

**HIGH COURT OF TRIPURA
AGARTALA**

MAC App. No.35 of 2024

The Branch Manager,

The Oriental Insurance Company Ltd.
Dharmanagar Branch, Raj Bari, Dharmanagar,
District- North Tripura,

A Company registered under the Companies Act, 1956,
Represented by the Assistant Manager cum Officer in
Legal Hub / Authorized Signatory, Agartala, Division
Office, H.G.B. Road, (Near Sarkar Nursing Home),
Agartala, West Tripura.

....Appellant

Versus

- 1. Smt Nisha Nath**
W/O- Late Arabindu Nath, aged about 44 years
- 2. Master Arjun Debnath,**
S/O- Late Arabindu Nath, aged about 17 years
- 3. Master Udoy Nath**
S/O- Late Arabindu Nath, aged about 12 years
- 4. Master Banu Nath**
S/O- Late Arabindu Nath, aged about 06 years

(The Claimants No.2, 3 and 4 are minors and being represented by their natural guardian mother namely Smt. Nisha Nath, being the claimant No.1).

(All are residents of Village-Bursingpara, Laljuri, PS- Kanchanpur, District- North Tripura)

....Claimants-Respondents

- 5. Shri Ranadhir Nath**
Son of Late Rangadeb Nath
of Netajinagar, PS-Kanchanpur,
District- North Tripura.
(Owner cum driver of vehicle bearing registration No.TR-02B-3562)

....Respondent

For Appellant(s)	:	Mr. B. Majumder, Adv.
For Respondent(s)	:	Mr. Alik Das, Adv.
Date of Hearing	:	04.11.2024
Date of delivery of Judgment and Order	:	07.11.2024
Whether fit for Reporting	:	NO

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This is appeal under Section 173 of M.V. Act is preferred challenging the judgment and award dated 22.03.2023 delivered by Learned Member, Motor Accident Claims Tribunal, North Tripura, Dharmanagar in connection with case No. T.S. (MAC) 31 of 2018. By the said judgment and award, Learned Tribunal below has awarded a sum of Rs.10,82,000/- and fastened the liability for payment of compensation upon the Insurance Company i.e. the present appellant.

02. Heard Learned Counsel, Mr. B. Majumder representing the appellant-Insurance Company and also heard Learned Counsel, Mr. Alik Das representing the claimant-respondents but none appeared on behalf of the respondent-owner-cum-driver of the offending vehicle bearing registration No.TR-02B-3562.

03. In course of hearing of argument, Learned Counsel for the appellant first of all drawn the attention of the Court that the Learned Tribunal below at the time of delivery of

judgment did not frame proper issues for which the judgment and award suffers from infirmities. Learned Counsel further submitted that relevant documents of the offending vehicle were not properly produced and marked for exhibits by the owner before the Learned Tribunal but the Learned Tribunal below ignoring the same delivered the judgment for which the judgment cannot be sustained in the eye of law.

It was further submitted that before the Tribunal the offending driver who drove the vehicle on the alleged day of accident was not made as party, for which the judgment suffers from non-joinder of necessary parties. Further Learned Counsel also submitted that from the contents of the claim-petition, it is clear that the offending vehicle had driven more than the permitted passengers as per permit and thus violated the terms and conditions of the policy of insurance and as such no liability could be fastened upon the Insurance Company, but the Learned Tribunal below at the time of delivery of judgment did not consider the same for which the interference of the Court is required and urged for allowing this appeal by setting aside the judgment of the Learned Tribunal below.

04. On the other hand, Learned Counsel for the claimant-respondents submitted that before the Learned Tribunal below the respondent-claimants adduced oral/documentary evidence on record in support of their claim. So, there was no infirmity in the judgment of the Learned

Tribunal below and furthermore, Learned Counsel for the claimant-respondents submitted that before the Tribunal the present appellant did not adduce any oral/documentary evidence on record in support of their defence, as such the points raised by Learned Counsel for the appellant cannot be accepted at this stage and urged for dismissal of this appeal with costs.

05. In the case at hand, the respondent-claimants filed one application under Section 166 of M.V. Act before the Learned Tribunal below seeking compensation amounting to Rs.21,03,334/- due to sudden death of Arabindu Nath in a motor accident which took place on 05.03.2018 at about 14.00 hours on Kanchanpur-Joyshree road near Joyshree H.S. School. The brief contents of the application filed by the respondent-claimants was in short is that on 05.03.2018 at about 14.00 hours when the deceased Arabindu Nath went to Laljuri market along with some other political persons of ruling Bharatiya Janata Party for attending a procession and while he along with others boarded in a vehicle bearing registration No.TR-02B-3562 for proceeding towards Joyshree and as soon as the vehicle reached nearby Joyshree School, that time the driver due to his rash and negligent driving lost his control over the vehicle and the vehicle was capsized on the road and the accident took place. As a result of which Arabindu Nath sustained severe injury on the orbital area of his forehead and other parts of the body. Later on, the members of the said

procession rescued him from the place of occurrence and shifted him to the Kanchanpur Government Hospital where the attending doctor declared him as dead. On the same day, post-mortem examination was conducted over the dead body of said Arabindu Nath.

It was further stated by the respondent- claimants that the deceased was a cultivator by profession and was also a business man and at the time of death, he was aged about 51 years and used to earn Rs.15,000/- per month. Hence, the respondent-claimants filed the claim-petition. On receipt of claim-petition, notices were served upon the opposite parties from the Tribunal and both the opposite parties appeared and contested the claim by filing written statement denying the averments made in the claim-petition.

The O.P. No.1 in the written statement submitted that on the alleged day of accident the vehicle had valid insurance policy with the opposite party No.2, i.e. the Oriental Insurance Company Limited, the appellant herein, vide policy No.322790/31/2018/310 which was valid from 27.04.2017 to 26.04.2018 and the vehicle had other documents like certificate of registration, tax token, permit, certificate of fitness, driving licence etc. So, by the written statement the O.P. No.1 took the plea that if any liability arises that should borne by the Insurance Company.

The O.P. No.2 i.e. the present appellant in the written statement denied the contents of the claim-petition and

submitted that the claim-petition is subjected to strict proof by the respondent-claimants. The Learned Tribunal below upon the pleadings of the parties framed the following issues:

(i) Whether the suit is maintainable?

(ii) Whether the injured-deceased namely Arabindu Nath sustained any injury due to any motor vehicular accident which took place on 05-03-2018 at about 14.30 hours at Kanchanpur-Jayashree Road near Jayshree Class XII School due to rash and negligent driving of the offending driver of TR-02B-3562 (Mahindra Bolero) ?

(iii) Whether the claimant is entitled to get compensation and if so, what would be the quantum of compensation and who shall be liable to pay the compensation amount?

(iv) Any other relief/reliefs as the claimant petitioners are entitled to?

06. To substantiate the issues both the parties have adduced oral/documentary evidence on record:

Witnesses of Claimant-respondents:-

PW1 – Smt. Nisha Nath

PW2- Sri Srikanta Debnath

Exhibits of PW1:-

(1) Certified Copy of Printed FIR form in two sheets as Exhibit-1(as a whole).

(2) Certified copy of written 'Ejhar of Anamika Nath in two sheets marked as Exhibit2(as a whole).

(3) Certified copy of the seizure list dated 05.03.2018 in one sheet marked as Exhibit-3 (as a whole).

(4) Certified copy of seizure list dated 12.03.2018 in one sheet marked as Exhibit-4 (as a whole).

(5) Certified copy hand ketch map dated 05.03.2018 marked as Exhibit-5 (as a whole).

(6) Certified copy of index of the hand sketch map marked as Exhibit-6 (as a whole).

(7) Statement under Section 161 of Cr.P.C of Sri Srikanta Debnath marked as Exhibit7 (as a whole).

(8) Certified copy of Postmortem report of Arabinda Nath in five sheets marked as Exhibit-8 (as a whole).

(9) Certified copy of Final Report in connection with case Kanchanpur PS case No. 2018 KCP 13 in two sheets marked as Exhibit-9 (as a whole).

(10) Xerox copy of Aadhaar Card of Smt. Nisha Nath marked as Exhibit-10 (as a whole).

(11) Xerox copy of Aadhaar Card of Banu Nath marked as Exhibit-11 (as a whole).

(12) Xerox copy of Aadhaar Card of Arjun Debnath marked as Exhibit-12 (as a whole).

(13) Xerox copy of Aadhaar Card of Uday Nath marked as Exhibit-13 (as a whole).

(14) Xerox copy of Aadhaar Card of Arabindu Nath marked as Exhibit-14 (as a whole).

(15) Xerox copy of Death Certificate of Arabindu Nath marked as Exhibit-15 (as a whole).

O.P. Witness:-

O.P.W 1 – Sri Ranadhir Nath

Exhibits of OPW1:-

(a) Copy of the fitness certificate vehicle bearing registration No. TR-02B3562 marked as Exhibit-A.

(b) Copy of insurance policy vehicle bearing registration No. TR-02B-3562 marked as Exhibit-B.

(c) Copy of registration certificate vehicle bearing registration No. TR-02B3562 marked as Exhibit-C.

(d) Copy of contract carriage permit vehicle bearing registration No. TR-02B3562 marked as Exhibit-D.

(e) Copy of pollution under control certificate of vehicle bearing registration No. TR-02B-3562 marked as Exhibit-E.

(f) Copy of driving license of Sri Ranadhir Nath issued on 15-06-2016 and valid till (T) 09-10-2020 and valid till (NT) 09-04-2025 marked as Exhibit-F.

07. Finally on conclusion of the proceeding Learned Tribunal below allowed the claim-petition filed by the respondent-claimant-petitioners and awarded a sum of Rs.10,82,000/- as already stated. For the sake of convenience

the operative portion of the judgment/award dated 22.03.2023 runs as follows:

ORDER

"17. In view of the above discussion and findings, the application under Section 166 of the Motor Vehicles Act, 1988 filed by the claimants is allowed on contest.

The Opposite Party No.2, The Branch Manager, Oriental Insurance Company Ltd. Rajbari, Dharmanagar, North Tripura shall pay the compensation of Rs.10,82,000/- (Rupees ten lakh eighty two thousand two hundred) only to the claimants within a period of 30 days from this day of award. This award of compensation shall carry interest at the rate of 5% per annum from the date of presentation of the claim petition before this Tribunal i.e. 14-11-2018 till the realization. The share of the claimant-petitioner no.1, Smt. Nisha Nath will be (Rs.2,60,500/- + Rs.40,000/-) = Rs.3,00,500/- with accrued interest.

The share of the claimant-petitioners no. 2, 3 and 4 namely Sri Arjun Debnath, Master Uday Nath and Master Banu Nath will be Rs.2,60,500/- (Rupees two lakh sixty thousand five hundred) only each with accrued interest.

18. Keeping in mind the guidelines of Hon'ble Apex Court in General Manager, Kerala State Road Transport Corporation, Trivandam Vs. Ms. Sushama Thomas and others (AIR 1994 SC 1631) and the guidelines as laid down in Union Carbide Corporations case (1991) 4 SCC 584 and subsequent decision of the Hon'ble High Court of Tripura in case no. MAC Application 36 of 2006 Joydeep Chakraborty Vs. Pintu Sharma and another since the claimant petitioners no. 2, 3 and 4 are minors, it is ordered that the share of the minors together with interest shall be fixed in a long term fixed deposit scheme at least for a period of six years or till they attain their majority in their respective names in any Nationalized Bank. No loan or other advances in any form shall be allowed on such fixed certificates without the express permission of this tribunal.

The share of the claimant-petitioner no.1, Smt. Nisha Nath shall be released in her favour by transmitting it directly to her savings bank account to allow her to meet the expenditure of their livelihood which she might have incurred for the death of the deceased.

Supply a copy of the judgment to the claimant-petitioners and a copy of the judgment shall also be communicated to the Opposite Party No.2, The Branch Manager, Oriental Insurance Company Ltd. Rajbari,

Dharmanagar, North Tripura to facilitate the payment of the awarded compensation in time.

Thus, the instant claim petition is disposed off on contest."

Challenging the judgment and award, this present appeal is preferred.

08. I have gone through the judgment and award delivered by the Learned Tribunal below and also perused the record of the Learned Tribunal below. It appears that although the respondent-claimant-petitioners alleged that the deceased used to earn Rs.15,000/- per month but in absence specific evidence on record Learned Tribunal below determined the monthly income of the deceased at Rs.10,000/- per month as the accident took place during the year 2018. Before this Court, the appellant also did not submit anything regarding determination of monthly income at the rate of Rs.10,000/- by the Tribunal below nor they adduced any contrary evidence on record to disbelieve the amount of monthly income determined by the Learned Tribunal below.

09. Admittedly in this case, the O.P. No.1 was the driver-cum-owner of the vehicle on the day of alleged accident. So, the plea taken by the Learned Counsel for the appellant that the driver was not made a party in the claim-petition is not correct and cannot be accepted.

10. On perusal of the judgment, further it appears that Learned Tribunal below at the time of delivery of judgment determined the monthly income of the deceased at the rate of Rs.10,000/- per month and with that amount added 15% as

future prospects and calculated the monthly income of the deceased for the purpose of claim-petition at Rs.11,500/- and thereafter, deducted one third ($1/3^{\text{rd}}$) of this personal income since the deceased was a married person and was aged about 51 years and relying upon the judgment of the **Tilak Chandra's case** determined multiplier 11 and after calculation determined Rs.10,12,000/- under the head "loss of income" and awarded the said amount and also, added Rs.15,000/- as loss of estate, Rs.40,000/- as loss of consortium and Rs.15,000/- as funeral expenses. Thus, finally, the Learned Tribunal below calculated the total amount of compensation at Rs.10,82,000/- and with that amount awarded 5% simple interest from the date of filing the claim-petition to till the date of realization.

11. Thus, after going through the judgment and award delivered by Learned Tribunal below, it appears that Learned Tribunal below after considering the oral/documentary evidence on record and also after relying upon the judgment delivered by the Hon'ble Supreme Court of India in **National Insurance Company Limited vs. Pranay Sethi and Ors.** dated 31.10.2017 in SLP (Civil) No.25590 of 2014, finally determined the aforesaid amount with interest as compensation on the claim-petition filed by the respondent claimant-petitioners and from the contents of the judgment, it appears that Learned Tribunal below rightly and reasonably after considering all the factors properly determined the

amount of compensation for which this Court does not find any scope to interfere with the judgment and award delivered by the Learned Tribunal below. The points of argument as raised by Learned Counsel for the appellant in course of hearing does not have any credence to decide this present appeal and those points as raised by Learned Counsel for the appellant are not supported by any cogent materials on record and as such the present appeal is liable to be dismissed henceforth.

From the side of the respondent-claimants also there was no cross-objection on the amount of award delivered by the Learned Tribunal below. So, the present appellant is liable to be paid the award of compensation to the respondent-claimants as on the day of alleged accident the vehicle had valid insurance policy coverage under the present appellant and the owner-cum-driver had valid driving licence to drive the vehicle on the alleged day.

12. In the result, the appeal filed by the appellant stands dismissed being devoid of merit. The judgment and award delivered by the Learned Tribunal below dated 22.03.2023 in connection with case No.T.S.(MAC) 31 of 2018 is hereby upheld and accordingly, it is affirmed. The appellant is hereby asked to pay 50% amount of compensation along with interest as per judgment of the Learned Tribunal below to the Registry of this High Court within a period of six (06) weeks from the date of delivery of the judgment as the appellant-

Insurance Company on 28.08.2024 has already deposited 50% of the award of compensation to the Registry of High Court.

A copy of this judgment/order be supplied to Learned Counsel for the appellant 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



**MOUMITA
DATTA**

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