Hon'ble Supreme Court in **Magma General Insurance Co. Ltd. Vs. Nanu Ram Alias Chuhru Ram & Ors.** reported in **2018 SCC online SC 1546** wherein Hon'ble the Supreme Court observed and declared three types of consortium i.e. spousal, parental and filial consortium. But in the present case the respondent-claimants No.1 & 2 being the daughter and son of the deceased had only a right to get parental consortium. But since they have become major, so they are not entitled to get the parental consortium also in view of the principles of law as laid down in Three Judges Bench in **New India Assurance Company Limited vs. Somwati And Others** reported in **(2020) 9 SCC 644** in **Civil Appeal No.3093 of 2020** following the principles as laid down in **Magma General Insurance Co. Ltd.** (supra) in para No.37.

11. It was further asserted by the Learned counsel of the appellant that during cross-examination of claimant-respondent No.2 as PW-1 she specifically stated that she is married and not dependent on the income of her father(deceased) and her brother, the respondent No.1 is an employee of Power Grid at Bhuvaneswar for the last five years. So the respondent claimant No.1 being major and employed cannot be treated as dependent on the income of

his father. Similarly, the respondent-claimant No.2 being major and married daughter also not dependent on her father is not entitled to get any consortium. But the Learned Tribunal ignoring the principles of law laid down granted consortium of Rs.80,000/- in favour of the respondent-claimants.

12. Learned counsel in course of hearing further submitted that the Learned Tribunal at the time of determination of award awarded interest @ Rs.9% p.a. whereas the Hon'ble Apex Court in different cases held that the rate of interest should be the prevailing rate of interest of National Bank since the Reserve Bank of India has reduced the rate of simple interest and presently the rate of fixed deposit and simple interest in all National Banks are @ Rs.5.3% and 3.5% respectively. So Learned counsel submitted that the rate of interest should be @ 6% instead of 9%.

13. It is already stated that inspite of receipt of notice the respondent-claimants did not contest this appeal. I have heard the arguments of Learned counsel for the appellant at length and gone through the award of the Learned Tribunal. In the claim petition the respondent-claimants have asserted that at the time of accident the deceased was a pensioner and as well as businessman and they claimed the monthly income of the deceased @ Rs.12,000/- per month. However, the Tribunal at the time

of determination of compensation determined the amount of monthly income @Rs.10,000/- per month in absence of any documentary evidence on record. In this regard I have gone through the citation referred in **Oriental Insurance Company Limited vs. Meena Variyal & Others** (supra).

14. The respondent-claimant No.1 Smt. Suchitra Podder in her examination-in-chief stated that the monthly income of her deceased father was Rs.12,000/- per month and he was a pensioner and doing business at the time of death. But in this regard no documentary evidence is proved. During cross-examination she also admitted that she has not submitted any documentary evidence in support of the income of her deceased father. She also stated that she was given marriage about 16 years back and she was never dependent on the income of her father after marriage and her brother is an employee of Power Grid serving at Bhubaneswar for last five years. But the Learned court below ignored these facts and determined the amount of monthly income of the deceased @ Rs.10,000/- per month which in my considered view was not proper. So in view of the principle of the aforesaid judgment and considering the facts and circumstances of the case in my considered view the monthly income of the deceased should be Rs.8,000/- at the time of his death in absence of any cogent oral/documentary evidence on record by the claimants.

15. In course of hearing Learned counsel Mr. A. Deb also submitted that the Tribunal at the time of determination of compensation added 10% as future prospect but in view of the judgment of the Hon'ble Supreme Court in **Pranay Sethi** (supra) in para-59.4, Hon'ble the Supreme Court observed as under:

"59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."

16. Further in **United India Insurance Co. Ltd. Vs. Satinder Kaur @ Satwinder Kaur & Ors. in Civil Appeal No.2705 of 2020 arising out of SLP (Civil) No.28548 of 2014** Hon'ble the Supreme Court in para-58 further observed that:

"59. The controversy does not end here. The question still remains whether there should be no addition where the age of the deceased is more than 50 years. Sarla Verma: [(2009) 6 SCC 121] thinks it appropriate not to add any amount and the same has been approved in Reshma Kumari: [(2013) 9 SCC 65]. Judicial notice can be taken of the fact that salary does not remain the same. When a person is in a permanent job, there is always an enhancement due to one reason or the other. To lay down as a thumb Rule that there will be no addition after 50 years will be an unacceptable concept. We are disposed to think, there should be an addition of 15% if the deceased is between the age of 50 to 60 years and there should be no addition thereafter. Similarly, in case of self-employed or person on fixed salary, the addition should be 10% between the age of 50 to 60 years. The aforesaid yardstick has been fixed so that there can be consistency in the approach by the tribunals and the courts."

Referring the same Learned counsel for the appellant submitted that the Tribunal ignoring the principles of law laid down by the Apex court at the time of

determination of compensation added 10% as future prospect and added that amount with the monthly income in determination of monthly income of the deceased.

17. I have gone through the said citations and it appears that Learned Tribunal did not consider the principles of law laid down by the Hon'ble Apex Court in the aforesaid case and decided to add 10% as future prospects with the monthly income which in my considered view Learned Tribunal committed error. Since the age of the deceased at the time of his death was 65 years. So the respondent-claimants are not entitled to get the said 10% as future prospects as determined by the Learned Tribunal below.

18. Learned counsel in course of hearing referring 'loss of consortium' relied upon another citation of **Satinder Kaur @ Satwinder Kaur** (supra) in paras-30, 31, 32, 33, 34 and 35 Hon'ble the Supreme Court further observed as under:

"30. In Magma General Insurance Co. Ltd. v. Nanu Ram & Ors.,¹² 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.

31. Parental consortium is granted to the child upon the premature death of a parent, for loss of parental aid, protection, affection, society, discipline, guidance and training. Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love and affection, and their role in the family unit.

32. Modern jurisdictions world-over have recognized that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is the compensation for loss of love and affection, care and companionship of the deceased child.

33. The Motor Vehicles Act, 1988 is a beneficial legislation which has been framed with the object of providing relief to the victims, or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of Filial Consortium. Parental Consortium is awarded to the children who lose the care and protection of their parents in motor vehicle accidents. The amount to be awarded for loss consortium will be as per the amount fixed in Pranay Sethi :[(2017) 16 SCC 680].

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:[(2018) 18 SCC 130], 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."

Referring the said citation Learned counsel for the appellant submitted that since the respondent-claimants are major and respondent-claimant No.1 is married and stated that she was not the dependent on the income of her deceased father and respondent No.2 is a service holder. So according to the Learned counsel they are not entitled to get any parental consortium. But the Learned Tribunal in determining the amount of compensation awarded parental consortium @ Rs.40,000/- per head. Thus assessed Rs.80,000/- as 'consortium'.

19. I have also gone through the said citation and I stand agree with the submission made by the Learned counsel for the appellant and from the evidence on record of the respondent-claimant No.1 as PW.1 it appears that she specifically stated that her marriage took place about 16 years back and she was living with her husband and she was never dependent on the income of her deceased father and her brother was also serving in Power Grid company since last five years. Taking into consideration the evidence on record further it appears that Learned Tribunal also committed error in determining the amount of compensation in granting parental consortium at Rs.80,000/- which the respondent-claimants are not entitled in view of the principles of law laid down by the Hon'ble Supreme Court in the aforesaid judgment and as such this amount of Rs.80,000/- be deducted from the total amount of compensation as awarded by the Learned Tribunal.

20. Lastly Learned counsel for the appellant submitted that the Tribunal in deciding the amount of compensation awarded interest @ Rs.9% per annum from the date of filing the claim petition till realization but the Hon'ble Supreme Court of India in **Subulaxmi vs. M.D. T. Nadu State Transport Corporation & Ors. in Civil Appeal No.7750 of 2012** in para No.13 and 15 Hon'ble the Supreme Court observed as under:

"13. In Abati Bezbaruah v. Dy. Director General, Geological Survey of India and Another: [(2003) 3 SCC

148], S.B. Sinha, J. in his opinion after referring to the earlier decisions opined that the question as to what should be the rate of interest would depend upon the facts and circumstances of each case and award of interest would normally depend on the bank rate prevailing at that time. A.R. Laxmanan, J. in his concurring opinion stated as follows:

The rate of interest must be just and reasonable depending upon the facts and circumstances of each case and taking all relevant factors including inflation, change of economy, policy being adopted by Reserve Bank of India from time to time, how long the case is pending, permanent injuries suffered by the victim, enormity of suffering loss of future income, loss of enjoyment of life etc., into consideration.

15. Thus analysed, we are disposed to think that the High Court has erred in not granting interest on the enhanced sum. As is evincible, the Tribunal had granted payment of interest at the rate of 9% per annum. Considering the totality of facts and circumstances, we find that the interest awarded by the tribunal is just and proper and accordingly we direct that the interest on the differential enhanced sum shall carry interest at the rate 9% per annum from the date of filing of the claim petition till the date of deposit of the same before the tribunal. The respondent corporation is directed to deposit the differential amount before the tribunal within a period of eight weeks from today."

Referring the same Learned counsel submitted that the rate of interest should be 6% considering the prevailing rate of interest as decided by the Reserve Bank of India. But the Learned Tribunal awarded interest @ 9% p.a. It is observed that Hon'ble the Apex Court also in the aforementioned case determined the rate of interest @ 9% p.a. and in similar other cases Hon'ble the Apex Court and our parent High Court also allowed interest @ 9% per annum in determining the award. So the submission of Learned counsel in this regard cannot be accepted and in my considered view Learned Tribunal has rightly awarded interest in the given case @ Rs.9% p.a.

21. So after hearing Learned counsel for the appellant and also after going through the record of the

Learned Tribunal below including the evidence on record it appears to me that Learned Tribunal at the time of determination of compensation has overlooked some of the principles of law laid down by the Hon'ble Apex Court in different cases and calculated compensation in higher side which needs to be reduced for the sake of justice.

22. In view of the discussions made above the compensation is recalculated thus:

The deceased was aged about 65 years at the time of accident. Learned Tribunal has assessed his monthly income to be Rs.10,000/- per month. Considering the facts of the case, it appears that Rs.8000/- per month would be reasonable to be determined as monthly income of the deceased. From that amount $\frac{1}{3}^{\text{rd}}$ be deducted as personal and living expenses of the deceased which comes to Rs.8,000 - Rs.2,667/- =Rs.5,333/-. The deceased was aged about 65 years at the time of death and as per the schedule the appropriate multiplier would be 7 and, thus, the compensation comes to Rs.5,333/- x 12 x 7 = Rs.4,47,972/-. In addition thereto, the claimants are also entitled to Rs.15,000/- as Funeral expenses, Rs.30,000/- for loss of consortium and Rs.15,000/- for loss of estate. The aforesaid amount of Rs.60,000/- awarded under the conventional heads should be enhanced at the rate of 10% in every three years in

pursuance of the judgment of **Pranay Sethi** (supra).
Thus, the total compensation comes to Rs.4,47,972/-
+ Rs.60,000+ 10% of Rs.60,000+Transportation cost
Rs.10,000/- (as awarded by the Tribunal).
Accordingly, the total compensation comes to
Rs.5,23,972/-.

Thus the appellant insurance company is liable to
make payment of compensation amounting to Rs.5,23,972/-
with 9% p.a. from the date of the filing of the claim petition
w.e.f 20.02.2018 till the realization of the amount to the
claimants. The appellant is to deposit the aforesaid
compensation before the Tribunal within a period of one
month from the date of passing of the judgment. The
disbursal of the compensation amount be made in
pursuance of the order passed by the Tribunal at the time of
delivery of judgment/award on 02.11.2022. A copy of this
order be supplied to the Learned counsel for the appellant
for immediate compliance.

23. In the result, the appeal is partly allowed with
the aforesaid observation and accordingly stands disposed
of. Pending application, if any, also stands disposed of.

Send down the LCRs forthwith along with a copy
of this judgment.