

**HIGH COURT OF TRIPURA
AGARTALA**

MAC APP No.23 of 2023

1. Smt. Debalina Choudhury (Chakraborty),
Wife of Late Arindam Chakraborty

2. Smt. Antarlina Chakraborty,
D/O. Late Arindam Chakraborty

-both the claimant-appellants reside at Ramnagar,
Road No.4/5, P.O. Ramnagar, Agartala, West Tripura
District, PIN:799 002

----Claimant-Appellant (s)

Versus

1. Shri Jagannath Prasad,
Son of Late Gouri Sankar Prasad,
34, Nabin Sen Road, Siliguri,
Darjeeling, West Bengal,
Owner of the Oil Tanker bearing No.NL-02-G-9992

2. National Insurance Company Limited,
9, Shakespear Sarani, near Nightingel Nursing Home,
Kolkata-71,(notice to be served through the Divisional
Manager, National Insurance Company Limited, A.K.
Road, Agartala, District: West Tripura,
Insurer of Oil Tanker bearing No.NL-02-G-1992

---- Respondents (s)

For Appellant(s) : Mr. C. S. Sinha, Adv.

For Respondent(s) : Mr. A. K. Deb, Adv.
Mr. D. J. Saha, Adv.

Along with

C.O.(F.A.) No.12 of 2023

Shri Jagannath Prasad,
Son of Late Gouri Sankar Prasad,
34, Nabin Sen Road, Siliguri,
Darjeeling, West Bengal,
Owner of the Oil Tanker bearing No.NL-02-G-9992

Versus

1. Smt. Debalina Choudhury (Chakraborty),
Wife of Late Arindam Chakraborty

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District, PIN:799 002

----Claimant-Appellant-Respondents (s)

3. National Insurance Company Limited,
9, Shakespear Sarani, near Nightingel Nursing Home,
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Road, Agartala, District: West Tripura,
Insurer of Oil Tanker bearing No.NL-02-G-1992
District, PIN:799 002

----Respondents (s)

For Appellant(s)	:	Mr. A. K. Deb, Adv. Mr. D. J. Saha, Adv.
For Respondent(s)	:	Mr. C. S. Sinha, Adv.
Date of Hearing	:	28.02.2024
Date of delivery of Judgment and Order	:	05.03.2024
Whether fit for Reporting	:	YES/NO

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

By means of this appeal the appellants being the claimant petitioners have challenged the award dated 25.11.2022 passed in TS (MAC) 02 of 2017 by the Learned Member, Motor Accident Claims Tribunal, West Tripura, Agartala seeking relief for modification of the award towards just and proper compensation. The owner of the offending vehicle i.e the OP No.1 preferred another Cross-objection as per Order XLI Rule 22 with Section 151 of CPC challenging the judgment and award dated 25.01.2022 passed by Learned Motor Accident Claims Tribunal, West Tripura, Agartala in case No. TS (MAC) 02 of 2017. Since both the appeal and the cross-objection have arisen out of the same

award/judgment, so by this common judgment the matter is taken up for hearing and consideration.

02. Heard Mr. C. S. Sinha, Learned counsel appearing for the claimant-appellants and also heard Mr. A. K. Deb, Learned counsel representing the respondent, OP No.2 i.e. National Insurance Company Limited and also heard Learned counsel Mr. D. J. Saha representing the respondent O.P. No.1 owner in respect of the appeal and also the cross-objection filed.

03. At the time of hearing, Learned counsel Mr. C. S. Sinha, appearing on behalf of the appellant claimant-petitioners submitted that the claimant-petitioners preferred an application under Section 166 of Motor Vehicles Act before the Learned Tribunal seeking compensation for the unfortunate death of one Arindam Chakraborty being the husband of the appellant claimant-petitioner No.1 and the father of appellant claimant-petitioner No.2. The Learned Tribunal after exhausting all the processes by the judgment and award dated 25.11.2022 allowed the claim application and fasten the liability of making payment of compensation upon OP respondent No.1 Shri Jagannath Prasad being the owner of Oil Tanker bearing No.NL-02-G-9992. Learned counsel for the appellant claimant-petitioners further submitted that to substantiate the case before the Tribunal the appellant claimant-petitioners adduced two witnesses and relied upon some documentary evidences which were

marked as exhibits. But at the time of determination of compensation the Learned Tribunal did not properly appreciate Exbt.6 i.e. the salary slip of the deceased resulting which at the time of delivery of judgment/award wrong calculation was made by Learned Tribunal deducting professional tax and income tax from the salary of the deceased which was not at all passed in accordance with the relevant provisions of the MV Act, thus awarded lesser amount of compensation to the appellant-claimants. So Learned counsel for the appellant claimant-petitioners urged for enhancing the amount of compensation allowed by the Learned Tribunal below, by allowing this appeal.

04. On the other hand, Learned counsel Mr. A. K. Deb representing the National Insurance Company Limited, i.e. the respondent No.2 submitted that Learned Tribunal below rightly determined the amount of compensation at the time of delivery of judgment and he relied upon one citation of the Hon'ble Supreme Court of India in **National Insurance Company Limited vs. Pranay Sethi and Others** reported in **(2017) 16 SCC 680** wherein in para No.44 it was specifically observed that at the time of determination of compensation actual income to be decided after deducting tax and according to Learned counsel, Learned Tribunal below, after deducting the amount of professional tax and income tax of the deceased calculated the monthly income of the deceased. So, according to

Learned counsel, Learned Tribunal below rightly delivered the judgment. In respect of cross-objection of the respondent OP No.1 i.e. the owner of the offending vehicle, he submitted that in spite of allowing opportunity the OP owner failed to produce relevant documents like valid driving license, insurance certificate, registration certificate and road permit etc. before the Learned Tribunal and as per law it was the legal obligation of the OP owner to adduce those documents before the Learned Tribunal to substantiate his defence, so that compensation, if awarded be imposed upon the insurance company. But here in the case, the OP owner in spite of opportunity failed to adduce any oral as well as documentary evidence to substantiate his defence and before this court also the cross-objector failed to adduce any original documents in support of his contention. So, Learned counsel for the National Insurance Company fairly submitted that the Learned Tribunal below rightly delivered the judgment and fastened the liability to the OP owner and urged for upholding the judgment of the Learned Trial court below.

05. Learned counsel for the cross-objector, Mr. D. J. Saha submitted that the OP owner through his attorney appeared before the Learned Tribunal and submitted his written statement/objection mentioning that on the alleged day, the offending vehicle was duly insured with the

respondent OP No.2 vide Insurance Policy No.150601/31/14/6300004515 covering the period from 28.09.2014 to midnight of 27.09.2015 and at the time of filing written statement, he has submitted all the photocopies of relevant documents in support of the defence, but due to some miscommunication on the day of adducing evidence neither the OP who is an old and aged person suffering from illness could appear before the Learned Tribunal nor his attorney could appear before the Tribunal along with the original documents in support of his defence for which the Learned Tribunal below fastened the liability with the OP owner and submitted that if the cross objection is not allowed then the cross-objector shall suffer severe irreparable loss and urged for allowing the OP owner to adduce those documents either by himself or through his attorney before the Learned Tribunal below by remanding back the case to the Learned Tribunal for the sake of justice.

06. For the sake of convenience, I would like to mention here in below the operative portion of the award/judgment of the Learned Tribunal below dated 25.11.2022 which is as under:

"It is, therefore, held that the petitioners are entitled to get compensation of Rs.97,64,200/- (Rupees Ninety-seven Lakh Sixty four Thousand Two Hundred only) with interest @ 6% per annum with effect from 02.01.2017 i.e. the date of filing of the claim petition till the date of actual payment. The owner of the Oil Tanker namely, Sri Jagannath Prasad, S/O. Late Gouri Sankar Prasad, 34 Nabin Sen Road, Siliguri, District, Darjeeling, West Bengal

will pay the amount of compensation with interest within 30 days from today.

Out of the awarded amount of compensation inclusive of interest, the petitioner no.1 will get 60% and petitioner no.2 will get 40%. Out of the respective share of petitioners no.1 and 2, 50% each of their share shall be kept in fixed deposit scheme in their respective name at the UCO Bank, District Court Branch, Agartala for a period of five years and remaining 50% of their respective share shall be paid to them through their respective bank account. No loan or withdrawal shall be permitted from any of the fixed deposit certificates without prior permission of this Tribunal. Petitioners no.1 and 2 shall however be at liberty to withdraw monthly interest from their fixed deposit accounts to meet their day to day expenses.

Supply copy of this award free of cost to the parties.

The claim petition stands disposed of on contest.

Enter the result in the relevant register as well as in the CIS."

07. I have heard detailed argument of Learned counsels at length and perused the record of the Learned Tribunal below as well as the memo of appeal and the cross-objection filed by the objector. Admittedly, in the case, there was no dispute on record in respect of the death of the deceased Arindam Chakraborty due to road traffic accident on 08.07.2015 inside Agartala Airport on link road near IOC complex. To substantiate the claim the appellant claimant-petitioners adduced two witnesses i.e. the claimant-petitioner No.1 as PW-1 and one Pranay Sarkar as PW-2 and relied upon some documentary evidences which were marked as Exbt.1-7. The contesting respondent OPs by the art of cross-examination could not discard the evidence of the appellant claimant-petitioner No.1 and their witnesses save and except denial and also the respondent OPs in support of their defence did not adduce any oral/documentary evidence on record and finally after going

through the pleadings of the parties and on perusal of the documentary evidence on record the Learned Tribunal below delivered the award as aforesaid.

08. In course of hearing of argument, Learned counsel appearing for the appellant claimant-petitioners relied upon one judgment of the Hon'ble Supreme Court of India in **United India Insurance Company Limited vs. Laxmamma and Others** reported in **(2012) 5 SCC 234**.

In para-26 Hon'ble the Apex court observed as under:

"26. In our view, the legal position is this: where the policy of insurance is issued by an authorised insurer on receipt of cheque towards the payment of premium and such a cheque is returned dishonoured, the liability of the authorised insurer to indemnify the third parties in respect of the liability which that policy covered subsists and it has to satisfy the award of compensation by reason of the provisions of Sections 147(5) and 149(1) of the MV Act unless the policy of insurance is cancelled by the authorized insurer and intimation of such cancellation has reached the insured before the accident. In other words, where the policy of insurance is issued by an authorised insurer to cover a vehicle on receipt of the cheque paid towards premium and the cheque gets dishonoured and before the accident of the vehicle occurs, such insurance company cancels the policy of insurance and sends intimation thereof to the owner, the insurance company's liability to indemnify the third parties which that policy covered ceases and the insurance company is not liable to satisfy awards of compensation in respect thereof."

Learned counsel Mr. Sinha also relied upon another judgment of the Hon'ble High Court of Karnataka in **M.F.A. NO.7043/2014 (MV-I)** dated 02.12.2022. In para-15 of the judgment Hon'ble Karnataka High Court observed as under:

"15. The counsel for the respondent also brought to notice of this Court the manner of receipt of premium regulations of 2002 and I have already discussed regulation Nos.3 and 4 with regard to mode of payment as well as commencement of risk. The issue involved between the parties also considered by the Apex Court in the case of ORIENTAL INSURANCE CO. 14 LTD., vs INDERJIT KAUR AND OTHERS reported in (1998) 1 SCC

371. The counsel would contend that the Apex Court has not discussed the same but in this judgment particularly Insurance Act, 1938, Section 64VB was discussed by the Apex Court regarding liability of insurer when cheque received towards premium dishonoured but policy not avoided. Insurer issuing insurance policy on receiving cheque towards premium, cheque dishonoured, insurer informing the insured that the cheque having been dishonoured, the insurer would not be at risk. In such circumstances, the insurer, even if he was entitled to avoid the policy for not having received the premium, held, nonetheless liable for third party risks as the public interest served by an insurance policy must prevail over the insurer's interest. It is further observed that the insurance policy, left open, public interest. It is held that despite the bar created by Section 64VB of the Insurance Act, the appellant, an authorized insurer, issued a policy of insurance to cover the bus without receiving the premium therefore. By reason of the provisions of Sections 147(5) and 149(1) of the Motor Vehicles Act, the appellant became liable to indemnify third parties in respect of 15 the liability which that policy covered and to satisfy award of compensation in respect thereof notwithstanding its entitlement (upon this question the supreme Court did not express any opinion) to avoid or cancel the policy for the reason that the cheque issued in payment of the premium thereon had not been honoured."

Referring the same, Learned counsel appearing for the appellant submitted that both the aforesaid cases are relevant for decision of this appeal.

09. On the other hand, Learned counsel Mr. A. K. Deb representing the Insurance Company, in course of hearing of argument relied upon the judgment of the Hon'ble Supreme Court of India in **National Insurance Company Limited** (supra) in para No.44 where the Apex court observed as under:

"44. At this stage, we must immediately say that insofar as the aforesaid multiplicand/multiplier is concerned, it has to be accepted on the basis of income established by the legal representatives of the deceased. Future prospects are to be added to the sum on the percentage basis and "income" means actual income less than the tax paid. The multiplier has already been fixed in Sarla Verma which has been approved in Reshma Kumari with which we concur."

Referring the same Learned counsel for the insurance company submitted that at the time of delivery of

the award Learned Tribunal below in para No.14 on perusal of Exbt.6 i.e. the salary slip for the month of June, 2015 of the deceased determined the monthly gross salary of the deceased as Rs.1,11,870/- and from that amount he deducted Rs.180/- and deducted Rs.16,923/- as income tax. Thus he calculated his monthly income after deducting the aforesaid taxes amounting to Rs.95,397/-. After that he added 15% of the said income as future income in view of the aforesaid judgment of the Hon'ble Supreme Court.

10. So after going through the Exbt.6 it appears to me that the Learned Tribunal below did not commit any error or wrong in calculating monthly income of the deceased. So the submission of the Learned counsel for the claimants that Exbt.6 was not properly appreciated by the Learned Tribunal below was not correct for which the judgment of the Learned Tribunal needs no interference to the extent as stated above. The citations as referred by appellant-claimants are not relevant for the decision of this case. Now in respect of fastening the liability to the cross-objector i.e. the owner of the offending vehicle it appears that before the Learned Tribunal the OP owner on 27.03.2019 submitted his written statement through his attorney Abhay Kant Kumar and submitted the photocopy of attorney and other documents before the Learned Tribunal. But at the time of recording evidence neither the OP owner Jagannath Prasad nor his Attorney as stated above

appeared along with the original documents to substantiate the written statement rebutting the claim of the appellant claimant-petitioners for which the Learned Tribunal below rightly fastened the liability of payment of compensation to the OP owner for want of proving of original insurance policy and other connected documents. Since the OP owner took the plea that on the alleged day the offending vehicle had all the valid documents of the vehicle including valid insurance policy and valid driving license of the driver, so it appears that for the sake of justice opportunity be given to the cross-objector is the respondent OP owner to adduce his oral as well as documentary evidence to substantiate his defence so as to exonerate him from the liability of payment of compensation as per award of the Tribunal if he actually has got valid documents of the offending vehicle on the day of alleged accident.

11. In the result, the appeal filed by the appellant claimant-petitioners stands dismissed being devoid of merit and the cross-objection filed by the respondent OP owner as well as the prayer for adducing additional evidence is hereby allowed. The case be remanded back to the Learned Tribunal below with a direction to give an opportunity to the respondent OP owner to adduce his oral as well as documentary evidence with opportunity to the other contesting parties to cross-examine the OP. The Learned Tribunal shall deliver a fresh judgment after taking evidence

of the OP owner and at the time of delivery of judgment the rate of interest @6% p.a. as imposed earlier with effect from 25.11.2022 to till date i.e. date of delivery of this present judgment be fixed upon the OP owner as due to his fault that liability has fasten upon the insurance company. The entire exercise shall be completed within a period of one month from the date of receipt of the copy of this judgment by the Tribunal. Learned counsels for the parties are hereby requested to cooperate with the Tribunal for early disposal of the case. The OP owner shall appear before the Learned Tribunal on **15.03.2024** and adduce his oral/documentary evidence, if any. With this observation, the award of the Learned Tribunal is modified to the extent above and both the cases are disposed of accordingly. Pending application(s) if any, stands disposed of.

A copy of this judgment be supplied to the Learned counsel Mr. C. S. Sinha for the appellant claimant-petitioners and Mr. A. K. Deb, Learned counsel representing the respondent, OP No.2 i.e. National Insurance Company Limited and also Learned counsel Mr. D. J. Saha representing the respondent O.P. No.1. Send down the LCRs along with a copy of this judgment.

JUDGE

SABYASACHI

BHATTACHARJEE

Moumita

Digitally signed by SABYASACHI
BHATTACHARJEE
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