

HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A
MAC. App. No.78 of 2023

1. The United India Insurance Co. Ltd.

..... Appellant

-V E R S U S-

1. Smti. Kalpana Deb Roy (wife of the deceased) & Others.

..... Respondents.

B_E_F_O_R_E
HON'BLE MR. JUSTICE T. AMARNATH GOUD

For Appellant(s)	:	Mr. P. Gautam, Advocate.
For Respondent(s)	:	Ms. S. Deb, Advocate.
Whether fit for reporting	:	YES/NO

Judgment and order dated 24th June, 2024

JUDGMENT & ORDER [ORAL]

Heard Mr. P. Gautam, learned counsel appearing for the appellant also heard Ms. S. Deb, learned counsel appearing for the respondents.

[2] This is an appeal filed under Section-173 of Motor Vehicles Act, 1988 read with Section-168 of the Act ibide, against the impugned judgment and award dated 22.12.2022 passed by the learned Motor Accident Claims Tribunal, No.2, West Tripura, Agartala, in connection with T.S. (MAC) 143 of 2019.

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

i. Admit the appeal.

ii. Call for the case records from the learned Tribunal below .

iii. Stay the operation of the impugned judgment and award dated 22.12.2022 passed by the Ld. Motor Accident Claims Tribunal, Tribunal No.2(Sri Gobinda Das), West Tripura, Agartala, in case No. T.S.(MAC) 143 of 2019, and the Hon'ble High Court may kindly be pleased to direct the Ld. Tribunal, not to proceed with any execution proceeding if any filed by the claimant respondents in the meantime, till disposal of the present appeal.

After hearing the parties be pleased enough to set aside/quash the impugned judgment and award dated 22.12.2022 passed by the Ld. Motor

Accident Claims Tribunal, Tribunal No.2(Sri Gobinda Das), West Tripura, Agartala, in case No. T.S.(MAC) 143 of 2019.

iv. After giving an opportunity both the parties, your Lordship may be pleased to set aside the impugned judgment/award dated 04.08.2022 passed by the learned Motor Accident Claims Tribunal, Tribunal No.4, West Tripura, Agartala in case No. T.S.(MAC) 84 of 2019.

[4] The facts in brief are that on 16.01.2019 deceased Rabindra Deb Roy the claimant respondent herein while proceeding towards Agartala from Teliamura by boarding a Mini Bus bearing No. TR-01-A-1490 being the offending vehicle herein was capsized from the main road in a turning at Nerengbari on NH8 Assam Agartala Road due to rash and negligent driving of the alleged driver, the deceased fell down on the road and sustained multiple previous injuries died on the spot and succumbed to his injuries on the following day that is on 17.01.2019. After that the claimant petition being the wife and son of the deceased filed the present claim petition before the Motor Accident Claims Tribunal, West Tripura, Agartala, Court No.2 bearing case No. T.S.(MAC) 143 of 2019.

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

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

(i) Claimant petitioners are entitled to get the award of Rs.18,54,000/- (Rupees eighteen lacs fifty four thousand) only along with 9% simple interest per annum from the date of registration of claim i.e. w.e.f. 18.07.2019 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 petitioner No.2 exclusively shall be entitled to get the amount of Rs.2,00,000/- that has been awarded under the head loss of love and affection. The claimant petitioners Nos.1 and 2 shall have equal share on the rest amount.

(ii) 50% of the share of the claimant petitioners in the award be invested by purchasing separate fixed deposit certificates from any Nationalized Bank at least for the next 5 years and no loan or advance or premature withdrawal shall be allowed without prior sanction of this Tribunal.

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

However, the claimant petitioner No.1 shall have the liberty to withdraw the monthly interest therefrom including from the account of her minor son.

The OP No.2, shall deposit the awarded amount along with interest thereon within one month to this Tribunal”

[6] Being aggrieved by and dissatisfied with the judgment and award dated 22.12.2022 passed by the learned Motor Accident Claims Tribunal, No.2, West Tripura, Agartala, in connection with T.S. (MAC) 143 of 2019, the present appeal has been preferred by the appellant.

[7] The learned Court below has assessed the monthly income of the deceased as Rs.15,000/- being driver but, this Court following the notification dated 4th August, 2023 framed by the High Court, 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 after 2015. 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/-. Thus, the computation would be as follows:

[8] So, applying the ratio of law as declared by the Hon’ble Apex Court in Pranay Sethi’s case, an addition to the extent of 10% should be added to the income of the deceased. In view of the law laid down in Sarla Varma’s case for the age group of 51 to 55 the appropriate multiplier is 12. Now in view of the aforesaid principles of law the calculation of compensation would be thus:

- i. Income per month = Rs.12,000/-.
- ii. 10% of above to be added as future prospect i.e. Rs.1200/-.
- iii. Total of Sl. Nos. (i) & (ii) above comes to Rs.12,000 + 1200 = Rs.13,200/- only.
- iv. One third of above to be deducted as personal and living expenses of deceased i.e. Rs.4,400/- = Rs.13,200 – 4,400 = Rs.8,800/-.
- v. Compensation after applying multiplier of 12 would be Rs.8,800 x 12 x 12 = Rs.12,67,200/- only.
- vi. Loss of estate = Rs.15,000/-.
- vii. Funeral expenses = Rs.15,000/-.
- viii. Loss of consortium = Rs.40,000/-.

[9] As per record the claimant petitioner No.2 is the minor son of the deceased and due to untimely death of his father he lost the love and affection that he would expected to get from his father. On this count I find it appropriate to award a sum of Rs. 40,000/- instead of Rs.2,00,000/- as awarded by the learned tribunal below along with 10% with the same amount towards loss of love and affection following the principle laid down in *Magma General Insurance Company Limited v. Nanu Ram @ Chuhru Ram and Others*, reported in (2018) 18 SCC 130, thus, the award regarding love and affection would be Rs.40,000 + (10% of Rs.40,000) 4,000/- = Rs.44,000/-. Thus, the total compensation stands at Rs. 12,67,200 + 15,000 + 15,000 + 40,000 + 44,000 = Rs.13,81,200/-. Accordingly, the claimants are entitled to Rs.13,81,200/- instead of Rs.18,54,000/- as awarded by the learned tribunal below.

[10] 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 one month from the date of receipt of the copy of this order, if not deposited. However, it is made clear that on such deposit; the claimants are at liberty to withdraw the same unconditionally.

[11] In the light of the above, the present appeal stands partly allowed. As a sequel, miscellaneous applications pending, if any, shall stand closed. Draw the decree accordingly and thereafter, send down the LCRs forthwith.

T. AMARNATH GOUD, J

A.Ghosh

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