

**HIGH COURT OF TRIPURA
AGARTALA**

Mac.app 79 of 2023

Smt. Manju Debnath and Ors.

---Appellant(s)

Versus

Sri Pankaj Malakar & Anr.

---Respondent(s)

For Appellant(s)	:	Mr. S. Lodh, Advocate.
For Respondent(s)	:	Mr. S. Chakraborty, Advocate.
Date of hearing and date of judgment and order	:	24.07.2024
Whether fit for reporting	:	No

HON'BLE MR. JUSTICE T. AMARNATH GOUD

Judgment and Order (Oral)

Heard learned counsel for the parties.

[2] This is an appeal under Section 173 of the Motor Vehicles Act, 1988 filed by the appellant challenging the judgment and award dated 01.03.2023 passed by the learned Motor Accident Claims Tribunal, No.1, West Tripura, Agartala in case No.T.S.(MAC) 01 of 2021.

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

- (i) *Admit the appeal*
- (ii) *Call the LC record appertaining to TS (MAC) 01 of 2021 which lying before the Ld. Member, Motor Accident Claim Tribunal Court No.1.*
- (iii) *Issue the notice upon the opposite parties.*
- (iv) *After hearing both the parties be pleased enough to set-aside order of the Le. Tribunal dated 01.03.2023 and pleased enough to allow the appeal with the substantial cost.*

[4] The case of the claimant-appellants in brief is that on 23.03.2020 at about 8.30 p.m. the victim Nepal Debnath was going from his house towards his neighbour's house at S.N. Colony on foot to attend Kali Puja festival. When he reached near the house of Biplab Ghosh, at that time, one Motor Bike bearing Registration No. TR-01-AL-6404 coming with high speed and in a negligent manner dashed the victim Nepal Debnath on

his back side. Due to the dashing of the Motor Bike, an unfortunate accident took place and the victim received bleeding injuries on his person. Just after the accident, the local people and fire service personnel shifted the injured at Jirania PHC wherefrom he was referred to the AGMC & GBP Hospital, Agartala wherein he got admitted as an indoor patient and during the period of his treatment, he succumbed to his injuries on the same day at about 10.20 p.m. Concerning the said accident, a police case was registered with the Jirania Police Station vide Jirania P.S. Case No.12 of 2020 under Sections 279/304(A) of I.P.C. and Sections 183/184 of M.V. Act, 1988 and after investigation, the Investigating Officer submitted Chargesheet against the rider of the Motor Bike. It is also stated in the claim petition that the deceased was a businessman of Furniture and Manufacturer and by this way he used to earn Rs.15,000/- per month and was 45 years old at the time of death. Finally, the claimant-appellants claimed compensation to the tune of Rs.26,55,000/- in total.

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

“It is, therefore, held that the petitioners are entitled to get compensation of Rs.19,64,000/- (Rupees Nineteen Lakh Sixty-four Thousand only) with interest @ 7% per annum with effect from 04.01.2021 i.e. the date of filing of the claim petition till the date of actual payment. The Opposite Party No.2 Liberty General Insurance Ltd. will pay the amount of compensation with interest within 30 days from today in terms of Section 168(3) of M.V. Act, 1988 and then to recover the same from the O.P. no.1, Sri Pankaj Malakar, owner of the Motor Bike bearing registration No. TR-01-AL-6404 by filing appropriate application in appropriate forum.

Out of the awarded amount of compensation inclusive of interest, the petitioner no.1 will get 40% and the petitioners no.2, 3 and 4 will get 20% each. Out of the respective share of petitioners no. 1, 2, 3 and 4, 50% each of their respective share shall be kept in fixed deposit scheme in their respective names in any Nationalized Bank of their locality for a period of five years and the remaining 50% of their respective share shall be paid to them through their respective bank account. The petitioners no.1, 2, 3 and 4 shall however be at liberty to withdraw monthly interest from their respective fixed deposit to meet their day to day expenses. No loan or withdrawal shall be permitted from/against any of the fixed deposit certificates without prior permission of this Tribunal.”

[6] Being aggrieved by and dissatisfied with the judgment and award dated 01.03.2023 passed by the learned Motor Accident Claims Tribunal, West Tripura,

Agartala in case No.T.S.(MAC) 01 of 2021, the present appeal has been preferred by the claimant-appellants.

[7] Learned counsel for the claimant-appellants has contended before this court that the learned Court below has assessed the monthly income of the deceased as Rs.12,000/- being a carpenter. On course of his argument, Mr. S. Lodh, learned counsel for the claimant-appellants has drawn the attention of this court to the salary certificate of the deceased issued by his employer. The learned tribunal has examined the said employer, Sri Debabrata Chakraborty where he deposed that the deceased used to work for his firm and he used to earn Rs.15,000/- per month. Therefore, it is apparent from the deposition of the employer of the deceased that his monthly salary was Rs.15,000/-. Stating thus, this Court is of the view that the monthly income of the deceased should be considered as Rs.15,000/- instead of Rs.12,000/- as assessed by the learned tribunal. Therefore the fresh calculation for compensation would be as follows:

Monthly income = Rs.15,000/-
25% is required to be added with the said amount as future income
25% of Rs.15,000/- = Rs.3750/-
Thus monthly income comes to Rs.15,000/- + Rs.3750 = Rs.18750/-
Loss of dependency = Rs.18750 x 12 x 13 = Rs.29,25,000/-
Loss of estate= Rs.16,500/-
Funeral expenses = Rs.16,500/-
Loss of consortium = Rs.1,76,000/-

Thus, the total amount of compensation comes to **Rs.31,34,000/- (Rupees thirty one lakh thity four thousand) only.**

[8] Therefore, the claimant-appellants would be entitled for compensation as indicated above along with 7% interest per annum 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 already deposited. However, it is made clear that

on such deposit, the appellant-claimants are at liberty to withdraw the same unconditionally as per procedure.

[9] With the above observation and direction, the present appeal stands partly allowed. As a sequel miscellaneous applications pending, if any, shall stand closed. Registry to do the needful as per procedure. Send down the LCRs forthwith.

JUDGE



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