

**HIGH COURT OF TRIPURA
AGARTALA**

MAC App. No.27 of 2024

Smt. Dipali Majumder (Saha),

Wife of Sri Nepal Saha, aged about 57 years,
Resident of Joynagar, P.O.- Birendranagar,
P.S. Jirania, Dist.- West Tripura.

....Claimant- Petitioner-Appellant

Versus

- 1. Smt. Badali Debbarma,**
Wife of Sri Pradip Debbarma,
Resident of Kunja Behari Para, P.O.-Birendranagar,
P.S.-Jirania, Dist.- West Tripura. Pin-799131.
(Owner of TR-01-BM-0751, Hyundai Verna)
- 2. The Branch Manager,**
Reliance General Insurance Company Limited of 3rd Floor,
602/J, Ker Chowmuhan, T.G. Road, Agartala,
P.S.- West Agartala, District- West Tripura, Pin-799002
(Insurer of TR-01-BM-0751, Hyundai Verna)
- 3. Sri Nepal Saha,**
Son of Lt. Gopal Saha,
Resident of vill- Joynagar, P.O.- Birendranagar,
P.S.- Jirania, District-West Tripura, Pin-799131
(Owner of TR-01-S-7955, Motor Cycle)
- 4. The Branch Manager,**
Bajaj Allianz General Insurance Company Limited of 3rd
Floor, Aitorma, Agartala Sentrum, Sakuntala Road,
P.S.- West Agartala, District- West Tripura,
P.O.-Agartala, Pin-799001
(Insurer of TR-01-S-7955, Motor Cycle)

.....Respondents

For Appellant(s)	:	Mr. S. Lodh, Adv.
For Respondent(s)	:	Mr. S. Chakraborty, Adv, Mr. R. G. Chakraborty, Adv.
Date of Hearing	:	05.11.2024
Date of delivery of Judgment and Order	:	07.11.2024
Whether fit for 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 22.11.2023 delivered by Learned Member, MAC Tribunal No.2, West Tripura, Agartala in connection with case No. T.S. (MAC) 54 of 2021. By the said judgment and award, Learned Tribunal below has awarded a sum of Rs.15,82,000/- in favour of the claimant-petitioner i.e. the appellant herein and fastened the liability of payment of compensation upon the O.P. No.2 i.e. the Reliance General Insurance Company Limited.

02. Heard Learned Counsel, Mr. S. Lodh representing the claimant-petitioner i.e. the appellant herein and also heard Learned Counsel, Mr. R. G. Chakraborty representing the respondent O.P. No.2 i.e. the Reliance General Insurance Company Limited and Learned Counsel, Mr. S. Chakraborty representing the respondent O.P. No.4 i.e. the Bajaj Allianz General Insurance Company Limited. None appeared on behalf on behalf of the respondent Nos.1 and 3 inspite of service of notice.

03. In course of hearing of argument, Learned Counsel for the appellant-claimant first of all drawn the attention of the Court that in the claim-petition the appellant shown the monthly income of the deceased at Rs.12,000/- per month and accordingly, the appellant adduced evidence before the

Learned Tribunal below and PW2 Sanjoy Sarkar in course of his examination stated that he has appointed the deceased as his driver and used to pay Rs.12,000/- per month as his salary and in addition to monthly salary he also used to pay Rs.50/- per day to him as food allowance which was mentioned in para No.2 of his examination-in-chief in affidavit submitted before the Tribunal and the testimony of the said witness has remained unrebutted/unshaken by the contesting O.Ps before the Learned Tribunal below but the Learned Tribunal below at the time of delivery of the judgment determined the monthly income of the deceased at Rs.10,000/- per month which should be atleast 12,000/- per month and urged for allowing this appeal on the said ground.

Learned Counsel further submitted that the Learned Tribunal below in the operative portion of the judgment only released Rs.2,00,000/- in favour of the appellant-claimant-petitioner and ordered for deposit of the balance money to the fixed deposit certificates which should also be modified as the appellant-petitioner being major having no other source of income and if the entire amount is kept in Fixed Deposit, in that case she would suffer financial inconvenience and also urged for modification of the order of the Learned Tribunal below.

04. On the other hand, Learned Counsel Mr. R. G. Chakraborty appearing on behalf of the respondent O.P. No.2

i.e. the Reliance General Insurance Company Limited submitted that the Learned Tribunal below based on the oral/documentary evidence on record rightly and reasonably determined the amount of compensation and delivered the judgment and furthermore, before the Learned Tribunal below the Insurance Company objected the contention of the petitioner regarding amount of monthly income of the deceased and he also drawn the attention of the Court referring the evidence of PW2 and submitted that PW2 himself is a driver, so, no reliance can be placed upon his evidence and urged for dismissal of the appeal. Learned Counsel for another Insurance Company did not submit anything in course of hearing of argument.

05. The present appellant as claimant filed a claim petition before the Tribunal under Section 166 of M.V. Act seeking compensation on the death of her son Prasenjit Saha who died due to a road traffic accident. According to the appellant on 18.02.2021 the deceased Prasenjit Saha was proceeding towards his house from Ranirbazar along with his friend by riding his motor cycle bearing registration No.TR-01-S-7955 by the left side of the road and at about 2130 hours when he reached at Bashkobra Near Kali Mandir on NH-8 Assam-Agartala road that time one vehicle bearing registration No.TR-01-BN-0751 (Hyundai Verna) was proceeding towards the same direction but the driver due to his rash and negligent driving and excessive speed lost control over the vehicle and

dashed behind the motor cycle of the deceased Prasenjit Saha, as a result of which Prasenjit Saha sustained fatal injuries and after the accident, he was immediately shifted to Jirania Hospital where the attending doctor declared him as dead. It was further submitted that the accident occurred due to rash and negligent driving by the driver of the said Hyundai Verna. The appellant further asserted that at the time of accident, the deceased was a driver by profession and was earning Rs.12,000/- per month and at the time of death he was unmarried and 22 years of old. Hence, the appellant filed the claim-petition.

Before the Tribunal, the O.P. No.1 i.e. the owner of vehicle bearing No.TR-01-BN-0751 (Hyundai Verna) appeared and submitted WS denying the assertions of the claimant petitioner and also took the plea that her vehicle was duly insured with the Reliance General Insurance Company Limited vide policy No.991492123740003782.

O.P. No.2 i.e. the Reliance General Insurance Company Limited appeared and submitted that the claim-petition is subjected to strict proof by the claimant-petitioner.

O.P. No.3, owner of the motor cycle bearing No.TR-01-S-7955 appeared and denied the averments made in the claim-petition and submitted that the accident occurred due to rash and negligent driving by the driver of the vehicle bearing No.TR-01-BN-0751 (Hyundai Verna). It was further submitted that the said motor cycle was duly insured with O.P. No.4 i.e.

the Bajaj Allianz General Insurance Company Limited and the deceased Prasenjit Saha had valid driving licence at the time of accident.

O.P. No.4 i.e. the Bajaj Allianz General Insurance Company Limited appeared and filed written statement and stated that the owner and driver of the vehicle bearing registration No.TR-01-BN-0751 (Hyundai Verna) was responsible for the alleged accident.

06. Upon the pleadings of the parties following issues were framed:

(I) Is the claim maintainable in its present form and nature ?

(II) If the death of the deceased Prasenjit Saha caused due to road traffic accident on the alleged date, time and place on account of rash and negligent driving on the part of the driver of vehicle bearing No. TR-01-BN-0751(Hyundai Verna)? If so, is the claimant petitioner entitled to get compensation as prayed for?

(III) What should be the quantum of compensation and who shall be liable to pay the compensation?

(IV) Relief/Reliefs?

07. To substantiate the issues the appellant herself was examined as PW1 and adduced another witness as PW2 and relied upon some documents which were marked as Exhibit-1(i) to 1(xxxi). The O.P. Nos.1 and 3 also filed their examination-in-chief in affidavit.

08. Finally on conclusion of the proceeding Learned Tribunal below allowed the claim-petition filed by the claimant-

appellant and awarded a sum of Rs.15,82,000/- along with 7.5% interest from the date of filing the claim-petition till the date of payment. For the sake of convenience the operative portion of the judgment/award dated 22.11.2023 runs as follows:

ORDER

22. The instant application under Section-166 of the Motor Vehicles Act, 1988 filed by the claimant-petitioner is hereby partly allowed and a sum of Rs.15,82,000.00(Rupees Fifteen Lakh Eighty Two Thousand) only is awarded in favour of claimant – petitioner as compensation for the death of her son late Prasenjit Saha, in a Road Traffic Accident, as aforesaid, and thus whole amount of compensation shall be paid by OP No.2, the reliance General Insurance Co. Ltd., being insurer, within a period of one month. The aforesaid amount shall carry interest @ 7.5% per annum to be paid from the date of filing of claim-petition, i.e., from 19.03.2021 till the date of payment.

23. In the event of deposit of the awarded amount with interest, Rs.2,00,000.00 shall be released in favour of of the claimant-petitioner, in her bank account for enabling her to meet necessary expenses because at this stage the claimant might require money to sustain her livelihood and the rest amount shall be kept in numbers of fixed deposit schemes each with Rs.5,00,000.00 in any Nationalized Bank for five years in her name separately.

24. No loan or withdrawal shall be permitted in the fixed deposit account nor joint name shall be allowed nor any cheque book, ATM card can be issued against fixed deposit account. However the interest to be credited in the fixed deposit may be released in favour of the claim-petitioner as per Bank's norms. 25. Let a copy of this Award be furnished to the parties through their engaged Ld. Counsels, for information. 26. The case is thus disposed of on contest. Enter the result in the relevant Register.

09. I have heard argument of both the sides and gone through the record of the Learned Tribunal below

including the judgment award delivered by Learned Tribunal below. In para No.14 of the judgment, it appears that Learned Tribunal below did not rely upon the evidence of PW2. So, in absence of cogent proof the Tribunal below determined the monthly income of the deceased at Rs.10,000/- per month like an unskilled worker. As already stated in the claim-petition the appellant asserted the monthly income of the deceased at Rs.12,000/- and the appellant as PW1 also reiterated the same fact. But PW2 who was also a driver by profession stated that he used to pay Rs.12,000/- per month to the deceased as his salary and in addition to that he used to pay Rs.50/- as daily food allowance to the deceased. But that part of evidence remained unshaken by the other contesting parties save and except denial. The incident took place on 18.02.2021. The Tribunal without any basis determined the monthly income of the deceased at Rs.10,000/- per month like an unskilled worker.

10. It is the admitted position that said deceased was a driver by profession. So, assuming that the deceased was a driver and in the year 2021 by driving vehicles he could easily earn Rs.400/- per day. So, taking into account the daily income at Rs.400/- per day, the Tribunal ought to have consider Rs.12,000/- per month as monthly income as a driver on that relevant point of time. Thus, in my considered view, the Tribunal below erred in deciding the monthly income of the deceased at Rs.10,000/- per month being a driver. So, after

hearing both the sides, it appears that the Learned Tribunal below committed error in deciding the monthly income of the deceased. So, this Court after hearing both the sides comes to the conclusion that the deceased during the year 2021 easily could earn atleast Rs.400/- per day i.e. Rs.12,000/- per month. So, his monthly income would be assessed to Rs.12,000/-.

11. Situated thus, the amount of compensation be recalculated as under:

(i) Monthly income: Rs.12,000/-

(ii) Rs.12,000 (monthly income) + Rs.4,800/- (40% of future prospects)= Rs.16,800/-

(iii) 50% be deducted towards personal living expense of the deceased from Rs.16,800/-. The same comes to Rs.8,400/-. Thus, yearly income comes to Rs.8,400 x 12= Rs.1,00,800/-.

(iv) With the aforesaid amount multiplier 18 be allowed as per Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr. Thus, loss of dependency comes to Rs.1,00,800/- x 18= Rs.18,14,400/-.

(v) With the aforesaid amount Rs.15,000/- be added as loss of estate, Rs.15,000/- be added as funeral expenses as per judgment delivered by the Hon'ble Supreme Court of India in National Insurance Company Limited vs. Pranay Sethi and Ors. and Rs.40,000/- be added as parental consortium as per judgment of the Magma General Insurance

Company Ltd. vs. Nanu Ram, reported in (2018) SCC OnLine SC 1546. Thus the claimant will be entitled to get Rs.18,14,400/- (loss of dependency) + Rs.15,000/- (for funeral expenses) + Rs.15,000/- (for loss of estate) + Rs.40,000/- (for loss of parental consortium) = Rs.18,84,400/- as total amount of compensation.

12. In the result, the appeal is partly allowed with modification that the claimant will be entitled to get total compensation amounting to Rs.18,84,400/- along with 7% interest per annum in place of 7.5% interest awarded by the Tribunal from the date of filing the claim-petition i.e. w.e.f. 19.03.2021 till the date of payment. The respondent O.P. No.2 shall be asked to deposit the amount to the Learned Tribunal below within a period of two months from the date of passing of this judgment. In the event of deposit of amount 50% of the total amount of compensation be released in favour of the appellant-petitioner and the rest amount shall be deposited in a Fixed Deposit Certificate in any Nationalized Bank for a period of 10 years by the Tribunal below in the name of the petitioner.

A copy of this judgment/order be given free of cost to the Learned Counsel for the appellant for information.

A copy of this judgment/order be furnished to Learned Counsel for the respondent No.2 i.e. the Reliance General Insurance Company Limited for information and

compliance. With this observation this appeal stands disposed of.

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

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

JUDGE



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