

**HIGH COURT OF TRIPURA
AGARTALA**

MAC App 66 of 2023

United India Insurance Company Limited

Through its Branch Manager, Kailashahar Branch,

PO & PS: Kailashahar, Unakoti, Tripura.

Represented by its Branch Manager, Divisional Head Office,

at Old RMS Chowmuhani, Agartala, West Tripura, PIN-799001

(Insurer of the offending vehicle bearing registration no. TR04-3309, Bolero)

---Appellant(s)

Versus

1. **Sri Pranatish Marak**, S/o Ramesh Marak,
2. **Sri Jintu Marak**, S/o- Sri Pranatish Marak,
3. **Sri Binud Marak**, S/o- Sri Pranatish Marak,
4. **Sri Sadha Marak**, S/o- Sri Pranatish Marak,
5. **Smt. Protima Marak**, D/o- Sri Pranatish Marak

All are residents of West Masli, Manu Ghat, ADC Village, Marak Para, near ISDS Centre of West Masli, Manu Ghat, Dhalai, Tripura-799275.

6. **Sri Rajib Rudra Paul**, S/o- Sri Parimal Rudra Paul,
Of Mainama, Manu Ghat, PS: Chailengta, District: Dhalai, Tripura,
(The Owner of the offending Vehicle bearing registration No.TR04-3309, Bolero)

---Respondent(s)

For Appellant(s)	:	Mr. S. Bhattacharjee, Advocate.
For Respondent(s)	:	Mr. T. D. Majumdar, Sr. Advocate. Mr. D. Kalai, Advocate.
Date of hearing and date of judgment and order	:	09.04.2024.
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 impugned Award dated 21.03.2023 passed by the Member, Motor Accident Claims Tribunal, Dhalai Judicial District, Ambassa in Case No. TS(MAC) 01 of 2021.

[2] The case of the claimant-respondents, in brief, is that on 07.01.2021 at about 01:30 pm deceased Jatila Marak along with her daughter Smt. Protima Marak (claimant-petitioner No. 5) was proceeding towards Kumarghat from their residence by an Auto Rickshaw bearing registration No. TR04-A-2055 and while they reached at East

Kanchanbari near Power Office, at that time one Bolero vehicle bearing registration No. TR04-3309 (hereinafter referred as the offending vehicle) came with rash and negligent manner with excessive speed and dashed the Auto Rickshaw violently, as a result deceased Jatila Marak fell down from the Auto Rickshaw and sustained severe bleeding injuries on her head and other parts of her body. Thereafter, injured was taken to Kumarghat Hospital for treatment with the help of Fire Service Vehicle but the attending doctors declared her death and after conducting postmortem over the dead body of deceased Jatila Marak, the dead body was handed over to the relatives. The claimant respondents in their claim petition further stated that the accident occurred due to rash and negligent driving of the offending vehicle bearing registration No. TR04-3309 (Bolero) by its driver. In this connection a specific case vide Kumarghat PS Case No. 2021/KGT/003 dated 07-01- 2021, under section 279/337/338/304A of IPC and Section 187 of MV Act was also registered. The claimant respondents in their claim petition also stated that at the time of accident the deceased was doing business by running a shop at Khayerpur, a Hotel at Madavbari and she was also an artisan and made full handmade Pachra and by this way she used to earn Rs. 50,000/- per month and that she was 43 years old at the time of death. It is also stated that the husband of the deceased received injuries on his Hip-joint in the year 2003 and two sons also suffering from various illness for which they have no ability to do any works and deceased was running the said hotel with the help of her younger son and as such all the respondents were fully dependent on the income of the deceased for their livelihood. So, they claimed compensation to the tune of Rs. 60,00,000/- with interest.

[3] The Opposite Party No. 1, owner of the offending vehicle by filing written statement apart from denying all the allegations in the claim petition contended, inter alia, that he is the registered owner of the said offending vehicle bearing registration No. TR04-3309 (Bolero) at the time of accident and it was duly insured with the Opposite

Party No. 2, i.e., The United India Insurance Company Ltd., Kailashahar Branch, Unakoti, Tripura Vide policy No. 1309813120P103710083. Opposite Party No. 1, therefore, urged for fixing the liability of its insurer to pay the compensation, if any.

[4] The Opposite Party No. 2, i.e., The United India Insurance Company Ltd., Kailashahar Branch, Unakoti, Tripura also contested the suit by filing written statement wherein it is stated that there is no cause of action to file the instant suit & as such, the suit is liable to be dismissed and the contents, averments, statements, assertions & allegations made in the claim-petition is not true & correct. The Opposite-party No. 2 also by filing written statement apart from denying all the allegations also put the claimant petitioners as well as the Opposite-party No. 1 in strict proof of their respective claim.

[5] On the pleadings of the parties following issues were framed with a view to decide the fate of the suit:-

- (i) *Whether the suit is maintainable in its present form and nature?*
- (ii) *Whether a motor accident has been occurred on 07.01.2021 at about 1.30 PM at East Kanchanbari, near Power Office under the jurisdiction of Manu PS due to rash and negligent driving of the offending vehicle bearing No. TR04-3309 (Bolero) by its driver?*
- (iii) *Whether the claimant-petitioners are entitled to get compensation as prayed for due to death of Lt. Jatila Marak, W/O- Sri Pranatish Marak of West Masli, PS- Manu, Dist- Dhaai, Tripura following a motor accident and if so, what should be the quantum of compensation and who will pay the same?*
- (iv) *What other relief(s) the parties to this suit are entitled to get?*

[6] Finally by the impugned order dated 21.03.2023, the learned Tribunal below has observed as follows:

Resultantly, the application under Section 166 of the Motor Vehicles Act, 1988 filed by the claimant-petitioners is allowed on contest.

Claimant petitioners are entitled to get the award of Rs.21,43,000/- (rupees twenty one lacs forty three thousand) only with 9% Simple interest per annum from the date of registration of claim i.e, w.e.f. 25-01-2021 till the date of realization thereof.

The awarded amount will be distributed equally in favour of the claimant petitioner Nos. 1 to 5. 60% share of the each claimant petitioners shall be paid to them directly to their individual bank accounts.

Rest 40% share of the each claimant petitioners be invested by purchasing separate Fixed Deposit certificate from any Nationalized Bank at least for the next 5 years and no loan or advance or pre-mature withdrawal shall be allowed without prior sanction of this Tribunal. However, the claimant petitioners shall have the liberty to withdraw the monthly interest therefrom.

The Opposite-party No. 2, i.e., The United India Insurance Company Ltd., Kailashahar Branch, Unakoti, Tripura shall deposit the awarded amount along with interest thereon within one month to this Tribunal.

[7] Aggrieved by the said impugned order dated 21.03.2023, the appellant-insurance company has approached this court for by way of filing this appeal.

[8] It is contended by the learned counsel for the appellant-insurance company that the learned Tribunal below failed to consider that the claimants No.2, 3 & 4 being the step and adopted sons of the deceased are not entitled to any amount of compensation as the step sons and adopted sons cannot be treated as the dependents of the deceased. Moreover, in absence of any evidence that they are either the step sons or adopted sons of the deceased and as such they cannot be considered as sons and/or legal-heirs or dependent of the deceased Jatila Marak.

[9] It is further contended by counsel for the appellant that the learned Tribunal below by awarding consortium to all the 5 claimants @ Rs.40,000 plus 10% thereof per claimant amounting to Rs.2,20,000 in total caused serious miscarriage of justice as it is settled proposition of law, that in absence of proof of dependency all the alleged claimants are not entitled to any award under the head of 'consortium'. Moreover addition of 10% in the said head is also impermissible in law.

[10] On the other hand, Mr. T.D. Majumder, learned senior counsel appearing for the claimant-respondents has submitted before this court that the impugned order dated 21.03.2023 passed by the Ld. Tribunal below is just and proper and needs no interference from this court. He further prayed to dismiss the appeal.

[11] Heard learned counsel for the parties.

[12] On perusal of the record and having considered the submission as advanced by the learned counsel for the appellant, this court is of the view that the claimant no.1 is the husband (Sri Pranatish Marak) and the claimant no.5 is daughter (Smt. Protima Marak) of the deceased. This court considers them as legal heirs/representatives for claiming the compensation. With regard to the other claimants (respondents No.2, 3 and

4) who are said to be the step children/adopted sons, no specific evidence is placed on record and no document has also been placed on record by them that authenticates that they are the legal heirs or representatives of the deceased.

[13] In view of the above discussion, the appellant insurance company is to give compensation as per the following calculation:

- (i) *Income per month = Rs.12,000 only*
- (ii) *25% of above to be added as future prospect Rs.3,000/- only*
- (iii) *The sum total of (i) and (ii) works at Rs.15,000/- only*
- (iv) *One-third (1/3) of above to be deducted as personal and living expenses of deceased Rs.15,000 minus Rs.5000 = Rs.10,000/- only*
- (v) *Compensation after applying multiplier of 14 = Rs.10,000 x 12 x 14 = Rs.16,80,000*
- (vi) *Loss of estate = Rs.15,000 and 10% of Rs.15,000/- comes to Rs.1,500/- and in total = Rs.16,500/-*
- (vii) *Funeral expenses = Rs.15,000 and 10% of Rs.15,000/- comes to Rs.1,500/- and in total Rs.16,500/-*
- (viii) *Loss of consortium = Rs.40,000/- x 2 in total = Rs.80,000/- and 10% of 80,000/- comes to Rs.8000 and in total Rs.88,000/-.*
- (ix) *Thus the total amount of compensation comes to **Rs.18,01,000/-** (Rs.16,80,000 + Rs.16,500/- + Rs.16,500/- + Rs.88,000/-) which the claimants respondents are entitled.*

[14] The claimant respondents are entitled to get the award of **Rs.18,01,000/-** (Rupees eighteen lakhs and one thousand only) from the date of registration i.e. w.e.f. 25.01.2021 with 9% of interest till the date of realization. The appellant insurance company shall deposit entire amount as indicated above to the account of the respondent-claimants within a period of one month from today, if not already deposited. On such deposit the claimants are at liberty to withdraw the same unconditionally as per procedure.

[15] With the above observation and direction, the present appeal challenging the judgment and award dated 21.03.2023 passed by the Ld. Motor Accident Claims Tribunal, Dhalai Judicial District, Ambassa in Case No.TS(MAC) 01 of 2021 stands allowed to the extent as indicated above. As a sequel, stay, if any, stands vacated. Pending application(s), if any, also stands closed.

JUDGE

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