

**HIGH COURT OF TRIPURA  
AGARTALA**

**MAC APP No.39 of 2024**

**Divisional Manager,**

Shriram General Insurance Company Limited,  
E-8, EPIP, Sitapura Industrial Area,  
Jaipur, Rajasthan, PIN: 302022,  
(Insurer of the vehicle bearing Registration  
Number TR- 01S-1822, Bolero Truck)

----Appellant (s)

Versus

**1. Smt. Anjali Shib,**

Wife of Late Samarendra Shib

**2. Sri Sajal Shib,**

Son of Late Samarendra Shib

**3. Sri Pinku Shib,**

Son of Late Samarendra Shib

**4. Sri Mitran Shib,**

Son of Late Samarendra Shib

-All are residents of village: Jangalia,  
P.O. & P.S. Bishalgarh, PIN:799 102,  
District: Sepahijala , Tripura

**5. Smt. Rupali Shib,**

Wife of Sri Sanjit Debnath,  
Daughter of Late Samarendra Shib,  
Resident of village:Konaban,  
P.S. Bishalgarh, PIN 799102,  
District: Sepahijala, Tripura

---- Claimant-Respondents (s)

**6. Sri Tahed Miah,**

Son of Late Mati Miah,  
Resident of village: Routhkhola,  
P.S. Bishalgarh, PIN 799102,  
District: Sepahijala, Tripura,  
(Owner of the vehicle bearing  
Registration No.TR-01S-1822 Bolero Truck)

---- Owner-Respondents (s)

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|-------------------------------------------|---|-----------------------------------------|
| For Appellant(s)                          | : | Mr. K. De, Adv.                         |
| For Respondent(s)                         | : | Mr. D. Deb, Adv.<br>Mr. S. Sarkar, Adv. |
| Date of Hearing                           | : | 09.08.2024                              |
| Date of delivery of<br>Judgment and Order | : | 16.08.2024                              |
| Whether fit for<br>Reporting              | : | YES/NO                                  |

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**HON'BLE MR. JUSTICE BISWAJIT PALIT**

**Judgment & Order**

This appeal is preferred challenging the judgment and award dated 19.09.2023 delivered by Learned Motor Accident Claims Tribunal No.2, West Tripura, Agartala in connection with Case No.TS(MAC) 86 of 2014.

**02.** Heard Learned counsel Mr. K. De appearing for the appellant and Learned counsel Mr. D. Deb and Learned counsel Mr. S. Sarkar appearing for the claimant-respondents. None appeared on behalf of the owner-respondent.

**03.** In course of hearing of argument Learned counsel appearing for the appellant submitted that the claimant-respondents initially filed one claim petition before the Learned Motor Accident Claims Tribunal which was numbered as TS(MAC) 86 of 2014 and after conclusion of proceeding by judgment and award dated 31.01.2018 allowed the claim petition of the claimant-petitioner but Learned Tribunal fastened the liability of payment of compensation upon the owner of the vehicle. Challenging that judgment the owner respondents preferred an appeal before the High court and this High Court by judgment dated 26.03.2019 in MAC APP No.68 of 2018 along with CO(FA) No.5 of 2018 disposed of the appeal with certain observations in para No.10 of the said judgment remanded

back the matter and thereafter the matter was taken before the Learned MAC Tribunal No.2. Learned MAC Tribunal after hearing both the parties and taking evidence on record allowed the petition but enhanced the amount of award and fastened the liability of payment of compensation to the present appellant i.e. insurance company and challenging that judgment/award this present appeal is preferred by the appellant. It was further submitted that the accident occurred on 11.10.2013 and accordingly the victim petitioner Samarendra Shib filed the claim petition on the ground of sustaining injury which was allowed by the then Tribunal but during pendency of the case the original petitioner expired and his legal heirs were joined as substituted claimant-petitioners before the Tribunal. But the Learned Tribunal below without treating the claim petition as a case of injury determined the amount of compensation as a death case due to road traffic accident but his death was not related to said accident because the accident took place in the year 2013 but he expired during the year 2020 after elapsing of a long period for which the judgment and award of the Learned Tribunal below suffers from infirmities and prayed for setting aside the judgment of the Learned Tribunal below. Learned counsel further submitted that in determining the amount of compensation Learned Tribunal below applied multiplier in pursuance of the judgment of the Hon'ble Supreme Court in **Sarla Verma and Others vs.**

**Delhi Transport Corporation and Another** reported in **(2009) 6 SCC 121** and also relied upon another citation in **National Insurance Company Limited vs. Pranay Sethi and Others** reported in **(2017) 16 SCC 680**. Referring both the cases Learned counsel for the appellant submitted that in both the cases multiplier and future prospects were taken into consideration considering the death of the deceased. But here in the case at hand the victim sustained injury for which he became permanently disabled, but ignoring the principles of law laid down by the Hon'ble Apex Court in the aforesaid cases Learned Tribunal below determined the amount of compensation for death which was not tenable in the eye of law and referring another citation of the Hon'ble Supreme Court of India in **United India Insurance Company Limited vs. Satinder Kaur alias Satwinder Kaur** reported in **(2021) 11 SCC 780** Learned counsel for the appellant further submitted that loss of estate would be determined in pursuance of the judgment of the Hon'ble Apex Court. But the Learned Tribunal below also did not consider the same principle and passed the award for which the interference of the court is required and urged for allowing this appeal by setting aside the judgment and award of the Learned Tribunal below.

**04.** On the other hand, Learned counsel for the respondent-claimants fairly submitted that it is the admitted position that the accident occurred in the year 2013 and due

to accident the victim became permanently disabled but later on in connection with the injury during the year 2020 the victim succumbed to his injury for which the Learned Tribunal below rightly decided the issues and allowed the claim petition and reasonably determined the amount of compensation for which there is no scope at this stage to interfere with the award of the Learned Tribunal below and Learned counsel for the respondents in support of his contention also relied upon one judgment of this High Court in **Hari Mohan Das and Ors. vs. Panchadeep Travels and Ors.** reported in **(2016) 1 TLR 818** and submitted that in view of the principle of the aforesaid judgment the claimants are entitled to get compensation treating the case as death due to road traffic accident. So there was no infirmity or perversity in the judgment of the Learned Tribunal below and in addition to that Learned counsel for the respondents also referred two other citations of the Hon'ble Apex Court in **United India Insurance Co. Ltd. vs. Syed Mahaboob (D) by LRs.** reported in **AIR 2006 (NOC) 545(KANT)** and **North West Karnataka Road Transport Corporation vs. Dundappa Ramappa Rakshit & Ors.** reported in **AIR 2006 (NOC) 759 (UTR.)** and finally submitted that since there was no perversity in the judgment of the Learned Tribunal below, so there is no scope to interfere with the award of the Learned Tribunal. So Learned counsel urged for dismissal of this appeal.

**05.** Now before coming to the conclusion let us discuss about the subject matter of the claim petition. The original claim petition was submitted by the victim Samarendra Shib, himself with the allegation that on 11.10.2013 at about 900 hours when the claimant was going to Bishalgarh market from his home at Jangalia and reached nearby a grocery shop of Nakul Saha that time a motor vehicle bearing No.TR-01S-1822 (Bolero Truck) came from the side of Agartala towards Sonamura with high speed being driven in a rash and negligent manner and dashed against the original claimant who was walking to the left side of the road and as a result the claimant fell down on the road and sustained fracture injuries on his right leg and other injuries on various parts of the body and became senseless and thereafter he was taken to Bishalgarh Hospital and wherefrom he was referred to GBP Hospital and thereafter he was referred to SSKM Hospital, Kolkata on 15.10.2013 and the claimant went therein being escorted by his son and other relatives on 17.10.2013 but as the bed was not available in SSKM Hospital so he was admitted in Bhattacharjee Orthopedics and Related Research Centre Pvt. Ltd., Narayanpur, Kolkata and there he was treated for more than a month but he could not recover fully and on return he availed treatment at GBP Hospital and thus he permanently disabled for the injuries sustained and the Medical Board after considering his injury certified his

disability to the extent of 80%. It was also submitted by him that due to his disability he was unable to move properly and could not utilize the leg for operating weaving machine and as such the claimant became income less for the maintenance of his family members including his wife, sons and daughter and claimed Rs.35,00,000/- as compensation. In the said claim petition OP owner appeared and submitted that the vehicle was duly insured with Shriram General Insurance Co. Ltd. and the vehicle was driven by the driver Litan Das who had valid driving license on the date of the accident and the OP insurance company by filing written statement submitted that the claim petition was subjected to strict proof. Finally on conclusion of the proceeding the First Tribunal determined the amount of compensation to the tune of Rs.3,77,553.00/- for the injuries sustained by the victim in vehicular accident and fastened the liability to the owner of the vehicle bearing No.TR-01S-1822 vide judgment and award dated 31.01.2018 as the OP owner failed to produce the relevant documents to substantiate his defence. For the sake of convenience, the operative portion of the judgment and award dated 31.01.2018 in TS(MAC)86 of 2014 runs as follows:

**"10. In the result, the petition under Section 166 of the Motor Vehicles Act is hereby allowed on contest. The claimant is awarded a sum of Rs.3,77,553/- (Rupees three lakh seventy seven thousand five hundred fifty three) only as compensation for the injuries sustained by him in a vehicular accident. Shri Tahed Miah being the owner of the offending vehicle bearing No.TR-01-S-1822**

is hereby directed to pay the said amount of compensation to the claimant within a period of 30(thirty) days from the date of judgment. This amount shall carry interest @ 6% (six per cent) per annum from the date of presentation of the petition before the Tribunal on 04.03.2014 till the payment is made."

**06.** The claimant himself preferred appeal before this High court which was numbered as MAC APP 68 of 2018 and in the said appeal cross objection was filed by the OP owner which was numbered as CO(FA) No.5 of 2018. This High Court by judgment dated 26.03.2019 disposed of both the appeals with the following observation in para-10 of the said judgment/award. For the sake of convenience I would like to refer herein below the operative portion of the order which runs as follows:

**"10. As such, as prayed for, present appeal is disposed of on the following mutually agreed terms:**

- (a) Impugned award dated 31st January, 2018 passed by learned Member, Motor Accident Claims Tribunal No.1, West Tripura, Agartala in Case No. Title Suit(M.A.C) 86 of 2014 titled as Sri Samarendra Shib vs. Tahed Miah & Anr. on a limited point is remanded back to the Tribunal for consideration afresh;**
- (b) The owner shall positively pay the amount in terms of the impugned award dated 31st January, 2018 within a period of 4(four) weeks from 1st April, 2019. Needless to add, if ultimately the liability is held to be that of the insurer, the amount already paid by the owner shall be reimbursed.**
- (c) Parties undertake to appear before the Tribunal on 30th April, 2019, on which date, a date shall be fixed by the Tribunal, enabling the owner to lead evidence in support of his claim, if so required and desired;**
- (d) Not more than two opportunities shall be afforded to each one of the parties for such purpose;**
- (e) Parties undertake to fully cooperate and not take any unnecessary adjournments;**
- (f) Save and except, for official witnesses, at their own cost and responsibility, parties shall produce their entire evidence on such date as may be fixed by the Tribunal;**
- (g) Hearing is expedited and it is expected of the Tribunal to decide the matter within a period of six months from the date of receipt of the order;**

- (h) Liberty is reserved to the parties to place on record original documents before the Tribunal;**
- (i) Original documents, if any, filed here be returned to the parties;**
- (j) The Registry is directed to 'forthwith' remit the records to the Tribunal. Also send a copy of the order to the Tribunal.**
- (k) This Court has not expressed any opinion on merits of the case;**
- (l) All issues are left open."**

**07.** After that the Learned Tribunal below in pursuance of the direction of the High Court heard both the sides and decided the case on following two points: (i) On the point of enhancement of compensation and (ii) point of liability. Finally the second Tribunal as per direction of the High Court proceeded to complete the proceeding and by judgment and award dated 19.09.2023 again allowed the claim petition of the claimant-petitioners who were substituted in the place of original claimant as his legal heirs. The operative portion of the judgment/award runs as follows:

**"31. The instant application under Section-166 of the Motor Vehicles Act, 1988 filed by the claimant-petitioners is hereby partly allowed and a sum of Rs.13,08,098.00 (Rupees Thirteen Lakh Eight Thousand Ninety Eight) only is awarded in favour of claimant-petitioners as compensation for the death of late Samarendra Shib, in a Road Traffic Accident, as aforesaid, and thus whole amount of compensation shall be paid by OP No.2, the Sriram General Insurance Co. Ltd., within a period of one month. The aforesaid amount shall carry interest @ 7.5% per annum to be paid from the date of death of deceased claimant, i.e., from 04.02.2020 till the date of payment, as awarded by the Hon'ble High Court of Tripura in "Hari Mohan Das"(supra).**

**32. The claimant petitioners shall be equally entitled to the awarded amount i.e., Rs.13,08,098.00 and in the event of deposit of the awarded amount with interest, Rs.1,00,000.00 each shall be released in favour of each of the claimant-petitioners out of their respective shares, in their respective bank accounts and the rest amount shall be kept in fixed deposit schemes in any Nationalized Bank for five years in their name separately as per their share."**

Challenging this judgment the insurance company has preferred this appeal.

**08.** I have heard both the sides at length and also gone through the judgment of the Learned Tribunal below very carefully and also perused the citation referred by the parties for determining the matters in controversy, now let us refer the judgment of this High Court in **Hari Mohan Das and Ors. vs. Panchadeep Travels and Ors.** reported in **(2016) 1 TLR 818**. In para numbers 7, 8, 9, 10, 11 and 12, this High Court observed as under:

**"7. The principle of actio personalis moritur cum persona is a principle applicable to personal injury cases. The literal meaning of this Latin phrase is that an action for personal injuries dies with the person injured. It is contended on behalf of the respondents that the legal representatives cannot be permitted to continue this action on behalf of the deceased and are not entitled to any compensation. On the other hand, on behalf of the legal representatives it is contended that they are entitled to claim the full compensation payable to the injured who is now dead. No doubt, as per this principle, an action for injuries whether physical or otherwise does not survive if the person injured dies. However, Section 306 of the Indian Succession Act saves the right even in such cases to a limited extent. Section 306 of the said Act reads as follows:**

**306. Demands and rights of action of, or against decease survive to and against executor or administrator. - All demands whatsoever and all rights to prosecute or defend any action or special proceedings existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators; except causes of action for defamation, assault, as defined in the Indian Penal Code, or other personal injuries not causing the death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory.**

**8. A bare perusal of the aforesaid provision shows that all demands and rights whatsoever existing in favour or against a person at the time of his death survive to his executors, administrators and heirs. However, an exception has been carved out, that actions for defamation, assault as defined in I.P.C. or other personal injuries not causing death of a party do not survive. Loss to the estate suffered by his legal heirs is not covered under the exception to this action and therefore any loss to the estate can be recovered by the legal heirs. Section 306 has modified the principle of "actio personalis moritur cum persona" to this limited extent and the legal heirs/representatives of injured can continue an action initiated by an injured person in respect to the loss to the estate.**

**9. A Division Bench of the High Court of Himachal Pradesh in Narinder Kaur and others vs. State of H.P. and others, [1991 ACJ 767], held as follows :**

8. We have heard the learned counsel for the parties and gone through the records. The principle of action personalis moritur cum persona relates only to the personal or bodily injuries and not to the loss caused to the estate of the deceased by the tortfeasor. In its applicability, the principle stands considerably modified by the provisions of section 306 of the Indian Succession Act, which clearly lays down that all demands whatsoever and all rights to prosecute or defend any action or special proceedings existing in favour of or against a person at the time of his death survive except causes of action for defamation, assault and other personal injuries not causing death of the party etc. which come to an end with the death of injured. The loss to the estate is thus not covered by the exceptions contained in section 306 of the Indian Succession Act. While taking this view, we are fortified by the decisions of the Supreme Court in Melepurath Sankunni Ezhuthassan v. Thekittil Geopalankutty Nair, 1986 ACJ 440 (SC) and M. Veerapa v. Evelyn Sequeira, AIR 1988 SC 506. The claimants as legal representatives of the original claimant were, as such, entitled to be substituted in his place with a view to continue the proceedings in the case and to have a decision on the claim in respect of the loss caused to the estate of the deceased.

10. As Judge of the High Court of Himachal Pradesh I have taken the same view in Ram Ashari and others vs. H.R.T.C. and another, [IV (2005) ACC 379], wherein it was held as follows:

6. It is well settled law that an action in torts for claim of compensation for damages on account of injuries suffered by an injured is a right personal to the injured. This right cannot be continued by the legal heirs or legal representatives. It is no doubt true that the legal heirs or the legal representatives can continue the proceedings in so far as they relate to the loss to the estate such as medical expenses, amount spent on treatment etc. However, the claim with regard to the pain and suffering, future loss of income and such related matters is an action which is personal to the injured alone and cannot be continued after his death unless it is proved that the death is the result of the injuries suffered in the accident.

11. A Full Bench of the Madhya Pradesh High Court in Bhagwati Bai and another vs. Bablu and others, [2007 ACJ 682], has taken an identical view in the matter. The Full Bench after considering the entire law on the subject held as follows:

15. In the result, we are of the considered opinion that a claim for personal injury filed under Section 166 of the Motor Vehicle Act, 1988 would abate on the death of the claimant and would not survive to his legal representatives except as regards the claim for pecuniary loss to the estate of the claimant .....” It is, therefore, obvious that the legal representatives of the deceased can continue the action but only in respect of pecuniary loss to the estate of the claimant.

**It is, therefore, obvious that the legal representatives of the deceased can continue the action but only in respect of pecuniary loss to the estate of the claimant.**

**12. Legal representatives have a right to be substituted insofar as the amount for which decree or award has been passed, but they cannot claim enhancement for amount of non-pecuniary losses, such as pain and suffering etc. Therefore, the claimants can only claim compensation with regard to the loss to the estate."**

**09.** On perusal of the aforesaid citation it appears that it is the settled position of law that an action in torts for claim of compensation for damages on account of injuries suffered by an injured is a right personal to the injured and this right cannot be continued by the legal heirs or legal representatives. However, the legal representatives of the deceased can continue the action but only in respect of pecuniary loss to the estate of the claimant. Meaning thereby claiming compensation for pain and sufferings, compensation for future discomfort, loss of amenities of life, compensation for future earnings are all losses which are personal to the injured and the same cannot be inherited by the legal heirs of the injured. The legal heirs of the injured can only claim for compensation with regard to the loss of estate and loss of estate would include expenditure on medicines, treatment, diet, attendant, doctor's fee etc. including some income and future prospects which would have caused reasonable accretion to the estate but for the certain expenditure which had to be met from and depleted the estate of the injured, subsequently deceased. Learned Tribunal below in determining the amount of compensation also relied upon the judgment of **The Oriental Insurance Co. Ltd. vs. Khalon @ Jasmail Singh Khalon**. In para-14

and 15 of the judgment dated 19.09.2023 the Learned Tribunal observed as under:

**"14. In "The Oriental Insurance Co. Ltd. vs., Khalon @ Jasmail Singh Khalon" it was observed by the Hon'ble Apex court that while the claim for personal injuries may not have survived after the death of injured unrelated to the accident or injuries, during pendency of the appeal, but the claim for loss of estate was available to and could be pursued by the legal representatives of the deceased. It was also observed that loss of estate would include expenditure on medicines, treatment, diet, attendant, Doctor's fee etc. including income and future prospects which would have caused reasonable accretion to the estate but for sudden expenditure which have to be met from and depleted the estate of the injured, subsequently deceased.**

**15. In Harimohan Das and other vs. Panchadeep Travels and others (2016) vol. I TLR 818 the Hon'ble High Court of Tripura observed that the legal representatives have a right to be substituted in so far as the amount for which decree or award has been passed but they cannot claim enhancement for amount of non-pecuniary losses such as pain and sufferings etc. and therefore, the claimants can only claim compensation with regard to the loss to the estate."**

**10.** Finally Learned Tribunal below determined the total amount of compensation to the tune of Rs.16,85,651/- but deducted the amount of compensation already paid to the claimant in pursuance of the first judgment of the Tribunal amounting to Rs.3,77,553/-. So after deduction the Learned Tribunal below determined the amount of compensation to the tune of Rs.13,08,098/- with 7.5% interest p.a. from the date of death of the deceased i.e. w.e.f. 04.02.2020 to till the date of payment in pursuance of the judgment of Hari Mohan Das (supra). As relied upon by the appellant the principle of other citations are equally applicable in this case.

**11.** After hearing both the sides and after going through the aforesaid citations referred by the parties it appears that there was no perversity in the judgment of the

Learned Tribunal below and it appears that in the present appeal the appellant has failed to draw the attention of the court any perversity to interfere with the judgment of the Learned Tribunal below.

**12.** In the result, the appeal filed by the appellant stands dismissed being devoid of merit. But considering the facts and circumstances of the case no order is passed as to costs. The judgment and award dated 19.09.2023 delivered by Learned Motor Accident Claims Tribunal No.2, West Tripura, Agartala in connection with Case No.T.S.(MAC) 86 of 2014 is hereby upheld and accordingly it is affirmed. The appellant insurance company be asked to deposit the award amount to the Tribunal below within a period of six weeks from the date of receipt of copy of the judgment. No interference is made in regard to disbursal of amount as ordered by the Tribunal by the said judgment dated 19.09.2023.

Send down the LCRs along with a copy of this judgment. A copy of this judgment be supplied free of cost to the Learned counsel for the parties.

Pending application, if any, stands disposed of.

**JUDGE**

**MOUMITA  
DATTA**

*Moumita*

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