

HIGH COURT OF TRIPURA

A_G_A_R_T_A_L_A

MAC. App. No.51 of 2023

1. United India Insurance Co. Ltd., represented by the Divisional Manager, office at GRS Tower, 1st Floor, Agartala, P.S. West Agartala, District: West Tripura [**insurer of the offending vehicle No.TR-01-AD-0440 Maruti Van**].

..... Appellant

-VERSUS-

1. Sri Krishnadhan Shil, son of late Kamini Shil.
2. Sri Samir Shil, son of Krishnadhan Shil.

Both are residents of Malbasa, Bangali Para, Amarpur, presently residing at C/O Sri Arun Shil of Paschim Tara Nagar Fakiramura P.S. Sidhai District: West Tripura.

.....Claimant respondents

3. Smti. Priyabala Debnath, wife of Manik Debnath of village Harinakhola, Mohanpur, P.S. Sidhai, District: West Tripura [Owner of the vehicle bearing No. TR-01-AD-0440 Maruti van].

.....Opposite party-respondent

Connected with

MAC. App. No.60 of 2023

1. United India Insurance Co. Ltd., represented by the Divisional Manager, office at GRS Tower, 1st Floor, Agartala, P.S. West Agartala, District: West Tripura [**insurer of the offending vehicle No.TR-01-AD-0440 Maruti Van**].

..... Appellant

-VERSUS-

1. Sri Krishnadhan Shil, son of late Kamini Shil, residents of Malbasa, Bangali Para, Amarpur, presently residing at C/O Sri Arun Shil of Paschim Tara Nagar Fakiramura P.S. Sidhai District: West Tripura.

.....Claimant-respondent

2. Smti. Priyabala Debnath, wife of Manik Debnath of village Harinakhola, Mohanpur, P.S. Sidhai, District: West Tripura [Owner of the vehicle bearing No. TR-01-AD-0440 Maruti van].

.....Opposite party.respondents

B_E_F_O_R_E
HON'BLE MR. JUSTICE T. AMARNATH GOUD

For Appellant(s)	:	Ms. R. Purkayastha, Advocate.
For Respondent(s)	:	Mr. P. Saha, Advocate.
		Mr. S. Lodh, Advocate.
Whether fit for reporting	:	YES/NO

Judgment and order dated 07th November, 2024

JUDGMENT & ORDER [ORAL]

Heard Ms. R. Purkayastha, learned counsel appearing for the appellant also heard Mr. P. Saha, learned counsel and Mr. S. Lodh, learned counsel appearing for the respondents.

[2] Both this appeals are taken up together for disposal by a common judgment as the facts are identical in nature. The appeal being MAC. App. No.51 of 2023 has been filed against the award dated 02.12.2022 passed by the learned Motor Accident Claims Tribunal, West Tripura, Agartala, Tribunal No.2 in T.S. (MAC) No.150 of 2021 whereby the learned Court below has most illegally and arbitrarily awarded compensation of Rs.8,62,072/- only along with 9% interest from the date of registration of claim till the date of realization thereof, to the claimant respondents. Further, in MAC. App. No.60 of 2023 has been filed against the award dated 02.12.2022 passed by the learned Motor Accident Claims Tribunal, West Tripura, Agartala, Tribunal No.2 in T.S. (MAC) No.149 of 2021 whereby the learned Court below has most illegally and arbitrarily awarded compensation of Rs.1,10,000/- only along with 9% interest from the date of registration of claim till the date of realization thereof, to the claimant respondents.

[3] The facts in brief are that on 18.12.2020 the deceased along with the claimant No.1 was proceeding towards Paschim Taranagar from Badharghat Railway Station by boarding a vehicle bearing registration No. TR-01-AD-0440 (Maruti Van) and at about 1.00 hrs. When the said offending vehicle reached at near Bhati Fatikchera, due to rash and negligent driving driver lost control over the said vehicle and it dashed with a cement pillar as well as dashed with a tree. In this connection a specific case vide Lefunga PS Case No. 31 of 2020 u/s 279/338 and Section 184 of the MV Act was also registered. The learned tribunal, after hearing both the parties and without

considering the vital points clearly mentioned in the pleadings of the appellant, the impugned award dated 02.12.2022 has most illegally and arbitrarily awarded compensation of Rs.8,62,072/- and Rs.1,10,000/- only along with 9% interest per annum from the date of registration of claim till the date of realization thereof, to the claimant respondents.

[4] Having heard the learned counsel appearing for the parties and gone through the material evidence on record, the learned Court below has observed as under:

“In the result, claim is awarded in following terms :(i)

Claimant petitioners are entitled to get the award of Rs.8,62,072/- (Eight lacs sixty two thousand and seventy two) only along with 9% simple interest per annum from the date of registration of claim i.e, w.e.f. 20.09.2021 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 claimant petitioners Nos. 1,2 and 3 shall have equal share on the rest amount.

Remaining amount of shares of the claimant petitioners shall be credited directly to their individual bank account.

The OP No.2 , i.e., the United India Insurance Company Limited shall deposit the awarded amount along with interest thereon within one month to this Tribunal.

Supply a copy of this award free of cost to the parties by not later than 15 days from the date of the award.

The case stands disposed off on contest.

In the result, claim is awarded in following terms :

Claimant petitioner is entitled to get the award of Rs.1,10,000/- (Rupees one lac ten thousand) only with 9% Simple interest per annum from the date of registration of claim i.e, w.e.f. 20.09.2021 till the date of realization thereof.

The OP No.2, insurer of the offending vehicle bearing registration No.TR-01-AD-0440, Maruti Van shall, within 30 days of the date of this award, deposit the entire amount as awarded, in favour of the Motor Accident Claims Tribunal, West Tripura, Agartala.

Supply a copy of this award free of cost to the parties by not later than 15 days from the date of the award.

The case stands disposed off on contest.”

[5] Learned counsel appearing for the appellant has submitted that the learned tribunal has failed to appreciate that the offending vehicle was a private car and accordingly the insurance policy was a private car liability only policy, the precondition of such policy is that the vehicle i.e. the private car cannot be used for hire purpose, where as it is evident from the FIR as well as the charge sheet which *inter alia* means that there is violation of the terms of the policy and in such a case, the appellant is not liable to indemnify the owner. Also Rs.10,000/- with 9% interest is on the higher side and need to be interfered with.

[6] In view of above and having heard the learned counsel appearing for the parties, this Court is of the opinion that fastening of liability it is seen from the claim statement that “.....on that very moment Sunati Shil now deceased found that a vehicle bearing its registration No. TR-01-AD-0440 (Maruti Van) parked at Badharghat Rail Station which was being driven by her relative and the owner of the said Maruti van also the relative of the deceased Sunati Shil, subsequently as per telephonic conversation with the owner of the said Maruti van and on request of the owner of the said vehicle, Sunati Shil now deceased boarded on the said vehicle along with her husband and other relatives.....”

[7] The owner of the offending Maruti Van through written statement apart from denying all the allegations in the claim petition contended, *inter alia*, that she is the registered owner of the said offending vehicle and it was duly insured with the insurance company, therefore, urged for fixing the liability of her insurer to pay the compensation, if any.

[8] In view of the same, it cannot be construed that the vehicle is given on hire by violation of policy conditions no such reasons or evidence is placed on record. As such, the submission advanced by the learned counsel appearing for the appellant cannot be accepted. Further, regarding the monthly income as assessed by the learned Court below amounting to Rs.10,000/- as per notification issued by this Court Rs.10,000/- is reasonable and needs no interference. Thus, the compensation as awarded by the learned Court below in both the cases, need no interference. Regarding the rate of interest, this Court in all matters is fixing 7.5% interest and to maintain uniformity while

comparing the bank rate of interest which is also much less. Consequently, the claimants would be entitled compensation as indicated above along with 7.5% interest per annum instead of 9% interest 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 within a period of two months, if not already paid from the date of receipt of the copy of this order and on such deposit; the appellant is at liberty to withdraw the same unconditionally.

[9] In view of above discussion and observation, the present appeal stands partly allowed. As a sequel, miscellaneous applications pending, if any, shall stand closed. Send down the LCRs forthwith.

T. AMARNATH GOUD, J

A.Ghash

