

**HIGH COURT OF TRIPURA
AGARTALA
MFA (EC). 1 OF 2024**

The Oriental Insurance Co. LTD

.....**Appellant(s)**

Versus

Smt. Susmita Banik (Chowdhury) & Ors.

.....**Respondent(s)**

For the Appellant(s) : Mr. B. Majumder, Advocate.

For the Respondent(s) : None.

Date of hearing and delivery of
Judgment & Order : 14.08.2024

Whether fit for reporting : NO.

**HON'BLE MR. JUSTICE T. AMARNATH GOUD
J U D G M E N T & O R D E R(ORAL)**

Heard Mr. B. Majumder, learned counsel appearing for the appellant-Insurance Company. None appears on behalf of the respondents.

[2] This present appeal has been filed under Section 30 of the Employee's Compensation Act, 1923 filed by the appellant, insurance company challenging the impugned judgment and award dated 25.08.2023, passed by the learned Commissioner, Employee's Compensation West Tripura, Agartala in Case No. T.S. (E.C) 02 of 2020.

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

- i. Admit this appeal.
- ii. Issue notice upon the respondents.
- iii. Formulate the substantial question of law as proposed in this present appeal.
- iv. Call for the records of the case from the Ld. Commissioner (Sri S. Sharma Roy), Employee's Compensation, West Tripura, Agartala in Case No. T.S.(E.C) 02 of 2020.
- v. Stay the operation of the impugned judgment and award dated 25.08.2023, passed by the Learned Commissioner, Employee's Compensation, West Tripura, Agartala in Case No. T.S. (E.C) 02 OF 2020.

- vi. After hearing the parties at length, be pleased enough to dismiss/set aside/ quash the impugned judgment dated 25/08/2023 passed by the Ld. Commissioner, Employee's Compensation, West Tripura, Agartala in Case No. T.S(E.C) 02 of 2020. "

[4] Brief facts of the case, is that the victim Makhan Chowdhury was a permanent driver of the Maruti Alto Car bearing registration No. TR-03-F-0283 under the respondent no.4 herein, owner of the said vehicle. As per direction of the owner of the vehicle, on 10.02.2019 at about 9.30 p.m. he was proceeding towards Santir Bazar from Baikhora Bazar by driving the said vehicle very slowly and with normal speed and when the vehicle reached on the middle distance of the road from Baikhora to Santir Bazar, suddenly, one tyre of the vehicle got burst and the vehicle was outlined from the road and met with an unfortunate accident. As a result, the driver of the said vehicle namely, Makhan Chowdhury sustained serious head injuries on his person. Immediately after the accident, he was taken to the Santir Bazar Hospital wherefrom he was referred to the Gomati District Hospital on the following day but on the way to Gomati District Hospital he succumbed to the injuries. Thereafter, on 11.02.2019 post mortem examination was done over the dead body in the Gomati District Hospital. They also stated that the said accident occurred arising out of and in course of his employment under the respondent No.4, owner of the alleged vehicle. Concerning the said accident a police case was registered in the Baikhora Police Station vide Baikhora P.S. UD Case No.01 of 2019 under Section 174 of Cr.P.C. Notice of the accident was not served upon the employer as per Section 10 of the Employee's Compensation Act as the owner of the vehicle had knowledge about the said accident. It is claimed by the claimant respondents herein that at the time of death, deceased Makhan Chowdhury was aged about 33 years and used to draw monthly wages of Rs.15,000/- as a skilled driver of the said vehicle including fooding, tiffin etc. Finding no other

alternative, they filed an application claiming compensation to the tune of Rs.20,00,000/-.

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

"A=W=A=R=D

In the result, the claimant petitioners are entitled to get compensation of Rs.18,20,000/- (Rupees Eighteen Lakh Twenty Thousand) only with interest @ 12% per annum from 10.03.2019 i.e. one month after the date of accident till realization. The opposite party no.2, Oriental Insurance Company Ltd., will pay the amount of compensation with interest within 30 days from today.

Out of the total awarded amount of compensation inclusive of interest, the claimant petitioner no.1 will get 50% and the claimant petitioners no.2 and 3 will get 25% each. Out of the respective share of claimant petitioners no.1, 2 and 3, 50% each of their respective share shall be kept in fixed deposit scheme in their respective names in any Nationalized Bank of their locality for a period of five years each and the rest 50% of their respective share shall be paid to them through their respective bank account. The claimant petitioners no.1, 2 and 3 shall however be at liberty to withdraw monthly interest from their respective fixed deposit account to meet their day to day expenses. No loan or withdrawal shall be permitted from any of the fixed deposit accounts without prior permission from this Commission.

Supply copy of this award free of cost to the parties.

The claim petition stands disposed of on contest.

Make necessary entry in the Trial Register as well as in the CIS."

[6] Being aggrieved and dissatisfied with the judgment and award dated 25.08.2023, passed by the learned Court of Commissioner, Employee's Compensation West Tripura, Agartala in Case No. T.S. (E.C) 02 of 2020, the present appeal has been preferred by the appellant.

[7] It appears to this court that the victim was a driver by profession. And at the time of accident, the age of the deceased was 33 years. So, the relevant factor would be 201.66. As per Notification vide No.F.44(11)-HC/2023/19504 dated 04.08.2023 issued by the Registrar General, Hon'ble High Court of Tripura, the monthly income of LMV driver (on production of license) was shown at Rs.18,000/- per month involving the accident which had taken

place after 31.12.2015. In the instant case the accident took place on 10.02.2019 and at the time of accident the deceased was driving the Maruti Alto Car which is a Light Motor Vehicle. Accordingly, the monthly income of the deceased driver is assessed at Rs.18,000/-. Therefore, the claimant respondents are entitled to an amount equal to 50% of the monthly wages of the deceased multiplied by the relevant factor. So, the compensation under Section 4 sub section 1(a) of the Act comes to (50% of Rs.18,000/-) Rs.9,000/- X 201.66 = Rs.18,14,940/-. As per the said Act, the claimant respondents are also entitled to get Rs.5,000/- towards funeral expenses. The total amount of compensation thus comes to Rs.18,19,940/- (Rs.18,14,940/- + Rs.5,000/-) rounded off to Rs.18,20,000/-.

[8] This Court in all matters, fixing 7.5% interest and to maintain uniformity while comparing the bank rate of interest which is also much less. Consequently, the claimants-respondents would be entitled compensation as indicated above along with 7.5% interest per annum instead of 12% as awarded by the learned Court 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 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 Claimant-respondents are at liberty to withdraw the same unconditionally as per procedure.

[9] In the light of the above, the present appeal stands partly allowed. As a sequel, miscellaneous application pending, if any, shall stand closed.

JUDGE

Paritosh

**RAJKUMAR
SUHANJIT
SINGHA** Digitally signed by
RAJKUMAR
SUHANJIT SINGHA
Date: 2024.08.28
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