

HIGH COURT OF TRIPURA
AGARTALA
MAC. APP.No.30 of 2023

The Oriental Insurance Company Limited,
represented by the Divisional Manager,
Agartala, Division Office,
H.G.B. Road (Near Sarkar Nursing Home),
Agartala, West Tripura

----- Appellant(s)

Versus

1. Smt. Sandhya Debnath,
wife of late Jitendra Debnath

2. Master Diptanu Debnath,
son of late Jitendra Debnath

3. Miss Diya Debnath,
daughter of late Jitendra Debnath

4. Sri Bimal Debnath,
son of late Jitendra Debnath,
all are residents of Village-Chandraichara,
P.S. Ambassa, District- Dhalai Tripura,
Agartala, P.S. East Agartala, District- West Tripura

The petitioner Nos.2 & 3 being minors are represented
by their natural guardian and next friend mother,
the petitioner No.1.

-----Claimant-Respondent(s)

Sri Manik Lal Saha,
son of Subal Chandra Saha,
resident of Village-jangalia,
P.O. Bishalgarh, P.S. Bishalgarh,
District- Sepahijala, Tripura
(Owner of the Truck bearing No.NL-01-N-0176)

-----Respondent(s)

For Appellant(s)	:	Mr. Biswanath Majumder, Adv.
For Respondent(s)	:	Mr. Samar Das, Adv.
Date of Hearing	:	20.02.2024
Date of Judgment & Order	:	23.02.2024
Whether fit for reporting	:	NO

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

Heard Mr. Biswanath Majumder, Learned counsel appearing for the appellant-Oriental Insurance Company Limited as well as Mr. Samar Das, Learned counsel appearing for the claimant-respondents. None appeared for the other respondent when the matter is called out.

2. This is an appeal by the Insurer namely Oriental Insurance Company Limited challenging the judgment and award dated 06.12.2022 passed by the Learned Motor Accident Claims Tribunal No.1, West Tripura, Agartala in connection with Case No.T.S.(MAC)169 of 2020.

3. The genesis of the case of the respondent-claimants before the Learned tribunal was that on 16.10.2020 at about 6:30 am in the morning when the victim Jitendra Debnath along with one co-worker namely Amit Paul were proceeding towards Jaharnagar towards Ambassa by riding the motor cycle bearing registration No.TR-02-F-5664 with normal speed and when they reached near the house of one Bikram Das that time one twelve wheeler Truck bearing registration No.NL-01-N-0176 was coming from the opposite direction being driven by the driver very rashly and negligently and at a very high speed lost control over the vehicle and dashed against the said motor cycle coming to the wrong side of the road resulting which the victim Jitendra Debnath sustained fracture injuries on his person and fell down on the road with severe bleeding injuries and died at the spot. After the accident, the driver of the offending Truck was trying to flee away from the place of occurrence with the Truck by driving the same and as a result, the driver of the said Truck again lost control over the vehicle and dashed another female person namely Riya Namasura who also died at the spot. Thereafter,

postmortem examination was done over the dead bodies by doctor of Kulai Hospital, Ambassa on the same day. Further, according to the claimant-petitioners, the accident took place due to rash and negligent driving with high speed by the driver of the Truck bearing registration No.NL-01-N-0176.

4. Regarding the accident an FIR was registered with Ambassa Police Station vide Ambassa P.S. Case No.45 of 2020 under Sections 279/338/304(A) of IPC and the respondent-claimants ultimately filed the claim petition before the Learned tribunal. Before the tribunal, the OP owner filed written statement denying the assertions of the respondent-claimant petitioners and also took the plea that the accident occurred on that day due to rash and negligent driving of the rider of the motor bike bearing registration No.TR-02-F-5664 and further took the plea that on the alleged day his vehicle was duly insured with the Oriental Insurance Company and if any compensation is awarded that should be paid by the Insurer of the said vehicle. The noticee i.e. the Oriental Insurance Company Limited also filed written statement denying the entire assertions. They also took the plea that the accident occurred due to rash and negligent driving of the motor cycle by the deceased. As such, the petitioners are not entitled to get any compensation and also took the plea that the owner of the Truck is to produce the original Insurance policy of the vehicle along with the driving license of the driver with other relevant documents and prayed for dismissal of the claim petition. On the pleadings of the parties, three issues were framed and both the parties adduced evidence and finally by the judgment/award as aforesaid Learned tribunal below awarded compensation allowing the prayer of the claimant-petitioners. For the sake of convenience, the operative portion of the order of Learned tribunal below runs as follows :

"It is, therefore, held that the petitioners are entitled to get compensation of Rs.32,33,000/- (Rupees Thirty two Lakh Thirty three Thousand only) with interest @ 9% per annum from 24.11.2020 i.e. from the date of filing of the claim petition till the date of actual payment. The Noticee No.2 Oriental Insurance Co. Ltd. is directed to make the payment 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 40% and other petitioners no.2,3 and 4 will get 20% each. Out of the respective share of the petitioners no.1 and 4, 50% each of their share shall be kept in a fixed deposit scheme in their respective names in any Nationalized Bank for a period of five years each and rest 50% of their respective share will be paid to them through their respective Bank Account. However, the petitioners No.1 and 4 shall be entitled to receive monthly interest therefrom for their day to day expenses. The entire share of minor petitioners no.2 and 3 will be kept in fixed deposit scheme in their respective names in the same bank and branch of the petitioners no.1 and 4 till they become major i.e. 21 years of age. The petitioner no.1 being the natural guardian and next friend mother of the minor petitioners no.2 and 3 is also entitled to receive monthly interest from their fixed deposit account and to utilize the same for their proper upbringing. No loan or withdrawal shall be permitted from any of the fixed deposit accounts without prior permission of this Tribunal."

Challenging the judgment/award as aforesaid, the present appellant has preferred this appeal before the High Court.

5. In course of hearing of argument, Learned counsel for the appellants submitted that the judgment/award of the Learned tribunal suffers from various infirmities as because the owner of the offending motor cycle was not made as party by the respondent-claimant petitioners in the original claim petition. No enquiry was made by the tribunal under Section 169 of the M.V. Act.

6. Learned counsel for the appellant further drawn the attention of the Court that by the impugned judgment/award the father of the deceased was treated as the dependent but as per law he was not dependent and there was no such evidence on record that the father of the deceased was dependent on the income of the deceased. As such,

Learned tribunal below committed serious infirmities in the process of assessment of compensation.

7. Further, according to Learned counsel for the appellant, the respondent-claimant petitioners before the tribunal failed to produce and proof any income certificate of the deceased, no certificate showing the actual age of the deceased was produced before the Learned tribunal by the respondent-claimant petitioners and the Learned tribunal also failed to frame the proper issues. So, according to the Learned counsel, the award of the Learned tribunal was suffers from various infirmities and furthermore, in deciding the compensation Learned tribunal awarded interest @ 9% p.a. which was too excessive and high beyond the principles of law laid down by this High Court. Even, the driving license of the driver of the motor bike was not produced before the Learned tribunal by the respondent-claimant petitioners. So, Learned counsel for the appellant at the time of hearing of argument submitted that as the Learned tribunal below did not consider the above aspects in delivering the judgment/award, so, the appeal be allowed by setting aside the judgment of the Learned tribunal.

8. On the contrary, Learned counsel for the respondent-claimant petitioners strongly countered the submission made by Learned counsel for the appellant and submitted that the Insurance Company has no locus standi to file this appeal under Section 149(2) of M.V. Act being a noticee and furthermore, the driver of the offending Truck was not a necessary party for determination of the compensation because as per the policy it was the joint liability of the owner of the offending Truck as well as the Insurer to pay compensation to the actual claimants. Learned counsel for the respondent-claimant petitioners further submitted that

after considering the oral and documentary evidence on record, Learned tribunal below rightly determined the amount of compensation. So, Learned counsel for the respondent-claimant petitioners finally urged for dismissal of the appeal upholding the judgment of the Learned tribunal below. In support of his contention, Learned counsel for the respondent-claimant petitioners referred few citations.

9. I have heard submission of Learned counsels at length and also gone through the record of the Learned tribunal below and also the citations as referred by the Learned counsel for the respondent-claimant petitioners. The Learned tribunal below at the time of determination of compensation determined the compensation to Rs.32,33,000/- (Rupees Thirty Two Lakh Thirty Three Thousand only) and awarded interest @ 9% p.a. from 24.11.2020 i.e. from the date of filing the claim petition by the respondent-claimant petitioners till the date of actual payment.

10. In **The IFFCO TOKIO General Insurance Company Limited versus Smti. Uma Adhikari (Barua)** [judgment dated 27.01.2017 in MAC.APP.No.26 of 2016] this High Court at the time of determination of the appeal in para-6 observed as under :

"6. Mr. Das, learned counsel has relied a decision of this court in New India Assurance Company Limited versus Bishaka Rudra Paul and Another reported in (2014) 1 TLR 497, where this court has clearly held that :

"The insurer as the noticee has no locus standi to challenge the award passed by the tribunal on questioning its legality inasmuch as the notice does not have that status to carry out an appeal under Section 173 of the Motor Vehicles Act beyond the grounds those would flow from Section 149(2) of the Motor Vehicles Act. Apart that, if on the premises as provided under Section 170(b) of the Motor Vehicles Act, the insurer is not provided with leave by the tribunal for resorting to all the defences as available to the owner of the vehicle or the driver, the insurer even as the party cannot resort to all such defences available to the owner/driver."

11. In **Maheshwari and Others versus Ramachandran and Others** reported in **(2023) ACJ 1210 [CA No.9187 of 2022; decided on 13.12.2022]** the Hon'ble Supreme Court of India in para-12 observed as under :

"12. The notional income of the deceased is thus fixed at Rs.15,000/- per month."

12. Further, in **Josphine James versus United India Insurance Co.Ltd. & Anr.** reported in **2013 STPL(Web)663 SC** the Hon'ble Supreme Court of India in paras-13 & 19 observed as under :

"13. It is an undisputed fact that the son of the appellant died in a motor vehicle accident on 12.6.1998, who was the sole earning member of the family. The respondent driver and insurer were initially impleaded as parties but notice could not be served to the driver despite repeated efforts. The driver was therefore later on deleted from the array of parties on the basis of the decisions of various High Courts including Delhi High Court wherein it was held that non-impleadment of driver of the offending vehicle is not fatal to the proceedings in view of the fact that the liability of the owner and the insurer of the offending vehicle is joint and several. The insured was placed ex-parte since he remained absent despite the service of notice upon him in the proceeding whereas the Insurance Company filed written statement wherein it has admitted that on the date of accident the offending truck stood duly insured with it and the insured was respondent No. 2 in the proceedings before the Tribunal.

19. Further, the award of interest at the rate of 6% per annum on the compensation as has been awarded both by the Tribunal and the High Court is also bad in law for the reason that in the case of Municipal Council of Delhi Vs. Association of Victims of Uphaar Tragedy : (2011) 4 SCC 481 this Court has awarded interest at the rate of 9% per annum on the compensation awarded in favour of the appellant. There is no justification for them in not applying the ratio of the abovementioned case to the fact situation of the present case. We therefore, grant interest at the rate of 9% per annum on the compensation amount awarded by the Tribunal as the Insurance Company has been contesting the case without any justifiable reason. Further, the Insurance Company has deprived the appellant of the benefit of her legitimate claim of getting the compensation and she was made to approach the court for determination of the claim even after passing of the award by the Tribunal since the same was contested by the Insurance Company by filing appeal by urging wholly untenable grounds which are not maintainable in law. Accordingly, we allow the appeal by setting aside the impugned judgment and award of the High Court and restore the compensation awarded by the Tribunal of Rs. 13,07,000/- both under the heads of pecuniary and non-pecuniary damages and the said amount carries 9% interest per annum from the date of filing of the application till the date of payment of the amount. We

direct the Insurance Company to deposit 50% of the awarded amount with proportionate interest in any of the nationalized Banks of the choice of the appellant for a period of 3 years. During the said period, if she wants to withdraw a portion or entire deposited amount for her personal or any other expenses, then she is at liberty to file application before the Tribunal which may be considered by it and pass appropriate order in this regard. If the amount of compensation has not yet been paid by the Insurance Company to the appellant, the same shall be paid within six weeks by obtaining demand draft in favour of the appellant."

13. In **New India Assurance Company Ltd. versus Bishaka Rudra Paul and Anr.** reported in **(2014) 1 TLR 497** this Court further observed as under :

6. Mr. S.K. Datta, learned counsel appearing for the respondents at the outset has vociferously raised the appellant's objection as to whether the New India Assurance Company Ltd. has got any locus-standi to prefer an appeal under Section 173 of the Motor Vehicles Act on challenging the quantum or resorting to any other grounds beyond what has been provided under Section 149(2) of the Motor Vehicles Act or without taking leave of the tribunal for taking all defences under Section 170 of the Motor Vehicles Act. Mr. S.K. Datta, learned counsel appearing for the respondents has submitted that the New India Assurance Company Ltd. was not a party in the proceeding being T.S. (MAC) 52 of 2011. The New India Assurance Company Ltd. was a noticee and the same would be apparent from the judgment and award dated 06.05.2013. He has further contended that even if the noticee does file the reply to the show cause, he cannot be considered as the party. Noticee is a non party observant, thus the noticee does not have any locus-standi to file an appeal under Section 173 of the Motor Vehicles Act.

7. Mr. S.K. Datta, learned counsel appearing for the respondents, relying on **United India Insurance Company Ltd. vs. Shila Datta and Others**, reported in 2011 ACJ 2729, has contended that when the insurance company is a noticee, not a party respondent it can oppose the claim on the grounds mentioned in Section 149(2) of the Motor Vehicles Act. For purpose of appreciation, the paragraphs 7,8,9 & 10 of **Shila Datta** (supra) are reproduced hereunder:

"7. The scheme of the Motor Vehicles Act, 1988, as contained in Chapters XI (Insurance of Motor Vehicles against Third Party risks) and XII (Claims Tribunals) proceeds on the basis that an insurer need not be impleaded as a party to the claim proceedings and it should only be issued a statutory notice under Section 149(2) of the Act so that it can be made liable to pay the compensation awarded by the tribunal and also resist the claim on any one of the grounds mentioned in Clauses (a) and (b) of Sub-section (2) of Section 149. Sub-sections (1), (2) and (7) of Section 149 clearly refer to the insurer being merely a noticee and not a party. Similarly, Sections

158(6), 166(4), 168(1) and 170 clearly provide for and contemplate insurer being merely a noticee for the purposes mentioned in the Act and not being a party respondent. Section 170 specifically refers to impleading of insurer as a party to the claim proceedings.

8. When an insurer is impleaded as a party - Respondent to the claim petition, as contrasted from merely being a noticee under Section 149(2) of the Act, its rights are significantly different. If the insurer is only a noticee, it can only raise such of those grounds as are permissible in law under Section 149(2). But if he is a party-respondent, it can raise, not only those grounds which are available under Section 149(2), but also all other grounds that are available to a person against whom a claim is made. It therefore follows that if a claimant impleads the insurer as a party-respondent, for whatever reason, then as such Respondent, the insurer will be entitled to urge all contentions and grounds which may be available to it.

9. The Act does not require the claimants to implead the insurer as a party Respondent. But if the claimants choose to implead the insurer as a party, not being a noticee under Section 149(2), the insurer can urge all grounds and not necessarily the limited grounds mentioned in Section 149(2) of the Act. If the insurer is already a Respondent (having been impleaded as a party Respondent), it need not seek the permission' of the Tribunal under Section 170 of the Act to raise grounds other than those mentioned in Section 149(2) of the Act. The entire scheme and structure of Chapters XI and XII is that the claimant files a claim petition only against the owner and driver and the tribunal issues notice to the insurer under Section 149(2) so that it can be made liable to pay the amount awarded against the insurer and if necessary, deny liability under the policy of insurance, on any of the grounds mentioned in Section 149(2). If an insurer is only a noticee and not a party Respondent, having regard to the decision in Nicolletta Rohtagi, it can defend the claim only on the grounds mentioned in Section 149(2) and not any of the other grounds relating to merits available to the insured-respondent. This is the position even where the claim proceedings are initiated suo moto under Sections 149(7) and 158(6) of the Act, without any formal application by the claimants, as the insurer is only a noticee under Section 149(2) of the Act.

10. Section 170 of the Act does not contemplate an insurer making an application for impleadment. Nor does it contemplate the insurer, if he is already impleaded as a party Respondent by the claimants, making any application seeking permission to contest the matter on merits. Section 170 proceeds on the assumption that a claim petition is filed by the claimants, or is registered suo moto by the tribunal, with only the owner and driver of the vehicle as the Respondents. It also proceeds

on the basis that in such a proceeding, a statutory notice would have been issued by the tribunal to the insurer so that the insurer may know about its future liability in the claim petition and also resist the claim, on any of the grounds mentioned in Section 149(2). Section 170 of the Act also assumes that the tribunal will hold an inquiry into the claim, where only the claimants and the owner and driver will be the parties. Section 170 provides that if during the course of such inquiry, the tribunal finds and satisfies itself that there is any collusion between the claimant and the owner/driver or where the owner/driver has failed to contest the claim, the tribunal may suo moto, for reasons to be recorded in writing, direct that the insurer who may be liable in respect of the claim, who was till then only a noticee, shall be treated as a party to the proceedings. The insurer so impleaded, without prejudice to the provisions of Section 149(2), will have the right to contest the claim on all or any of the grounds that are available to the driver/owner."

14. A conjoint reading of the principles as laid down in Shila Datta (supra) and Rekha Jain v. National Insurance Company Ltd. : 2013 STPL (Web) 612 SC it would eminently transpire that the insurer as the noticee has no locus-standi to challenge the award passed by the tribunal on questioning its legality inasmuch as the noticee does not have that status to carry out an appeal under Section 173 of the Motor Vehicles Act beyond the grounds those would flow from Section 149(2) of the Motor Vehicles Act. Apart that, if on the premises as provided under Section 170(b) of the Motor Vehicles Act, the insurer is not provided with leave by the tribunal for resorting to all the defences as available to the owner of the vehicle or the driver, the insurer even as the party cannot resort to all such defences as available to the owner/driver. Indubitably in this case, the appellant is simply a noticee. Thus, in view of Shila Datta (supra) the appellant does not have any locus-standi to carry out this appeal on questioning the quantum either directly or by implications and accordingly, this appeal fails and is dismissed. However, there shall be no order as to costs."

14. Here in the case at hand, it appears that the Learned tribunal below at the time of determination of compensation considered all the relevant points as well as documentary evidence on record adduced by the parties and ultimately determined the amount of compensation/award. In view of the principles of law down by the Hon'ble Apex Court and the High Court and also scrutinizing the grounds of objection this Court is constrained to hold that in this case the appellant being a noticee does not have a legal right to raise the

objection as has been raised in the appeal and accordingly, this appeal being bereft of merit and accordingly stands dismissed. The judgment/award dated 06.12.2022 passed by the Learned Motor Accident Claims Tribunal No.1, West Tripura, Agartala in connection with Case No.T.S.(MAC)169 of 2020 is hereby upheld and accordingly it is affirmed.

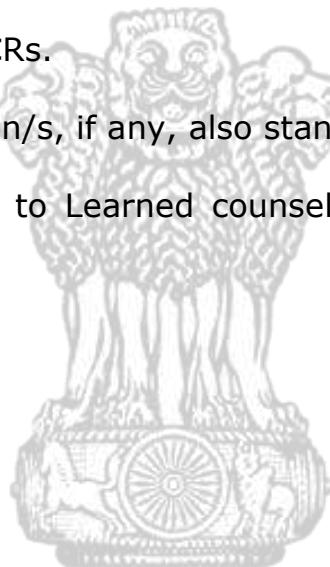
The sum as awarded by the tribunal if not paid by the appellant Insurance Company shall be paid within a period of 2(two) months from today.

There shall be no order as to costs.

Send down the LCRs.

Pending application/s, if any, also stands dismissed.

Copy be supplied to Learned counsels for information and compliance.



सत्यमेव जयते

JUDGE

Digitally signed by Sabyasachi
BHATTACHARJEE
Date: 2024.02.26 14:53:59 +05'30'

Sabyasachi B