

**HIGH COURT OF TRIPURA
AGARTALA
MAC App. No.26 of 2023**

The National Insurance Company Ltd
(To be represented by Divisional Manager),
Agartala Divisional Officer, 42, Akhaura Road,
P.O.-Agartala, District-West Tripura, Pin-799001

----Insurer Appellant(s)

Versus

1. Sri Nandalal Rupini,
S/O Sri Panchadhan Rupini

2. Smti Hema Malini Rupini
W/O Sri Nandalal Rupini,
Both are residents of Atuk Thang Bari, Jirania
P.S.-Jirania, District-West Tripura

----Claimant-respondent(s)

3. Smti Pinki Das (Deb),
W/O Late Shibu Deb

4. Sri Subhajit Deb,
S/O Late Shibu Deb

Both are resident of Das Para, Amarpur,
P.S. – Ampa, District – Gomati.
Sl.No.3 & 4 (Owners of TR-01-J-6882, Motor Cycle)

----Owner respondent(s)

For Petitioner(s)	:	Mr. A. K. Deb, Adv.
For Respondent(s)	:	None.
Date of hearing	:	11.01.2024
Date of delivery of Judgment & Order	:	25.01.2024
Whether fit for reporting	:	NO

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

The National Insurance Company Limited as an appellant has preferred this appeal under Section 173 of M.V. Act challenging the award dated 05.01.2023 passed in

connection with Case No. T.S.(MAC) 81 of 2017 by Motor Accident Claims Tribunal (Tribunal No.2), Agartala, West Tripura District. The appellant by the memo of appeal has prayed for modification of the award.

2. The gist of the appeal in short, is that the respondent claimant-petitioners have filed one claim petition under Section 166 of M.V. Act claiming compensation of Rs.26,40,000/- (Rupees Twenty-six lakh forty thousand only) with 14% interest for the death of their minor son, Bisesh Rupini who died due to a vehicular accident. The said accident occurred on 20.04.2017 at about 10:30 hrs at Champaknagar bazaar under Jirania PS due to rash driving of motor cycle bearing No. TR-01-J-6882. At the time of accident, said Bisesh Rupini was walking on foot with his grandmother at Champaknagar bazaar and after the accident the deceased was brought to Jirania Hospital with multiple grievous injuries on different parts of his body and thereafter he was referred to AGMC and GBP Hospital at Agartala and on 21.04.2017, he succumbed to injuries. On that issue, a case bearing Jirania P.S. case No.19/2017 under Section 279/338 of IPC & 184/187 of the M.V. Act was registered. Further, according to the respondent claimant-petitioners, deceased was 10 years old at the time of his death and was a student of Class-V.

3. The OP respondents No.3 and 4 being the owners of motorcycle bearing No.TR-01-J-6882 contested the claim by filing their joint written statement and denied all the allegations

made in the claim petition and also contended that on the alleged day, the offending motorcycle was insured with the National Insurance Co. Ltd. i.e. the present appellant covering the period of alleged incident and submitted that if any liability arises that would be borne by the O.P. Insurance Company.

4. The present appellant as O.P No.2 being the insurer of the motorcycle No.TR-01-J-6882 by filing written statement denied the accident and submitted that the claim petition was not maintainable and baseless and further submitted that if any terms and conditions of the insurance policy is violated then the OP No.2 i.e. the Insurance Company shall not be liable to pay any compensation as per Section 149(2) of M.V. Act and further submitted that on the alleged day, the offending motor bike was not involved in any accident as such the claimants were not entitled to get any compensation and further submitted that the claim was excessive and exorbitant.

5. Learned Tribunal on the basis of the pleadings of the parties framed the following issues:

I) If the death of deceased Bishesh Rupini was caused on the alleged date, time and place due to road traffic accident n the rash and negligent riding of the rider of alleged motor bike? If so are the claimant petitioners entitled to get compensation?

II) What should be amount of compensation and who shall be held liable to pay the compensation?

6. To substantiate the claim petition, the respondent claimant-petitioner No.2 was examined herself as PW1 and

relied upon some documentary evidence which were marked as exhibits before the Learned Tribunal:

1) Certified copy of FIR, ejahar, post mortem and final report in c.w. Jiraniai PS case No.19 of 2017 in 13 sheets-[Ext.1(i) to 1(xii)];

2) Photocopy of Adhar Card of the deceased (compared with the original)-(Exbt-2);

3) Photocopy of Adhar Card of PW1 (compared with the original)-(Exbt-3)

On the other side, the respondent O.P. owner examined one Litan Dey as OPW-1 and relied upon some documentary evidences:

1. Original copy of screen report in respect of vehicle bearing No.TR-01-J-6882 (Motor Bike)-Exbt.A;

2. Photocopy of policy of insurance in respect of said vehicle (compared with the original)-Exbt.B;

3. Photocopy of driving license of OPW1(compared with the original)-Exbt.C.

7. Learned Tribunal after considering the evidence on record and also after hearing both the sides finally determined the compensation of Rs.10,05,000/- (Rupees Ten Lakh five thousand only) with 9% simple interest per annum from the date of registration of the claim i.e. w.e.f. 05.05.2017 till the date of realization with a further direction to the Insurance Company to deposit the amount within a period of one month.

8. Challenging that award the appellant has preferred this appeal under Section 173 of M.V. Act. It is to be noted here that at the time of hearing Learned Counsel for the appellant submitted that the Learned Tribunal wrongly determined the amount of compensation and awarded

excessive and exorbitant amount, which needs to be modified. Learned Counsel for the appellant further submitted that the Learned Tribunal relying upon the judgment of this Court in **Akinchan Chakraborty and another v. Oriental Insurance Co. Ltd. and anr., (Case No. MAC App. No.96 of 2013 decided on 03.06.2016)** wherein the Hon'ble High Court relied upon another decision of Hon'ble Supreme Court in **Kishan Gopal & Anr vs Lala & Ors** reported in **2013, ACJ 2594**, assessed the notional income of the deceased (who was aged about 10 years and was a student) at Rs.30,000/- per annum in place of Rs.15,000/- and applying multiplier of 15 granted compensation of Rs.4,50,000/- as pecuniary damage and further awarded a sum of Rs.50,000/- for loss of expectation of life and sum of Rs.5,000/- for funeral expenses calculated amount of compensation of Rs.4,50,000/- and thereafter added Rs.50,000/- towards loss of expectation of life and Rs.5,000/- for funeral expenses but without application of proper mind and in absence of any settled principle of law further awarded Rs.5,00,000/- towards love and affection which according to Learned Counsel for the appellant was not justified and beyond the settled principles of law. So, Learned Counsel urged before the Court for intervention by modifying the award.

9. As already stated none appeared on behalf of the respondents to contest this present appeal. I have heard argument of Learned Counsel for the appellant and also gone through the record of the Learned Tribunal below. There is no

dispute on record in respect of accident on the alleged date and time also in respect of death of the deceased on that date and time. Further, there was no dispute on record that at the time of death the deceased was aged about 10 years old and was a school-going student.

10. Relying upon the aforesaid judgment of the High Court and also relying upon the judgment of **Kishan Gopal** (supra), Learned Tribunal below determined the notional income of the deceased at Rs.30,000/- per annum and along with that amount applied multiplier as 15 and calculated compensation amounting to Rs.4,50,000/- which in my considered view, Learned Tribunal below rightly adopted and decided and after that Learned Tribunal below with that amount awarded Rs.50,000/- towards loss of expectation of life and Rs.5,000/- as funeral expenses. That amount also in my considered view Learned Tribunal below rightly determined and Learned Counsel for the appellant at the time of hearing also did not submit anything regarding the aforesaid amount of compensation awarded.

11. Now, in respect of loss of love and affection, Learned Tribunal below awarded Rs.5,00,000/-. In this regard, Learned Counsel for the appellant relied upon one citation of the Hon'ble Supreme Court of India. In **United India Insurance Company Limited vs Satinder Kaur alias Satwinder Kaur in Civil Appeal No.2705 of 2020** reported

in **(2021) 11 SCC 780** wherein Hon'ble the Apex Court in para 34 and 35 has observed as under :

"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 the High Courts have been awarding compensation for both of loss of consortium and loss of love and affection. The Constitution Bench in Pranay Sethi (2017) 16 SCC 680, 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 the 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."

From the aforesaid citation of the Hon'ble Apex Court, it appears that Hon'ble Apex Court discarded to award compensation towards love and affection as a separate head. But here in the case at hand, the Learned Tribunal below awarded compensation of Rs.5,00,000/- towards loss of love and affection to the claimant-petitioners which in my considered view Learned Tribunal below wrongly decided ignoring the principle of law laid down by the Hon'ble Supreme Court. So, this amount needs to be modified as awarded by the Learned Tribunal. But at the same time, in the aforesaid judgment Hon'ble Supreme Court in para 30, 31, 32 and 33 further observed as under:

"30. In Magma General Insurance Co. Ltd v. Nanu Ram :(2018) 18 SCC 130 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*."

From the above principle of law laid down by the Hon'ble Apex Court, it appears that the respondent claimant-petitioners being the parents of the deceased are entitled to get filial consortium. In pursuance of the judgment of **National Insurance Company Limited v. Pranay Sethi and others** reported in **(2017)16 SCC 680** in para 52 wherein the Hon'ble Apex Court decided to award loss of consortium of Rs.40,000/- along with funeral expenses and loss of estate. So, in the

present case Filial consortium Rs.40,000/- x 2 i.e. 80,000/- which the claimant-petitioners are entitled to get from the appellant and the respondent claimant-petitioners are also entitled to get Rs.15,000/- towards funeral expenses. But the Tribunal below has awarded only Rs.5,000/-. So, an addition of Rs.10,000/- will be added with the compensation awarded by the Learned Tribunal, as funeral expenses.

12. So, after hearing Learned Counsel for the appellant and also after going through the record of the Learned Tribunal below, it appears that the respondent claimants are entitled to get the compensation as follows:-

- | | |
|---------------------------|---------------|
| i) Income(30,000 x 15) : | Rs.4,50,000/- |
| ii) Loss of expectation : | Rs. 50,000/- |
| iii) Funeral Expenses : | Rs. 15,000/- |
| iv) Filial Consortium : | Rs. 80,000 |
| (40,000 x 2) | |

Total compensation to be paid : Rs.5,95,000/-

13. In the result, the appeal filed by the insurer-appellant is partly allowed with modification that the respondent claimant-petitioners shall entitled to get award of Rs.5,95,000/- (Rupees Five Lakhs ninety-five thousand only) with 9% simple interest per annum from the date of registration of claim petition i.e. 05.05.2017 till the date of realization in place of Rs.10,05,000/- as awarded by the Learned Tribunal. The rest operative portion of the award of the Learned Tribunal below regarding disbursal of amount shall remain unchanged. The

Insurance Company shall comply with the order within a period of one month from the date of passing of this judgment.

A copy of the judgment be given to the Learned Counsel for the appellant for immediate compliance free of cost.

14. With this observation, the appeal stands disposed of. Send down the LCR alongwith a copy of this judgment. Pending application(s), if any, also stands disposed of.

