

**HIGH COURT OF TRIPURA
AGARTALA**

MAC App.67 of 2023

United India Insurance Co. Ltd.

..... Appellant(s)

Versus

Smt. Champa Dey and others

..... Respondent(s)

For Appellant(s)	:	Ms. R. Purkayastha, Advocate.
For Respondent(s)	:	Mr. S. Bhattacharjee, Advocate. Mr. S. Datta, Advocate
Date of hearing and delivery of judgment & Order	:	24.06.2024
Whether fit for reporting	:	Yes/No.

HON'BLE MR. JUSTICE T. AMARNATH GOUD

Judgment and order (Oral)

The present appeal is filed against the impugned award dated 06.02.2023 passed by the Member, Motor Accidents Claims Tribunal, West Tripura, Agartala, Tribunal No.4 in T.S. (MAC) 54 of 2018 whereby the learned Tribunal below has awarded compensation of Rs.5,95,000/- only within a period of 30(thirty) days from the date of award along with interest @ 9% per annum from the date of presentation of the claim petition before the tribunal on 11.04.2018 till realization to the claimant respondents by the OP No.2 (appellant).

[2] The brief facts of the case as per the impugned judgment and order of the Court below are that on 28.09.2017, the victim along with her parents boarded in a auto rickshaw bearing No. TR-02-B-1981 and was proceeding towards Kumarghat town for visiting Durga Puja. At about 22:00 hrs., while reached at Rajendra Bazar, due to high speed and negligent driving of the driver of their auto rickshaw, it dashed one alto car bearing No. TR-02-E-0544 coming from opposite direction. As a result, all of them sustained injuries on their persons. The victim Anwesha Dey sustained severe injuries on various parts of her body and

immediately was brought to Dharmanagar District Hospital, with the help of local people. On the next day i.e. on 29.8.2017, she was taken to Silchar South City Hospital where she was admitted for better treatment and after discharge from the hospital she had to take time to time follow up treatment therefrom. It was alleged that the accident occurred due to reckless and irresponsible driving of the offending auto rickshaw by its driver. It was further contended that the victim was a student and used to earn Rs.9,000/- per month but due to said unfortunate accident she became disabled.

[3] The O.P. No.1, owner of the offending auto rickshaw has contested the suit by filing written statement before the learned Tribunal below and apart from denying all the allegations has contended that he was the owner of the offending vehicle which was insured with the O.P. No.2, the United India Insurance Co. Ltd. on the alleged date and time of accident. On the other hand, O.P. No.2 through their written statement apart from denying all the allegations put the claimant petitioner as well as the O.P. No.1 in strict proof of their respective claims.

[4] Learned tribunal below, after examining all the facts and circumstances of the case and upon hearing the submissions of the learned counsel of both the parties, passed the following order on 06.02.2023:

ORDER

.....12. In the result, the application under section 166 of the M.V. Act, 1988 filed by the claimant, Smt. Champa Dey is allowed on contest.

The claimant is entitled to a sum of **Rs.5,95,000/-** (Rupees five lakhs ninety five thousand) only as compensation in this case.

O.P. No.2 the United India Insurance Co. Ltd. being insurer of the offending vehicle bearing No. TR-02-B-1981 shall pay the said amount of compensation to the claimant within a period of 30 (thirty) days from the date of award in terms of Section 168(3) of the Act.

The amount of compensation shall carry interest @ 9% per annum from the date of presentation of the claim petition before the Tribunal on 11.04.2018 till realization.

Entire amount of compensation awarded in favour of the victim minor girl namely, Miss Anwesha Dey be invested by purchasing Fixed Deposit certificate from any Nationalized Bank till her attaining majority i.e. 21 years of age. However, the claimant petitioner No.1 being the mother of victim shall have the liberty to withdraw the monthly interest from the account of her minor daughter with the condition that the amount shall be invested only for the well being of the minor.

The O.P. insurance company shall give notice of the deposit of the compensation amount to the claimant and shall also file a compliance report with this Tribunal within 15 days of the deposit.

13. Supply copy of the judgment to the claimant and the O.P. No.2 free of cost....."

[5] Heard Ms. R. Purkayastha, learned counsel for the appellant insurance company. Also heard Mr. S. Bhattacharjee, learned counsel and Mr. S. Datta, learned counsel on behalf of the claimant-respondent No.1.

[6] Ms. Purkayastha, learned counsel for the appellant insurance company submits that the learned Tribunal has failed to appreciate that it is a case of composite negligence and the driver of other vehicle is also responsible. The owner or driver of the said vehicle has not been impleaded as party due to which the instant insurance company was made to bear the entire burden of payment. It is also contended by the learned counsel that the rate of interest which is imposed upon the insurance company along with the awarded compensation is 9% per annum from the date of presentation of the claim petition before the Tribunal, which is also on the higher side. Learned counsel, therefore, urges this Court to set aside the judgment and award passed by the learned Tribunal below.

[7] On the contrary, Mr. S. Bhattacharjee, learned counsel for the claimant-respondent No.1 opposes the submission made by the learned counsel for the appellant insurance company. Learned counsel prays that the order passed by the learned Tribunal below should not be interfered with as the same has been passed in accordance with law. To support his contention, learned counsel has placed reliance on the judgment passed by the Hon'ble Supreme Court in ***Khenyei vs New India Assurance Co.Ltd. & Ors.*** The relevant contents of the said judgment as referred by the learned counsel for the claimant respondent No.1, is quoted hereinbelow:

".....4. It is a case of composite negligence where injuries have been caused to the claimants by combined wrongful act of joint tortfeasors. In a case of accident caused by negligence of joint tortfeasors, all the persons who aid or counsel or direct or join in committal of a wrongful act, are liable. In such case, the liability is always joint and several. The extent of negligence of joint tortfeasors in such a case is immaterial for satisfaction of the claim of the plaintiff claimant and need not be determined by the court. However, in case all the joint tortfeasors are before the court, it may determine the extent of their liability for the purpose of adjusting inter-se equities between them at appropriate stage. The liability of each and every joint tortfeasor vis a vis to

plaintiff/claimant cannot be bifurcated as it is joint and several liability. In the case of composite negligence, apportionment of compensation between tort feors for making payment to the plaintiff is not permissible as the plaintiff/claimant has the right to recover the entire amount from the easiest targets/solvent defendant.

5. In Law of Torts. 2nd Edn., 1992 by Justice G.P. Singh, it has been observed that in composite negligence, apportionment of compensation between two tort feors is not permissible*****

***** What emerges from the aforesaid discussion is as follows:

(i) In the case of composite negligence, plaintiff/claimant is entitled to sue both or any one of the joint tort feors and to recover the entire compensation as liability of joint tort feors is joint and several.

(ii) In the case of composite negligence, apportionment of compensation between two tort feors vis a vis the plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them.

(iii) In case all the joint tort feors have been impleaded and evidence is sufficient, it is open to the court/tribunal to determine inter se extent of composite negligence of the drivers. However, determination of the extent of negligence between the joint tort feors is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of payment to the plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/ extent of their negligence has been determined by the court/tribunal, in main case one joint tort feor can recover the amount from the other in the execution proceedings.

(iv) It would not be appropriate for the court/tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tort feors. In such a case, impleaded joint tort feor should be left, in case he so desires, to sue the other joint tort feor in independent proceedings after passing of the decree or award.

19. Resultantly, the appeals are allowed. The judgment and order passed by the High Court is hereby set aside. Parties to bear the costs as incurred...."

[8] In view of the above referred judgment of the Hon'ble Supreme Court cited *supra*, this Court finds no infirmity in the impugned judgment and award passed by the learned tribunal below on 06.02.2023. This Court is of the view that the assessment of compensation as assessed by the learned tribunal is just and proper. However, insofar as interest imposed by the learned tribunal @9% per annum is concerned, it is obviously on the higher side. This Court in all matters is fixing 7.5% per annum interest to maintain uniformity while comparing the bank rate of interest which is also much less. Consequently, the claimant(s) would be entitled to compensation as awarded by the learned tribunal below along with interest @ **7.5% per annum** instead of 9% per annum as fixed by the learned tribunal with

effect from the date of presentation of the claim petition till the date of actual payment.

Thus, the present appeal stands partly allowed to the extent as indicated above. As a sequel, miscellaneous application(s) pending, if any, shall stand closed.

Draw the decree accordingly and thereafter, send down the LCRs.

JUDGE



Sabyasachi G.

**SABYASACHI
GHOSH**

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