

**HIGH COURT OF TRIPURA
AGARTALA**

MAC App. 62 of 2023

National Insurance Company Limited,
Represented by its Divisional Manager (In Charge),
Agartala Division, 42, Akhaura Road, P.O.: H.P.O.
Agartala, P.S.: West Agartala, Dist: West Tripura,
PIN: 799001
(Insurer of TR-01-AS-0265, Maruti Suzuki Swift)

.....Appellant

VERSUS

1. **Shri Tapas Debnath,**
Son of late Hiralal Debnath,
.....**Claimant/Respondent No.1**
(son of the deceased)
 2. **Shri Ranjan Debnath,**
Son of late Hiralal Debnath,
.....**Claimant/Respondent No.2**
(son of the deceased)
 3. **Smt. Rani Debnath,**
Daughter of late Hiralal Debnath,
.....**Claimant/Respondent No.3**
(daughter of the deceased)
- All the 3 above are residents of village-
Netaji Subhas Palli, Aralia,
P.S.: East Agartala, District: West Tripura,
PIN: 799004.
4. **Shri Shayan Chakma,**
Son of Shri Sujit Chakma
resident of Shyamali Bazar, Kunjaban
P.S.: NCC, District: West Tripura,
PIN: 799006.
.....**(Owner of TR-01-AS-0265,**
Maruti Suzuki Swift)

For Appellant(s)	: Mr. Samrat Kar Bhowmik, Sr. Advocate. Mr. J. Das, Advocate.
For Respondent(s)	: Mr. Kundan Pandey, Advocate.
Date of hearing and delivery of judgment and order	: 12.01.2024
Whether fit for reporting	: No

HON'BLE MR. JUSTICE T. AMARNATH GOUD

JUDGMENT & ORDER (ORAL)

This is an appeal under Section 173 of the Motor Vehicles Act,
1988 against the award dated 10.04.2023 passed by the learned Member,

Motor Accident Claims Tribunal, Tribunal No.4, West Tripura, Agartala in case No. TS (MAC) 23 of 2021.

[2] Brief facts of the case is that on 22.12.2019 at around 7.30 a.m. while the deceased Sudha Debnath was going towards Mathchowmuhan market, through Shibnagar College Road the alleged accident was occurred as suddenly when she came in front of the Bandhan Wedding Hall at around 7.30 a.m. vehicle bearing No. TR-01-AS-0265 came with high speed in rash and negligent manner and dashed the victim Sudha Debnath. Due to the accident the deceased fell on the road and was admitted at GBP Hospital and during the treatment, she died at the hospital. The deceased Sudha Debnath, as mentioned in the claim petition, was an employee of Ma Tripureswari Mechanical Workshop, House Assistant and she was also engaged running a Tiffin House. It was stated that she was earning Rs.25,000/- per month. After filing of the claim petition notices were served upon the opposite parties. Both the opposite parties No.1 and 2 (owner of the offending vehicle and the insurer of the vehicle respectively) submitted written statement before the tribunal and challenged the claim petition.

[3] The O.P. No.1, owner of the offending vehicle has contested the suit by filing written statement and apart from denying all the allegations has contended that he is the owner of the offending vehicle and that at the time of accident the driver drove the vehicle having valid driving licence and that the vehicle was insured with the O.P. No.2, the National Insurance Co. Ltd. (the appellant herein). Therefore, O.P. No.1, urged for fixing the liability on his insurer to pay the compensation, if any.

The O.P. No. 2, the insurance company through their written statement have denied all the allegations and thereby put the claimant petitioners as well as the O.P. No.1 in strict proof of their respective claims.

[4] With a view to decide the claim of the claimant petitioners following issues were framed by the Motor Accident Claims Tribunal, West Tripura, Agartala:

"ISSUES

(1) Whether Sudha Debnath died in a vehicular accident occurred on 22.12.2020 at about 7.30 a.m. at Shibnagar College Road, Agartala near Bandhan Bieybari under East Agartala P.S. West Tripura District due to rash and negligent driving of vehicle bearing No. TR-01-AS-0265 (Maruti Suzuki Swift) by its driver?

(2) Whether the claimant petitioners being the legal representatives of the deceased, are entitled to get compensation, if so, upto what extent and who shall be liable to pay the same ?"

[5] Learned Tribunal on consideration of all the facts and circumstances and on perusal of material evidence available on record, observed in the following manner:

"ORDER

13. In the result, claim is awarded in following terms :-

(i) Claimant petitioners are entitled to get the award of Rs.24,41,500/- (Rupees twenty four lakhs forty one thousand five hundred) only along with 9% simple interest per annum from the date of the petition i.e. w.e.f. 28.01.2021 till the date of realization thereof from the O.P. No.2 the National Insurance Co. Ltd.

(ii) 40% of the award of all the claimants be invested by purchasing separate Fixed Deposit Certificates 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 withdrawal shall be allowed without prior sanction of this Tribunal. The interest accrued on the fixed deposit certificates shall be directly transmitted to the individual savings accounts by the concerned bank. The concerned bank shall retain the original fixed deposit certificates and the

copies of the certificates to be handed to all the claimant petitioners. The claimant petitioners are directed to submit photocopies of their bank pass book.

(iii) The O.P. No.2 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.

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

(v) The case stands disposed on contest.....”

[6] Aggrieved by the award delivered on 10.04.2023, the appellant herein has approached this Court seeking following reliefs:

- a) Admit the appeal;
- b) Call for the records of case No. T.S.(MAC) 23 of 2021 from the Court of learned Motor Accident Claims Tribunal, Court No.4, West Tripura, Agartala.
- c) Stay the operation of the impugned award dated 10.04.2023 passed in T.S.(MAC) 23 of 2021.
- d) After hearing the parties be kind enough to set aside/quash/modify the impugned award appealed against.

[7] Heard Mr. Samrat Kar Bhowmik, learned senior counsel appearing along with Mr. J. Das, learned counsel for the appellant insurance company. Also heard Mr. Kundan Pandey, learned counsel representing the claimant-respondents. Perused the record.

[8] Mr. Samrat Kar Bhowmik, learned senior counsel appearing for the appellant-insurance company submits that without any documentary evidence and only on the basis of pleadings, learned Tribunal wrongly computed the earning of the deceased to be Rs.25,000/- per month and passed an award of Rs.24,41,500/-. He further contends that learned Tribunal failed to appreciate that since the deceased was 60 years old, 10% of income should not have been added as future prospect. He also submits that the 9% per annum simple interest as fixed by the learned Tribunal on the awarded amount is much higher than the prevailing bank interest. He, therefore, urges before

this Court that the compensation as awarded by the learned Tribunal to the claimant-respondents is liable to be set aside.

[9] On the contrary, Mr. Kundan Pandey, learned counsel representing the claimant-respondents prays before this Court that the award passed by the Tribunal should not be interfered with and the instant appeal filed by the appellant insurance company be dismissed.

[10] Having perused the entire record and upon hearing the submissions advanced by the learned counsel appearing for the parties, this Court is of the view that in the absence of documentary proof adduced by the claimant-respondents on the income of the deceased, learned tribunal fixed the income of the deceased as Rs.25,000/- per month. This Court is of the view that in the absence of documentary proof of income of the deceased, the principle as laid down in ***Ramachandrappa v. Royal Sundaram Alliance Insurance Co. Ltd.,*** be followed by fixing a notional income @ **Rs.10,000/- per month.**

[11] On perusal of record, it is revealed that at the time of death, the deceased was 60 years old. As such, 10% of the income which has been added by the Tribunal for future prospect should be deleted.

Except the above discussed two heads (i.e. reduction of income and deletion of added of 10% of income as future prospect), insofar as, other heads calculated by the Tribunal are concerned, the same shall remain unaltered.

[12] This Court in all the similarly situated matters is fixing 7.5% interest to maintain uniformity while comparing the bank rate of interest which is also much less. Thus, this Court is of the view that ends of justice would be met if the rate of interest fixed by the learned tribunal be reduced from 9% per annum to 7.5%. per annum.

[13] Now in terms of the present appeal, the total compensation to be awarded to the claimants herein is re-calculated which stands as under:

(i) Income per month = Rs.10,000/- only.

(ii) One fourth deduction to be contributed for her personal expenses
 $(10,000 - 2,500) = \text{Rs.}7,500/-$

(iii) Compensation after applying multiplier of 9 $(\text{Rs.}7,500 \times 12 \times 9 = \text{Rs.}8,10,000/-)$.

(iv) Loss of consortium = $\text{Rs.}40,000/ \times 4 = \text{Rs.}1,60,000/-$,

(v) Loss of estate = $\text{Rs.}15,000/-$

(vi) Funeral expenses = $\text{Rs.}15,000/-$

[Pranay Sethi case has been followed in loss of estate, loss of consortium and funeral expenses, which should be enhanced at the rate of 10% in every 3 years. Thus, the figure stands $(\text{Rs.}15,000/- + \text{Rs.}15,000/- + \text{Rs.}1,60,000/- = \text{Rs.}1,90,000/-) + (10\% \text{ of } 1,90,000/-) = \text{Rs.}2,09,000/-]$.

(vii) Transportation cost = $\text{Rs.}5,000/-$ (A lump sum amount is awarded as no document was submitted in this respect);

(viii) Total compensation $(\text{Rs.}8,10,000 + \text{Rs.}2,09,000 + \text{Rs.}5,000) =$
 $\text{Rs.}10,24,000/-$.

Thus, total compensation stands at **$\text{Rs.}10,24,000/-$ (Ten Lakh Twenty-Four Thousand only)**. Accordingly, the compensation is reduced from $\text{Rs.}24,41,500/-$ to $\text{Rs.}10,24,000/-$.

Consequently, the total compensation entitled by the claimants would be **$\text{Rs.}10,24,000/-$ (Ten Lakh Twenty-Four Thousand only)** along with **7.5% simple interest per annum** from the date of presentation of the claim petition till the date of actual payment.

[14] In view of the above, the instant appeal is allowed to the extent as indicated above. Thus, the appellant insurance company is liable to pay the

total amount as awarded to the claimants in TS (MAC) 23 of 2021. The amount to be deposited within one month from today on the file of the Motor Accidents Claims Tribunal, Tribunal No.4, West Tripura, Agartala and on depositing the same, the claimants may file appropriate application to the satisfaction of the Court and withdraw the amount as per law.

As a sequel miscellaneous application(s) pending if any, shall stand closed.

Draw the decree accordingly. Send down LCR.

JUDGE

Sabyasachi. G.

**SABYASACHI
GHOSH**

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