

HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A
MAC. App. No.45 of 2023

1. National Insurance Company Ltd.

..... Appellant

-VERSUS-

1. Smti. Sachi Rani Mitra and 5 Others.

..... Respondents.

B_E_F_O_R_E
HON'BLE MR. JUSTICE T. AMARNATH GOUD

For Appellant(s)	:	Mr. S. Lodh, Advocate.
For Respondent(s)	:	Mr. P.S. Roy, Advocate. Mr. B. Majumder, Advocate. Mr. R. G. Chakraborty, Advocate.
Whether fit for reporting	:	<u>YES/NO</u>

Judgment and order dated 20th June, 2024

JUDGMENT & ORDER [ORAL]

Heard Mr. S. Lodh, learned counsel appearing for the appellant also heard Mr. P.S. Roy, learned counsel; Mr. B. Majumder learned counsel and Mr. R. G. Chakraborty, learned counsel appearing for the respondents.

[2] This appeal has been filed under Section-173 of the Motor Vehicles Act, 1988 against the impugned judgment and award dated 13.01.2023 passed by the learned Member, Motor Accident Claims Tribunal, West Tripura, Agartala, Court No.5 in connection with T.S. (MAC) 15 of 2021.

[3] The appellant has prayed for the following reliefs:

“Under the circumstances stated above it is most humbly prayed that your Lordships would be kind enough to admit the appeal, call for the records, and after hearing the parties set aside the impugned judgment and award dated 13.01.2023 passed by the learned Member, Motor Accident Claims Tribunal, West Tripura, Agartala, Court No.5 in T.S. (MAC) 15 of 2021 and pass any other order(s) as may be deemed fit and proper for fair ends of justice.”

[4] The facts in brief are that for the death of Pranab Mitra, respondent Nos. I to 4 jointly filed a claim petition under Section-166 of the M.V. Act, 1988, before the learned Member, Motor Accident Claims Tribunal,

West Tripura, Agartala, and the same was registered and marked as T.S. (MAC) 15 of 2021. After hearing the parties, vide impugned Judgment & Award dated 13.01.2023, learned tribunal held that the alleged accident took place due to the fault of the deceased and respondent No. 5. Learned tribunal below also assessed the compensation amounting to Rs. 23,45,000/- and thereafter deducted 50% holding that as the alleged accident took place due to contributory negligence, and lastly awarded Rs. 11,72,500/- and ordered that as the appellant is the insurer of respondent No. 4, they should pay compensation amounting to Rs. 11,72,500/- along with interest @8% per annum and held that the claimant-respondent No.1 is entitled to the compensation only.

[5] The learned Tribunal after hearing the parties and on perusal of the material evidence on record has observed as under:

“The OP No.2, The National Insurance Co. Ltd. is directed to deposit the awarded compensation of Rs.11, 72,500/- (Rupees Eleven Lakh seventy two thousand five hundred) only within 30 days from today with interest thereon at the rate of 8% per annum with effect from date of filing of the claim application i.e., from 19.01.2021 to till realization of the full.

Distribution of Compensation:

Only claimant No.1 is entitled to get compensation and claimant No.2,3 and 4 are not entitled to get any compensation.

Protection Awarded Compensation:

Sixty percent (60%) of the amount of compensation of claimant No.1 is to be fixed deposited for five years and the rest amount are to be released in her favour in her bank account.

In case of necessity, the Tribunal can be approached for withdrawal of fixed deposited amount. On maturity of the fixed deposits the Banker shall credit the amounts to the sole SB Accounts of claimants without any further order from the Tribunal.”

[6] Being aggrieved by and dissatisfied with the judgment and award 13.01.2023 passed by the learned Member, Motor Accident Claims Tribunal, West Tripura, Agartala, Court No.5 in connection with T.S. (MAC) 15 of 2021, the present appeal has been preferred by the appellant.

[7] The learned Court below has assessed the monthly income of the deceased as Rs.15,000/- being a mason, this Court following the guidelines framed on 4th August, 2023, wherein a skilled labour must earn

Rs.12,000/- per month but the learned tribunal below has assessed monthly income Rs.15,000/- which needs to be interfered with. The deceased was 19 years old at the time of the accident and therefore, multiplier 18 shall apply in view of the judgment of the Hon'ble Apex Court in Sarla Verma and Others v. Delhi Transport Department and Another, reported in (2009) 6 SCC121.

[8] As deceased was self employed and aged about 19 years in view of the Judgment of the Hon'ble Apex Court in National Insurance Company Limited vs. Pranay Sethi, AIR 2017 SC 5157 an addition of 40% amount is to be made towards future income. Thus, 40 % of Rs. 12,000/- stands Rs. 4,800/-. Hence, loss of income stands (Rs. 12,000/ + Rs. 4,800 =) Rs. 16,800/-.

[9] In cross examination PW.1 admitted that claimant Nos.2,3 and 4 are major and claimant Nos.2, 3 and 4 being the brothers and sister of deceased, it cannot be said that they were dependent on the income of the deceased. Claimant Nos.2, 3 and 4 also cannot be treated as legal heir of deceased in presence of claimant No.1, the mother of the deceased. Hence, in my opinion mother is the only legal heir and was dependent on the deceased. Hence, claimant No.1 is only entitled to get compensation.

[10] As the deceased died bachelor deduction towards personal expense should be $1/2^{\text{nd}}$. Thus, $1/2^{\text{nd}}$ of Rs.16,800/- is Rs.8,400/-. Hence, loss of income after deduction of personal expense stands (Rs.16,800 - Rs.8,400/- = Rs.8,400/-). Thus, the loss of income of the deceased stands at (Rs. 8,400 x 12 x 18 =) Rs.18,14,400/- instead of Rs.22,68,000/- as awarded by the learned tribunal below however, the rest of the award as awarded on different heads, shall remain unaltered.

[11] The awarded amount shall be deposited by the insurance company within a period of one month from the date of receipt of the copy of this order, if not deposited. However, it is made clear that on such deposit; the claimants are at liberty to withdraw the same unconditionally.

In the light of the above, the present appeal stands partly allowed. As a sequel, miscellaneous applications pending, if any, shall stand closed. Draw the decree accordingly and thereafter, send down the LCRs forthwith.

T. AMARNATH GOUD, J

A.Ghash

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HIGH COURT OF TRIPURA



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