

**HIGH COURT OF TRIPURA
AGARTALA
MAC. APP. NO.52 OF 2023**

The National Insurance Company Ltd.

.....Appellant(s)

Versus

Smti. Khusumya Sarkar@Kusumya Sarkar and ors.

.....Respondent(s)

For the Petitioner(s) : Mr. A.K. Deb, Advocate.

For the Respondent(s) : Mr. G.K. Nama, Advocate.

Date of hearing and delivery of
Judgment & Order : 21.06.2024

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)**

This present appeal has been filed under Section 173 of the M.V. 1988 against the impugned award dated 16.12.2022 passed in T.S.(MAC) 33 of 2019 by learned Motor Accident Tribunal, Dharmanagar North Tripura for modifying the award. The suit arose out of Ambassa P.S. Case No.38/2018 under Section 279/338/304A of the IPC. The claimant-respondents claimed compensation of Rs.45,60,000/- due to the death of Naradmoni Sarkar.

2. The learned Tribunal below as against the claim of Rs.45,60,000/- passed the award in favour of the claimants in the following terms:-

"ORDER

I. The claimant petitioners are entitled to get the award of Rs. 18,80,056/- (Eighteen lakh Eighty thousand fifty six) only along with 9% S.I per annum from the date of the petition that is from 19.08.2019 till realization thereof.

II. The claimant petitioner namely Smt. Khusamaya Sarkar shall be entitled to get the amount of Rs. 44,000/- as consortium plus(+) medical expenses of RS 3,000 Rs 47,000. The Claimant Petitioners No 3 shall be entitled for Rs 3,000/ for the cost of the treatment. The claimant petitioners No. 1,2,3,4 and 5 shall have equal share on the rest amount.

III. 50% of the share of the claimant petitioners of the remaining amount shall be invested by purchasing separate Fixed Deposit Certificate from Nationalised Bank for a period of five years

with auto-renewal facility and the claimant petitioners shall open Savings Account in the same Bank. No loan or advance or pre-mature withdrawn is allowed without the prior permission of the Tribunal. The interest accrued on the Fixed Deposit Certificate shall be directly transmitted in equal distribution to the individual Savings Account by the concern Bank. The concern Bank shall retain the original Fixed Deposit Certificate and the copies of the certificate to be handed to all the claimant petitioners.

IV. The remaining amount of share of the claimant petitioners No. 1,2,3,4 and 5 to be credited directly to their individual Bank Account. The claimant petitioners 1 to 5 are directed to submit photocopies of the bank pass book.

V. The Op No. 3 National Insurance Co. Ltd shall deposit the amount so ordered along with interest thereon within one month to this Tribunal from the date of the order.

VI. Copy of this order so awarded to be served upon the parties not later than 15 days from the date

VII. The case is disposed on contest.

VIII. Enter the result.

3. Aggrieved by the award, the insurer-appellant-Insurance company has preferred this appeal.

4. Heard Mr. A.K. Deb, learned counsel appearing for the appellant-Insurance Company as well as Mr. G.K. Nama, learned counsel appearing for the claimant-respondents.

5. Mr. Deb, learned counsel appearing for the appellant-Insurance Company submitted that exhibit 5/6 i.e., money receipt cannot be taken as the income of the deceased. To support his argument, learned counsel relied upon the Judgment of this Hon'ble High Court passed in **MAC APP. No.2 of 2010** titled as **Sri Tarun Kumar Reang Vs. Sri Rakesh Debnath and ors.** Learned counsel further submitted that the learned Tribunal below erred while calculating the reduction on personal expenses wherein there are five dependents and the deduction should have been $\frac{1}{4}^{\text{th}}$ instead of $\frac{1}{3}^{\text{rd}}$ of the total month income. Further, the learned Tribunal below awarded interest @ 9% per annum which is on the higher side.

6. Heard and perused the evidence on record.

7. This Court has carefully considered the plea of the appellant-counsel regarding the income of the deceased. After thorough examination, the

Courts rejects the plea, determining that the existing calculation of the deceased monthly income is appropriate and based on substantial evidence. The last money receipt document dated 24.01.2018 which has been marked as Exbt-5/6 has been taken into consideration by the learned Tribunal while coming to the said findings which is just and proper. The judgment as referred by learned counsel appearing for the appellant in this regard is also not applicable to the fact of this case. The appellant has also sought a reduction in the interest rate of 9% per annum applied to the awarded amount. However, this court found no compelling reason to alter this rate, concluding that it was fair and just given the circumstances.

Nonetheless, in terms of the Hon'ble Supreme Court Judgment reported in **(2009) 6 SCC 121** titled as **Sarala Verma(Smt) and ors. Vs.Delhi Transport Corporation and anr.**, this court acknowledges the appellant's argument for a reduction on account of personal and living expenses from 1/3rd to 1/4th on the account that the family of the deceased consists of his widow, his two sons and two daughters who were the dependents upon him. The same is also agreed upon by both the parties. The rest of the award as past the learned Tribunal below shall remain unchanged.

8. Accordingly, after a reduction of 1/4th of the monthly income of the deceased on account of personal and living expenses, the total compensation comes to:-

1. Income Per Month Rs. 32,000/- Only.

11. No Additional Income as future prospects being the age of 65 years Nil.

III. One-fourth of the above to be deducted as personal and living expenses for the deceased (Rs.32,000/- minus Rs.8,000/- = Rs.24,000/-/-.

IV. Compensation after applying multiplier of 7= Rs. 24,000/- x12x7=Rs.20,16,000/-only.

V. Loss of estate Rs. 15,000/- +(plus) 10%-Rs. 16,500/- Only,

VII. Loss of Consortium Rs. 40,000/- + (plus) 10% Rs. 44,000/- Only.

VI. Funeral Expenses Rs. 15,000/- + (plus) 10%=Rs. 16,500/- Only,

Thus, total compensation stands at Rs. 20,16,000/- + 16,500/-
16,500/- + 44,000/- = Rs.20,93,000/-(Rupees Twenty Lakhs Ninety Three
Thousand only).

9. As indicated above, the rest of the order as passed earlier by the
learned Tribunal below shall remain unchanged. Hence, this present appeal is
disposed of with the modification as indicated above. As a sequel, stay if any
stands vacated. Pending application(s), if any, also stands closed.

JUDGE

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