

**HIGH COURT OF TRIPURA
AGARTALA**

Mac.app 57 of 2023

National Insurance Company Limited

---Appellant(s)

Versus

Smt. Dashanti Tripura And 2 Ors

---Respondent(s)

For Appellant(s)	:	Mr. Samrat Kar Bhowmik, Sr. Advocate. Mr. E. Darlong, Advocate.
For Respondent(s)	:	Mr. P K. Pal, Advocate.
Date of hearing and date of judgment and order	:	04.07.2024
Whether fit for reporting	:	No

HON'BLE MR. JUSTICE T. AMARNATH GOUD

Judgment and Order (Oral)

Heard learned counsel for the parties. In spite of service of notices there is no representation for other respondents. Since the matter is coming up for final hearing.

[2] This is an appeal under Section 173 of the Motor Vehicles Act, 1988 as amended till date, against the award dated 29.03.2023 passed by the Ld. Member Motor Accident Claims Tribunal, Court No.5, West Tripura Agartala in case TS(MAC) 248 of 2021.

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

- (i) *Admit the appeal*
- (ii) *Call for the records of Case No: TS(MAC) 248 of 2021 from the Court of Ld. Motor Accident Claims Tribunal, Court No:5 West Tripura, Agartala;*
- (iii) *Stay the operation of the impugned award dated 29.03.2023 passed in TS (MAC) 248 of 2021.*
- (iv) *After hearing the parties be kind enough to set aside/quash the impugned award appealed against.*
- (v) *Pass such other order or orders as the Hon'ble High Court may seem fit and proper.*

[4] The brief fact of the claimants' case is that on 05.03.2021 at about 9.00 am when the complainant and the deceased Bachan Tripura was proceeding from Paikhola towards Birchandra Manu as a pillion rider of the motor cycle No. TR-08-C-C9260

(Pulsar) with very slow and normal speed and on proper position on the left side of the road, in the mean time another vehicle bearing Registration No. TR-01-U-1724, (DI Vehicle) was coming from opposite direction being driven very rashly and negligently at a very high speed. When the said vehicle reached at Sachindra Garow High School, the driver of the said vehicle lost Control over the said vehicle due to very high and excessive speed. It subsequently dashed the Motor cycle No. TR-08-C-9260 (Pulsar) by going wrong side of the road and met an unfortunate tragic accident. As a result, the victim, i.e., the pillion rider of the motor cycle Bachan Tripura sustained serious fracture injuries on his person and fell down on the road with serious bleeding conditions. After the said accident, the deceased Bachan Tripura was brought to the Santirbazar Hospital and thereafter he was referred to the Gomati District Hospital, Udaipur. Thereafter, he was again referred to the AGMC and GBP hospital, Agartala, West Tripura. But in a few hours, he succumbed to the said injuries in the said hospital. A postmortem examination was done over the dead body. It is also stated that the said accident was occurred due to rash and negligent driving by the driver of the offending vehicle bearing Registration No. TR-01-U-1724, (DI Vehicle) and a case was registered in the Santirbazar PS vide Case No. 06 of 2021 dated 06.03.2021 under section 279/338/304A of IPC. It is also pleaded that deceased was a skilled businessman, i.e., rubber sales man by his profession and was earning Rs. 21,000/- per month and at the time of his death, he was aged 29 years of his age and his future prospect was very bright and it was expected that he would make more and more contribution towards his family and for himself if he had not died due to the said tragic accident.

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

“The Noticee, The National Insurance Co. Ltd. is directed to deposit the awarded compensation of Rs. 23,89,000/- (Rupees Twenty three lakhs eighty nine thousand 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 ie., from 17.12.2021 to till realization of the full.

Distribution of Compensation

Claimant No.1 and 2 are entitled to get compensation equally.

Protection Awarded Compensation

Fifty percent (50%) of the amount of compensation of claimant No.1 and 2 are to be fixed deposited for five years and the rest amount are to be released in their favour in their 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 dated 29.03.2023 passed by the Ld. Member Motor Accident Claims Tribunal, Court No.5, West Tripura Agartala in case TS(MAC) 248 of 2021, the present appeal has been preferred by the appellant-insurance company.

[7] Having gone through the record, it appears to this Court that the learned tribunal below has assessed the monthly income of the deceased as Rs.15,000/- being a rubber sales man. 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.12,000/- for a skilled worker and in the present case accident had taken place in 2021. 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.12,000/-. Hence, Rs.15,000/- is reduced to Rs.12,000/-. Moreover, on perusal of the record, it is seen that the learned tribunal applied multiplier 18 to the age of the deceased. On bare perusal of the record it surfaces that the age of the deceased was 29 at the time of accident. Hence, this Court applies multiplier 17 to the age of the deceased as per **Smt. Sarala verma vs. Delhi Transport Corporation & Anr** passed by the Supreme Court of India.

[8] Thus the computation would be as follows:

- (i) Rs.12,000/- + 40% for future prospect (i.e. Rs.4800/-) = **Rs.16,800/-**
- (ii) Since the deceased left behind two legal heirs, deduction towards person expense should be ½. Thus, ½ of Rs.16,800/- is **Rs.8400/-**

- (iii) Income per month Rs.8400/- x 12 x 17= **Rs.17,13,600/-**
- (iv) Consortium for claimant no.1= **Rs.40,000/-**
- (v) Consortium for claimant no.2= **Rs.40,000/-**
- (vi) Loss of estate = **Rs.15,000/-**
- (vii) Funeral expenses = **Rs15,000/-**
- (viii) As per the judgment of Pranay Sethi the conventional i.e. loss of estate, funeral expenses and loss of consortium heads should be enhanced at the rate of 10 percent in every 3 years. Thus the total amount of compensation in respect of loss of estate, funeral expense, and loss of consortium comes to (Rs.1,10,000/- + 10% (Rs.11,000/-) = **Rs.1,21,000/-**
- (ix) Thus, total compensation stands at Rs.17,13,600/-+Rs.1,21,000/- = **Rs.18,34,600/- (Rupees eighteen lakhs thirty four thousand and six hundred) only.**

[9] In view of the above calculation, the claimants are entitled to the compensation to the tune of **Rs.18,34,600/- (Rupees eighteen lakhs thirty four thousand and six hundred) only**. It is represented by the senior counsel for the appellant-insurance company that an amount of Rs.11,94,500/-, which is the 50% of the awarded amount as decided by the learned tribunal, has already been paid to his registry in pursuance to the impugned order dated 29.03.2023. Therefore, the remaining compensation, as per the new calculation, 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 already deposited. However, it is made clear that on such deposit, the claimants are at liberty to withdraw the same unconditionally as per procedure.

[10] It is further submitted the senior counsel for the appellant that the appellant had already deposited Rs.25,000/- to this registry at the time of filing the appeal. The insurance company is at liberty to withdraw the same as per procedure.

[11] In the light of the above, the present appeal stands partly allowed. It is pertinent to mention here that remaining impugned order dated 29.03.2023 remains unaltered other than the observation made above. As a sequel miscellaneous applications pending, if any, shall stand closed. Draw the decree accordingly and thereafter, send down the LCRs forthwith.

JUDGE

Dipak