

**HIGH COURT OF TRIPURA
AGARTALA**

Mac.app 49 of 2023

The United Insurance Co. Ltd.

---Appellant(s)

Versus

Sri Gopal Acharjee and Ors.

---Respondent(s)

For Appellant(s)	:	Mr. P. Gautam, Advocate.
For Respondent(s)	:	Mr. H.K. Bhowmik, Advocate.
		Mr. S. Paul, Advocate.
		Mr. Alik Das, Advocate.
Date of hearing and date of judgment and order	:	26.06.2024
Whether fit for reporting	:	No

CO(FA) 14 of 2023

Sri Gopal Acharjee and 3 Ors.

---Appellant(s)

Versus

M/s Pran Beverages (India) Private Ltd and Anr.

---Respondent(s)

For Appellant(s)	:	Mr. S. Paul, Advocate.
		Mr. Alik Das, Advocate.
For Respondent(s)	:	None.

HON'BLE MR. JUSTICE T. AMARNATH GOUD

Judgment and Order (Oral)

Heard learned counsel for the parties.

[2] This is an appeal under Section 173 of the Motor Vehicles Act, 1988 read with Section 168 of the Act invited, against the impugned judgment and award dated 09.01.2023 passed by the Ld. Motor Accident Claims Tribunal, No.2, West Tripura, Agartala in Case No.TS(MAC) 121 of 2018.

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

- (i) *Admit the appeal;*
- (ii) *Call for the case records from the Learned Tribunal below:*

- (iii) *Stay the operation of the impugned judgment and award dated 09.01.2023 passed by the Ld. Motor Accidents Claims Tribunal, No.2, West Tripura, Agartala in Case no. TS(MAC) 121 of 2018, and the Hon'ble High Court may kindly be pleased to direct the Ld. Tribunal, not to proceed with any execution proceeding if any filed by the claimant respondents in the mean time, till disposal of the present appeal.*
- (iv) *After hearing the parties be pleased enough to set aside/quash the impugned judgment and award dated 09.01.2023 passed by the Ld. Motor Accident Claims Tribunal, No.2, West Tripura, Agartala in Case No. TS(MAC) 121 of 2018;*
- (v) *Pass any other order or orders as the Hon'ble High Court may deem fit and proper.*

[4] Brief facts leading to this case is that on 21.05.2018 the deceased was proceeding towards her place of work at PRAN Company, Bodhjunnagar Agartala from her house by boarding a vehicle bearing registration No. TR-01-AD-0448(Bolero)(here-in-after called the offending vehicle). When reached in front of ICORE Cement Factory Growth Centre, Bodhjunnagar at about 5-30/6-00 hrs. through the Bodhjunnagar Industrial Estate Road, it met with an accident and capsized due to rash and negligent driving on the part of the driver resulting which deceased and other passengers of the offending vehicle sustained multiple grievous injuries on their persons. Immediately after the accident deceased was taken to AGMC& GBP Hospital for treatment but considering the grievousness of injury deceased was referred to ILS Hospital and on 22.05.2018 she was taken to ILS Hospital and in course of treatment she succumbed to her injuries on 25.05.2018 in the said hospital. Accordingly post mortem was also done over the body of the deceased on the following day. In this connection Bodhjunnagar PS Case No. 49 of 2018 u/s 279/337/338/304-A of IPC was also registered. Claimant petitioners further stated in their claim petition that the accident occurred due to rash and negligent driving on the part of the driver of the offending vehicle. Claimant petitioners also stated that deceased was aged about 33 years and she was a food product worker of Pran Company by profession and she used to earn Rs. 12,000/- per month before the accident. The claimant petitioners, therefore, approached this Tribunal seeking

compensation due to death of the deceased and quantified their claim to the tune of Rs. 56,56,000/-.

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

(i) Claimant petitioners are entitled to get the award of Rs.23,20,688/- (Rupees twenty three lacs twenty thousand six hundred eighty eight) only along with 9% simple interest per annum from the date of registration of claim i.e, w.e.f. 03.08.2018 till the date of realization thereof.

The petitioner No. 1 exclusively shall be entitled to get the amount of Rs. 40,000/- as consortium, the petitioner Nos. 3 and 4 exclusively shall also be entitled to get the amount of Rs.40,000/- (two lacs each) as awarded under the head loss of love and affection. The claimant petitioners Nos. 1 to 4 shall have equal share on the rest amount.

(ii) 50% of the share of the claimant petitioner Nos.1 and 2 in the award be invested by purchasing separate Fixed Deposit certificate from any Nationalized Bank at least for the next 5 years and no loan or advance or pre-mature withdrawal shall be allowed without prior sanction of this Tribunal.

75% of the shares of the claimant petitioner Nos. 3 and 4 shall be invested by purchasing separate Fixed Deposit certificates from any Nationalized Bank at least for the next 5 years with auto renewal facility till they attain 21 years and no loan or advance or pre-mature withdrawal shall be allowed without prior sanction of this Tribunal.

Remaining amount of shares of the claimant petitioner Nos. 1,2, 3 and 4 shall be credited directly to their individual bank account.

However, the claimant petitioner No.1 shall have the liberty to withdraw the monthly interest therefrom including from the account of his minor grand son and daughter. Claimant petitioner No.2 shall also be entitled to withdraw monthly interest.

Needless to say that the amount so ordered to be paid to the minor claimant petitioners shall be incurred only for the welfare and benefit of themselves.

[6] Being aggrieved by and dissatisfied with the judgment and award dated 09.01.2023 passed in connection with T.S.(MAC) 121 of 2018 by the learned Member, Motor Accident Claims Tribunal No.2, West Tripura Agartala, the present appeal has been preferred by the appellant.

[7] The learned Court below has assessed the monthly income of the deceased as Rs.9180/- being a daily labour. But this Court following the notification dated 4th August, 2023 framed by the High Court, wherein no income of proof of the injured/deceased issued by the competent authority is submitted, notional wages for determination of compensation in the claim cases/appeals involving accidents which

has taken place on or before 31.12.2015 shall be Rs.10,000/- for a unskilled worker and in the present case accident had taken place in 2018. After taking consent from both sides and as per schedule of the notification of this Court, the income of the deceased is considered as Rs.10,000/-. Hence, Rs.9180/- is increased to Rs.10,000/-. As per the judgment passed by the Hon'ble Supreme Court of India in ***Magma General Insurance Company Limited vs Nanu Ram alias Chuhru Ram and Others*** reported in ***(2018) 18 SCC 130*** an addition of 10% of the income should be added towards future prospects. Thus the computation would be as follows:

- (i) Income per month Rs.10,000 only + 40% of the income towards future prospect Rs.4000/- = Rs.14,000/-
- (ii) One third of Rs.14,000/- 4166/- = Rs.9834/-
- (iii) Compensation after applying multiplier of 14 = Rs.9834/- x 12 x 17 = Rs.20,06,136/-
- (iv) Loss of Estate Rs.15000/- + 10% = Rs.16,500/-
- (v) Funeral Expenses Rs.15000/- + 10% = Rs.16,500/-
- (vi) Loss of consortium Rs.40000/- + 10% = Rs.44,000/-
- (vii) Loss of love and affection for the two children- Rs.40,000/- each + 10% , Rs.80,000+Rs.8000)=Rs.88,000/-

[8] Thus, the total compensation stands as ***Rs.20,06,136/- + Rs.16500/- + Rs.16500/- + Rs.44000/- + Rs.88,000/- = Rs.21,71,136/- (Rupees twenty one lakhs seventy thousand one hundred thirty six) only.***

[9] The Ld. Tribunal has imposed 9% interest along with the awarded amount. After perusing the record, it appears to this court that the imposition of 9% was higher and therefore this court fix the interest at 7.5%. Consequently, the claimants would be entitled compensation as indicated above along with 7.5% interest per annum instead of 9% as awarded by the learned tribunal below, with effect from the date of presentation of the claim petition till the date of actual payment. The awarded amount shall be deposited by the insurance company along with 7.5% interest from the date of registration of claim i.e. 03.08.2018 till the date of realization thereof 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 as per procedure.

[10] In the light of the above, the present appeal and the cross objection being CO(FA) 14 of 2023 stands disposed of with the above observation and modification. As a sequel miscellaneous applications pending, if any, shall stand closed. Draw the decree accordingly and thereafter, send down the LCRs forthwith.

JUDGE



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