

HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A
MAC. App. No.86 of 2023

1. Smti. Gita Karmakar and 2 Others.

..... *Appellants*

-VERSUS-

1. Sri Shibayan Kar and Another

..... *Respondents.*

B_E_F_O_R_E
HON'BLE MR. JUSTICE T. AMARNATH GOUD

For Appellant(s)	:	Mr. D. J. Saha, Advocate.
For Respondent(s)	:	Mr. G.S. Das, Advocate.
		Mr. K. Deb, Advocate.
		Ms. V. Poddar, Advocate.
Whether fit for reporting	:	<u>YES/NO</u>

Judgment and order dated 24th June, 2024

JUDGMENT & ORDER [ORAL]

Heard Mr. D. J. Saha, learned counsel appearing for the appellants also heard Mr. G. S. Das, Mr. K. Deb and Ms. V. Poddar, learned counsel appearing for the respondents.

[2] This is an appeal filed under Section-173 of Motor Vehicles Act, 1988 against the award dated 30.04.2022 passed by the learned Member, Motor Accident Claims Tribunal, Sepahijala District, Sonamura in connection with T.S. (MAC) No.08 of 2020.

[3] The case in brief is that on 19.06.2020 the deceased Madhu Sudhan Karmakar, met with an accident at about 2030 hours. It was alleged that one Maruti Celerio Car bearing registration No. TR01-AS-0406 dashed him from his behind with a high-speed coming from the direction of Bishalgarh towards Agartala as a result of which Madhu Sudhan Karmakar (now deceased) sustained grievous injury on his leg and head. On 24.06.2020 the Madhu Sudhan Karmakar (now deceased) succumbed to his injuries. An award dated 30-04-2022, was passed by learned Member, Motor Accident Claims Tribunal, Sepahijala District, Sonamura, in connection with T.S. (MAC) 08 of 2020 wherein, the total compensation would come to Rs. (53,56,560/- + 77,000/- +

1,32,000/- + 6329/-) Rs.55,71,889/- i.e. Rs.55,72,000/-(Rupees fifty five lacs seventy two thousand) only for the death of the deceased Madhu Sudhan Karmakar.

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

“23. In the result, the petition under Section-166 of M.V. Act is hereby allowed on contest. The claimant petitioners namely, Smt. Gita Karmakar, Smt. Rakhi Rani Karmakar, Smt. Jaba Karmakar and Sri Akash Karmakar are entitled to get compensation of Rs.55,72,000/- (Rupees fifty five lacs seventy two thousand) only equally being the legal heirs of deceased Madhu Sudhan Karmakar. The award shall carry interest @ 7.5% per annum from the date of filing of this claim petition i.e. 15.07.2020 till the date of payment.

24. The OP No.2 New India Assurance Company Ltd. being the insurer of the offending vehicle bearing No. TR01-AS- 0406(Celerio) is hereby directed to make payment of compensation together with interest as stated above to the claimant-petitioners within a period of 60(sixty) days from the date of award.

25. In view of the judgment passed by the Hon'ble High Court in Appeal (MAC) 36 of 2006, considering the future necessity and livelihood of the claimant-petitioners the 50% of the awarded amount of compensation of the claimant- petitioners shall be kept in a fixed deposit scheme in the Nationalized Bank for 5(five) years and the rest 50% amount of the awarded amount shall be released to the claimant petitioners by transmitting it directly from the Court to their individual Bank account of the claimant petitioners. But no loan and withdrawal shall be permitted on the fixed deposit without prior permission of this Tribunal.

26. The claimant petitioners be asked to furnish copy of PAN Card and two sets of photocopy of their passbook duly certified by Bank having IFSC and MICR code with one passport size colour photograph”.

[5] Being aggrieved by and dissatisfied with the judgment and award dated 30.04.2022 passed in T.S. (MAC) 08 of 2020, the present appeal has been preferred by the appellants.

[6] Having heard the learned counsel appearing for the parties and also going through the observation made by the learned tribunal below, this Court is of the opinion that $1/3^{\text{rd}}$ deduction needs to be replaced by $1/4^{\text{th}}$ since the learned tribunal erred in considering that as per Sarla Verma's case the deduction towards his personal living expenses would $1/3^{\text{rd}}$, whereas, the Hon'ble Apex Court in Sarla Verma's case

clearly speaks that the deduction to be made towards personal and living expenses should be one fourth ($1/4^{\text{th}}$) where the number of dependent family members is 4 to 6.

[7] The learned trial court below has observed that as per survival certificate at the time of accident the deceased left his wife, two daughters and one son, out of them two daughters were already given marriage prior to his death and as such the petitioner Nos.1 and 4 are only the dependent family members of the deceased who earned their livelihood out of the income of the deceased. Therefore, the deduction towards his personal living expenses would be $1/3^{\text{rd}}$. But this Court is not in a position to accept such finding which is made by the learned tribunal below that the petitioner-claimant Nos.1 and 4 are the only dependent.

[8] The learned tribunal has awarded Rs.80,34,840/- and after deducting $1/3^{\text{rd}}$ towards his personal and living expenses the awarded came to Rs.53,56,560/-. But, after following the principle laid down in Sarla Verma's case, this Court is of the opinion that the deduction would be $1/4^{\text{th}}$ instead of $1/3^{\text{rd}}$. Thus, after deduction of $1/4^{\text{th}}$ of Rs.80,34,840/- the award would come to Rs.60,26,130/-. Accordingly, the claimants are entitled to Rs.60,26,130/- along with other amounts as awarded on different heads by the learned tribunal below.

[9] Thus, the total compensation would come to Rs.60,26,130 + 77,000 + 1,32,000 + 6,329 = Rs.62,41,459/- instead of Rs.55,72,000/-. The awarded amount with 7.5% interest 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. In view of above modification, the present appeal stands 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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HIGH COURT OF TRIPURA



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