

**HIGH COURT OF TRIPURA
AGARTALA**

MAC APP No.90 of 2023

The Oriental Insurance Company Limited,

A company registered under
the Companies Act, 1956,
Represented by the Assistant
Manager cum Officer in Legal Hub/Authorized Signatory,
Agartala, Division Office, H.G.B. Road,
(Near Sarkar Nursing Home),
Agartala, West Tripura

----Appellant (s)

Versus

1. Smt. Rumpa Bhattacharjee (Chakraborty),
Wife of Late Rinku Chakraborty

2. Sri Rajdip Chakraborty,
Son of Late Rinku Chakraborty

3. Sri Nityananda Chakraborty,
Father of Late Rinku Chakraborty

4. Smt. Smriti Chakraborty,
Mother of Late Rinku Chakraborty,

-All are residents of village:Suryamani Nagar, East
Durgapur, PS:Amtali, District: West Tripura

---- Claimant/Respondents (s)

5. Sri Suman Debnath,
Son of Late Bimal Debnath,
Resident of village: West Laximibil,
P.S. Bishalgarh, District: Sepahijala, Tripura,
(Owner of Motor Bike bearing No.TR-01-T9752

---- Respondents (s)

For Appellant(s)	:	Mr. Biswanath Majumder, Adv.
For Respondent(s)	:	Mr. S. B. Debnath, Adv. Ms. A. Banik, Adv. Ms. Tulu Debnath, Adv.
Date of Hearing	:	31.05.2024
Date of delivery of Judgment and Order	:	20.06.2024
Whether fit for Reporting	:	NO

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This appeal is preferred by the appellant challenging the judgment and award dated 14.03.2023 passed by Learned Member, Motor Accident Claims Tribunal, Court No.1, West Tripura, Agartala in connection with Case No.T.S.(MAC)118 of 2020. By the said judgment and award Learned Tribunal has awarded a sum of Rs.32,33,000/- with interest @ 7% per annum with effect from 07.09.2022 till the date of actual payment or realization and liability was fasten upon the insurance company.

02. At the time of hearing Learned counsel Mr. B. Majumder appearing for the appellant submitted that the Learned Tribunal below assessed the monthly income of the deceased at Rs.15,000/- per month without any basis which needs to be modified because the claimant-petitioner side could not adduce any documentary evidence in respect of the monthly income of the deceased. Learned counsel for the appellant further submitted that the Learned Tribunal below also treated the father of the deceased as a dependant which needs to be modified in view of the fact that the father in a case under Motor Accident Act cannot be treated as dependant. It was further submitted that the Learned Tribunal below at the time of determination of compensation also determined the interest in respect of future loss of income which is also not legally permissible in

the eye of law because for future income there was no scope to fix any interest. But the Learned Tribunal ignoring the different principles of law laid down by the Hon'ble Apex court has determined the rate of interest for future loss of income for which the interference of the court is required.

03. On the other hand, Mr. S.B. Debnath along with Ms. Tulu Debnath appeared on behalf of the respondents No.1-4 submitted that the accident took place in the year 2020 and during that period the daily income of a Mason cum Steel Bar Cutter was not less than Rs.700-1000/- per day in our state. So the Learned Tribunal below considering the facts and circumstances of the case and considering the number of working days in a month determined the monthly income of the deceased @Rs.15,000/- per month which was very rational and reasonable as per the prevailing market rate of the state in the year 2020. So there was no infirmity and ambiguity in the judgment of the Tribunal. Learned counsel further submitted that in the given case the father of the petitioner was totally depending upon the income of his deceased son because there is no evidence on record that the father used to earn money individually or separately for which the Learned Tribunal below considered the father as a dependent but in a normal practice in a case under Motor Vehicles Act the Tribunal is always considers the mother as the dependent but if the father also appears to be dependent upon the income of the son there is no

legal bar to award any compensation to the dependent father. Here in this case there is also no contrary evidence on record from the side of the insurance company. So in summing up Learned Counsel for the respondent-claimants submitted that since there was no infirmity in the judgment of the Learned Tribunal, so Learned counsel urged for dismissal of this appeal upholding the judgment of the Learned Tribunal below with costs.

04. Now for the sake of convenience, I would like to discuss herein below the subject matter of the claim petition filed before the Tribunal. The claimant-petitioners submitted one claim petition to the Learned Tribunal under Section 166 of MV Act alleging inter alia that on 15.03.2020 while the victim Rinku Chakraborty was returning back to his house from Babul Chowmuhan Bazar by walking keeping the left side of the road, that time a motor bike bearing registration No.TR-01-T-9752 came with high speed rashly, carelessly and negligently dashed against the victim from his back side and thus the accident took place in between 1930 hours to 2000 hours. As a result of which the victim Rinku Chakraborty fell down on the road and sustained grievous bleeding injuries on his person and he became senseless. After the accident he was shifted to the TMC & Dr.B.R. Ambedkar Memorial Teaching Hospital, Hapania wherein he got admitted as an indoor patient, but considering his serious condition, he was referred to the

AGMC & GBP Hospital, Agartala for better treatment. But ultimately victim succumbed to his injuries. PM examination was done over his body and in the claim petition the petitioners have asserted that the accident took place due to rash and negligent driving of the motor bike bearing registration No.TR-01-T-9752. It was further submitted that on this issue a police case was registered vide P.S. Case No.50 of 2020 under Sections 279/304(A) of IPC and Section 184 of M.V. Act, 1988. The claimant-petitioner further submitted that the deceased was a Steel bar cutter (Rod Mistry) having monthly income of Rs.15,000/- and was 32 years old at the time of death. Hence the claimant-petitioners filed the claim petition seeking compensation.

05. The OP No.1 contested the case by filing written objection denying the assertion of the claimant-petitioner and submitted that on 15.03.2020 when the motor bike bearing registration No.TR-01-T-9752 reached at Babul Chowmuhani at that time a man while crossing the road suddenly came in front of the motor bike. As a result, the man sustained injuries on his person. But there was no negligence on the part of the owner of the motor bike and as such the owner of the motor bike is not liable to pay any compensation to the claimant-petitioners. It was further submitted that the motor bike was duly insured with the Oriental Insurance Company Limited covering the period with effect from 18.12.2019 to 17.12.2020 having a valid

driving licence of the rider of the motor bike. So, if any compensation is awarded that should be paid by the insurer of the said motor bike.

06. The OP No.2, the Oriental Insurance Company Limited also appeared and contested the case by filing written statement denying the assertions of the claimant-petitioners and finally submitted that the claim petition is subjected to strict proof by the claimant-petitioners. Upon the pleadings of the parties following issues were framed:

(1) Did deceased Rinku Chakraborty die in a road traffic accident occurred on 15.03.2020 at about 1930 to 2000 hours at Babul Chowmuhani on N.H. Road under Amtali P.S. out of use of vehicle bearing registration No.TR-01-T-9752 (Achiever Motor Cycle) due to rash and negligent riding by the rider of aforesaid motor cycle?

(2) Are the petitioners entitled to get compensation as prayed for and if so, to what amount and who is liable to pay the same?

(3) To what other reliefs the parties are entitled?

07. To substantiate the issues both the parties have adduced oral/documentary evidence on record:

Witnesses of the Claimant-Appellants:

PW-1: Rumpa Bhattacharjee

PW-2: Sri Nilanka Chakraborty

Exhibits of the Claimant-Appellants:

(i) Exbt 1 and Exbt 2: FIR alongwith ejahar

(ii) Exbt 3: Post Mortem Report

(iii) Exbt 4: Chargesheet

(iv) Exbt 5: Survival Certificate

Witnesses of OP Witness:

OPW-1: Sri Suman Debnath

Exhibits of the OPWs:

- 1) Exbt. A: Driving Licence
- 2) Exbt. B: Policy Certificate
- 3) Exbt C: Registration Certificate
- 4) Exbt D: Pollution Certificate

08. Finally on conclusion of trial the Learned Tribunal below allowed the claim petition by delivering the judgment. The operative portion of the judgment dated 14.03.2023 is mentioned below:

"It is, therefore, held that the claimant petitioners are entitled to get compensation of Rs.32,33,000/- (Rupees Thirty-two Lakh Thirty-three Thousand only) with interest @ 7% per annum with effect from 07.09.2020 i.e. the date of filing of the claim petition till the date of actual payment. The opposite party No.2, Oriental Insurance Company 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.

Out of the awarded amount of compensation inclusive of interest, the claimant petitioner no.1 will get 40% and the claimant petitioners no.2, 3 and 4 will get 20% each. Out of the respective share of the claimant petitioners no.1, 2, 3 and 4, 50% each of their respective share shall be kept in fixed deposit scheme in their respective name in any Nationalized Bank of their locality for a period of five years each and the remaining 50% of their respective share shall be paid to them through their respective bank account. The claimant petitioners no.1, 2, 3 and 4 shall however be at liberty to withdraw monthly interest from their respective fixed deposit account 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.

Supply copy of this award free of cost to the parties.

The claim petition stands disposed of on contest.

Enter the result in the relevant Register as well as in the CIS."

09. I have gone through the judgment of the Learned Court below. Learned court below determined the monthly income of the deceased @Rs.15,000/- per month i.e. Rs.500/- per day considering the market situation in the State of Tripura in the year 2020 and relying upon the

judgment of the Apex Court in **National Insurance Company Limited vs. Pranay Sethi and Others** reported in **(2017) 16 SCC 680**. With that amount added 40% as future income and thus assessed his monthly income to Rs.21,000/- and calculated the loss of dependency as $\text{Rs.21,000/-} \times 12 \times 16 = \text{Rs.40,32,000/-}$. Thereafter deducted $\frac{1}{4}$ th amount as personal expenditure of the deceased and thus calculated Rs.30,24,000/- as the loss of income. Thereafter, Learned Tribunal below relying upon the said judgment **Pranay Sethi** (supra) and also relying upon the judgment of Hon'ble Supreme Court in United India Insurance Company Ltd. vs. **Satinder Kaur alias Satwinder Kaur & Ors** in **Civil Appeal No.2706 of 2020** arising out of **SLP(Civil) No.12520 of 2015** came to the observation that the loss of consortium is to be paid not only to the spouse of the deceased but also to the children in case of death of a parents or to the parents in case of death of any child. According to the Learned Tribunal in the said judgment the Hon'ble Supreme Court awarded separate amount for loss of consortium @Rs.40,000/- for each of the claimants following the principle of law laid down by Hon'ble Supreme Court. Thereafter Learned Tribunal below determined loss of estate at Rs.15,000/- and 10% of that Rs.15,000/- i.e. Rs.1500/- and for funeral expenses also Learned Tribunal below determined Rs.15,000/-+10% of the same amount i.e. Rs.16,500/- and thereafter also

calculated the loss of consortium for four persons at Rs.1,60,000/- (one lakh sixty thousand). Along with that 10% of Rs.1,60,000/- i.e. more 16,000/-, in total Rs.1,76,000/- as loss of consortium. Thus the Learned Tribunal below calculated the total amount of compensation at Rs.32,33,000/- (Rs.30,24,000/- + Rs.16,500/- + Rs.16,500/- + Rs.1,76,000/-) and finally calculated Rs.32,33,000/- as compensation along with 7% interest from the date of filing the claim petition till realization.

10. So after hearing both the sides and also after going through the record of the Learned Tribunal below no infirmity is found in the said judgment. Hence in my considered view this appeal deserves no consideration and accordingly it stands rejected.

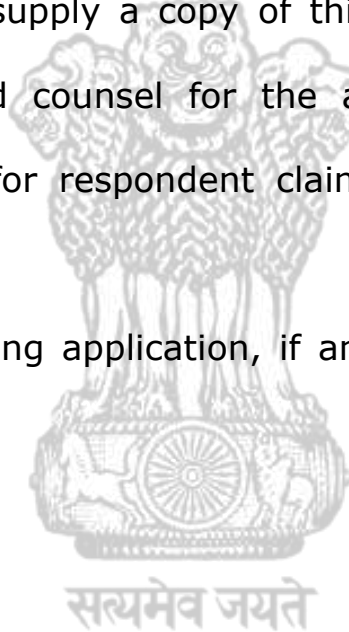
11. In the result, the appeal filed by the appellant is hereby dismissed on contest being devoid of merit. The judgment and order dated 14.03.2020 delivered by Learned Member, Motor Accident Claims Tribunal, West Tripura, Agartala is hereby upheld and accordingly it is affirmed. The appellant insurance company i.e. the OP No.2 of the main case is hereby asked to comply the judgment within a period of 6(six) weeks from the date of passing of the judgment. It is on record that the appellant insurance company by this time has deposited Rs.16,16,500/- (sixteen lakh sixteen thousand and five hundred) vide cheque No.004681 dated 29.12.2023 to the Registry of the High

Court. So the appellant insurance company be further asked to deposit the balance amount within the aforesaid stipulated period to the Registry of the High Court. The payment be disbursed by the Registry in pursuance of the judgment and award of the Tribunal dated 14.03.2023 passed in TS (MAC) 118 of 2020.

With this observation and direction the case is disposed of.

Send down the LCRs along with a copy of this judgment and also supply a copy of this judgment free of cost to the Learned counsel for the appellant insurance company and also for respondent claimant-petitioners for information.

The pending application, if any, stands disposed of.



JUDGE

**MOUMITA
DATTA**

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