

**HIGH COURT OF TRIPURA  
AGARTALA**

**MAC App. No.22 of 2024**

**New India Assurance Company Ltd.,**

Agartala Division,  
4, Mantribari Road,  
P.S. West Agartala,  
District- West Tripura,  
Pin- 799001.

Represented by its Divisional Manager.

(Insurer of motor bike bearing No.TR-03-H-5725)

**....Appellant.**

**Versus**

**1. Sri Sankar Saha,**  
S/o. Late Monmohan Saha.

**2. Smti. Basana Saha,**  
W/o. Sri Sankar Saha.

Both are resident of No.1 Sukanta Colony,  
Rangkang, Amarpur, P.S. Birganj,  
District- Gomati Tripura,  
Pin- 799101

**.....Respondent Claimants.**

**3. Sri Abhijit Datta,**  
S/o. Sri Himangshu Bikas Datta,  
Resident of Nabadiganta Lane,  
Joynagar, Agartala,  
P.S. West Agartala,  
District- West Tripura,  
Pin- 799001.  
(Present owner of the vehicle No.TR-01-AE-1621,  
Tipper).

**4. Sri Utpal Deb,**  
S/o. Late Gopal Deb,  
Resident of Majlishpur,  
Mohanpur, Agartala,  
P.S. Ranir Bazar,  
District- West Tripura,  
Pin- 799035.  
(Previous owner of the vehicle No.TR-01-AE-1621,  
Tipper).

**.....Respondent Owners.**

**5. Sri Ashim Das,**  
S/o. Sri Adhir Ch. Das,  
Resident of Bilthai, Dharmanagar,  
P.S. Panisagar,  
District- North Tripura,  
Pin- 799260.  
(Driver of the vehicle No.TR-01-AE-1621, Tipper).

**....Respondent Driver**

**6. Sriram General Insurance Co. Ltd.,**  
BR Arcade, 3<sup>rd</sup> Floor,  
21, Janapath, Opp. of Hotel Priya Palace,  
Ulubari, P.S. Paltanbazar,  
Guwahati, Assam.  
(Insurer of the vehicle No.TR-01-AE-1621, Tipper).

**....Respondent Insurer**

---

|                                           |   |                                               |
|-------------------------------------------|---|-----------------------------------------------|
| For Appellant(s)                          | : | Mr. G. S. Das, Adv,<br>Mr. K. Deb, Adv.       |
| For Respondent(s)                         | : | Mr. S. Bhattacharjee, Adv,<br>Mr. K. De, Adv. |
| Date of Hearing                           | : | 02.09.2024                                    |
| Date of delivery of<br>Judgment and Order | : | 05.09.2024                                    |
| Whether fit for<br>Reporting              | : | NO                                            |

---

**HON'BLE MR. JUSTICE BISWAJIT PALIT**

**Judgment & Order**

This appeal is preferred under Section 173 of M.V. Act challenging the judgment and award dated 27.09.2023 delivered by Learned Motor Accident Claims Tribunal No.2, Gomati Judicial District, Udaipur in connection with case No.T.S.(MAC) 10 of 2022. By the said judgment and award, Learned Tribunal below has fastened the liability of compensation upon both the Insurance Companies jointly in

equal share i.e. the present appellant and also the respondent No.6, Sriram General Insurance Company Limited.

**02.** Heard Learned Counsel, Mr. G. S. Das for the appellant Insurance Company and also heard Learned Counsel Mr. K. De for the respondent Insurer No.6, Sriram General Insurance Company Limited and also heard Learned Counsel, Mr. S. Bhattacharjee for the respondent-claimants.

**03.** In course of hearing of argument Learned Counsel for the appellant drawn the attention of this Court that in this case, the present appellant has only challenged the mode of payment of compensation by the Tribunal. According to Learned Counsel, the offending tipper vehicle was insured with respondent No.6, i.e. the Sriram General Insurance Company Limited, but the Learned Tribunal below fastened the liability of compensation upon the appellant and also upon the said respondent No.6 equally, but the motor bike insured with the appellant was in no way responsible for the alleged accident on the alleged day of accident.

Learned Counsel for the appellant first of all drawn the attention of the Court referring page No.8 of the claim petition wherein, in column No.20, it was specifically mentioned that on the alleged day the deceased was proceeding towards Amarpur from his house at Sukanta Colony by riding his motor bike bearing No.TR-03-H-5725 and while

he reached at Rangrang near Kawamara Samatatal mouth on the way of Amarpur to Nutanbazar Road that time the driver of offending vehicle bearing No.TR-01-AE-1621 (Tipper) was proceeding towards Nutanbazar from Amarpur reached at Rangrang near Kawamara Samatatal mouth without giving any signal of indicator and dashed the said motor bike rash and negligently. Learned Counsel for the appellant further drawn the attention of this Court the examination-in-chief in affidavit of the witness Smt. Basana Saha wherein in para No.4, she specifically stated that on 29.01.2020 at about 01.30 p.m. her son, Litan Saha was proceeding towards Amarpur from his house at Sukanta Colony by riding his motor bike bearing No.TR-03-H-5725 and while reaching towards at Rangrang near Kawamara Samatatal mouth on the way of Amarpur to Nutanbazar Road under Birganj Police Station, Amarpur that time the driver of the offending vehicle bearing No.TR-01-AE-1621 (Tipper) was proceeding towards Natunbazar from Amarpur reached at Rangrang near Kawamara Smatatal mouth without giving any signal of indicator dashed against the motor bike rash and negligently.

Learned Counsel further submitted that in the charge sheet which was relied upon by the claimant-petitioners, it was specifically stated that the I.O. after completion of investigation being prima facie satisfied laid charge sheet against the driver of tipper truck bearing No.TR-

01-AE-1621 namely Ashim Das. Learned Counsel further submitted that the Learned Tribunal below at the time of determining of the claim-petition framed the following issues:

**(I) Whether Litan Saha, S/o Sri Sankar Saha died in a road traffic accident on 29-01-2020 at about 1.30 PM at Rangkhang near Kawamara under PS-Birganj due to the rash and negligent driving by the driver of the Tipper bearing No. TR-01AE-1621 (Tipper)?**

**(II) Are the claimant-petitioners entitled to be compensated under the Motor Vehicles Act, 1988? If so, to what extent and who shall be liable to pay such compensation?**

Referring the same, Learned Counsel submitted that upon the pleadings of the parties Learned Tribunal below proceeded to determine as to whether the offending tipper vehicle was responsible or not for the alleged accident on that day and in para No.12 of the judgment, the Learned Tribunal below came to the observation that on the alleged day the accident occurred due to rash and negligent driving by the driver of vehicle No.TR-01-AE-1621 (Tipper) in deciding issue No.1. But surprisingly, at the time of delivery of judgment Learned Tribunal fastened the liability of payment of compensation upon both the Insurance Companies, i.e. the present appellant and respondent No.6, Sriram General Insurance Company Limited for which Learned Counsel for the appellant drawn the attention of the Court for interference of the judgment and award and to modify the judgment to the extent that the entire compensation would be borne by the

respondent No.6 who was insurer of the offending tipper truck on the day of accident.

**04.** Per contra, Learned Counsel, Mr. K. De representing the respondent No.6, Sriram General Insurance Company Limited submitted that from the judgment it transpires that the accident occurred due to head and collision between both the vehicles, for which, Learned Tribunal below rightly and reasonably delivered the judgment fixing liability of payment of compensation upon both the Insurance Companies.

At the time of hearing of argument Learned Counsel for the respondent-claimants submitted that the referring claimants have nothing to say on the award of the Learned Tribunal below and urged before the Court to pass appropriate order considering the materials on record.

**05.** I have heard arguments of both the sides and gone through the judgment of the Learned Tribunal below. For the sake of convenience, I would like to refer herein below the relevant portion of the judgment and award of the Learned Tribunal below as mentioned in para No.16 and 17 which are as follows:

**"16. In the result, it is hereby ordered that the claimant petitioners are entitled to get compensation of ₹12,09,600/- + ₹15,000/- + ₹40,000/- + ₹15,000/- = ₹12,79,600/- (Rupees twelve lacs seventy nine thousand six hundred) only. The OP No.4 i.e. New Indian Assurance Company Ltd., the insurer of the motorbike bearing registration No. TR-**

03H-5725 and the OP No.5 i.e. Sriram General Insurance Co. Ltd., the insurer of the offending vehicle bearing Registration No. TR-01AE-1621 (Tipper) are directed to make the payment of compensation to the claimant-petitioners jointly and in equal manner within 30 (thirty) days from today along with interest thereon @ 6% per annum from the date of filing of claim petition, i.e., from 25.02.2022 till payment/realization of the same.

17. Out of the said amount the claimant-petitioner No.1 & 2 be paid ₹3,00,000/- each and the rest amount of ₹6,79,600/- in equal manner should be kept in fixed deposit in their respective accounts in any Nationalized Bank for the period of 5(fve) years. In the case in which investment in long term in the nature of fixed deposit is made on condition that the Bank will not permit any loan or advance on the Fixed Deposit and interest on the amount invested is paid monthly directly to the claimants or their legal heir(s), as the case may be. Further the claimant-petitioners are also granted liberty to apply for withdrawal in case of an emergency. To facilitate the payment of amount of the claimant-petitioners and the fixed deposit amount on maturity, the claimantpetitioners at the appropriate time shall file photo copy of their Bank Pass Book in their names containing photograph, account number, IFSC number and the RTGS number duly certified by the Banker and a copy of Passport Size photographs before making payment so as to enable this Tribunal to transfer the amounts directly to their Bank Account."

From the aforesaid paras, it appears that in para No.16 the Learned Tribunal below has fastened the liability of payment of compensation amounting to Rs.12,79,600/- in equal share upon both the Insurance Companies with 6% interest from the date of filing the claim-petition till realization.

**06.** Learned Counsel for the Sriram General Insurance Company Limited in course of hearing of argument only drawn

the attention of the Court that there was head on collision between both the offending tipper truck and the motor bike for which the Learned Tribunal below rightly fastened the liability of payment of compensation upon both the Insurance Companies. But on perusal of the claim-petition, evidence on record, specifically the examination-in-chief in affidavit of one of the claimants and also after going through the observation of Learned Tribunal below in para No.12 in deciding issue No.1 and also after going through the charge sheet laid by the I.O. which was relied upon by the claimant petitioner, it appears that in all the places the entire allegation was levelled against the driver of the offending tipper truck but Learned Tribunal below in the concluding part of the judgment without any basis came to the observation that both the vehicles were responsible for the alleged accident. It was the admitted position that the deceased rider of the bike was also the owner of the bike and the same was duly insured at the time of accident with the appellant. But before the Learned Tribunal below, there was no such evidence on record that the motor bike was also responsible for the alleged accident on the alleged day and since the claimant-petitioner and the charge sheet of I.O. specifically supported the story of the claimant-petitioner that the accident occurred due to rash and negligent driving of the driver of tipper truck, so, it was surprising as to

how the Learned Tribunal below came to the observation that both the vehicles were responsible for the accident.

**07.** Furthermore, before the Learned Tribunal below in the written statement, there were no assertions by the respondent No.6 i.e. the Sriram General Insurance Company Limited that the accident occurred due to rash and negligent driving of the driver and rider of both the vehicles. Even no such evidence was adduced on behalf of the said Insurance Company and also by the other contesting parties. Thus, after going through the judgment of the Learned Tribunal below and also after going through the record of the Learned Tribunal below, it appears that Learned Tribunal below at the time of delivery of judgment through misconception of fact fastened the liability of payment of compensation upon both the Insurance Companies for which the interference of the Court is required and in the opinion of this Court, since there was clear evidence on record regarding the rash and negligent driving by the driver of the offending tipper truck which caused the accident on the alleged day. So, the entire amount of compensation as determined by the Learned Tribunal below shall be borne by the respondent No.6 i.e. the Sriram General Insurance Company Limited.

**08.** In the result, the appeal filed by the appellant is partly allowed with the modification that the entire amount of

compensation amounting to Rs.12,79,600/- shall be borne by the respondent No.6 i.e. the Sriram General Insurance Company Limited and the appellant Insurance Company is thus exonerated from the liability of 50% amount of award to the claimants as per judgment. The entire award as ordered by the Tribunal shall be borne by the respondent No.6, Sriram General Insurance Company of this appeal and the Insurance Company is asked to deposit the said amount to the Learned Tribunal below within a period of six (06) weeks from the date of delivery of the judgment.

**09.** A copy of this judgment be given free of cost to Learned Counsel for the appellant and also to the Learned Counsel for the respondent No.6, i.e. Sriram General Insurance Company Limited for information and compliance.

Send down the LCR along with a copy of the judgment.

Pending application(s), if any, also stands disposed of.

**JUDGE**

**MOUMITA  
DATTA**

*Purnita*

Digitally signed by  
MOUMITA DATTA  
Date: 2024.09.06 15:39:14  
+05'30'