

**HIGH COURT OF TRIPURA
AGARTALA
MAC. APP. No. 65 of 2023**

National Insurance Company Ltd. ***Appellant(s)***
Versus
Smt. Rekha Rani Saha & Ors. ***Respondent(s)***

For Appellant(s) : Mr. S. Kar Bhowmik, Sr. Advocate
Mr. N. Debnath, Advocate.
Mr. E. L Darlong, Advocate

For Respondent(s) : Mr. TD Majumder, Sr. Advocate
Mr. D. Kalai, Advocate
Mr. T. Halam, Advocate

**Along with
CO(FA) No. 20 of 2023.**

Smt. Rekha Rani Saha & Ors. ***Appellant(s)***
Versus
M/S. National Insurance Company Ltd. & Anr. ***Respondent(s)***

For Appellant(s) : Mr. TD Majumder, Sr. Advocate
Mr. D. Kalai, Advocate
Mr. T. Halam, Advocate

For Respondent(s) : Mr. S. Kar Bhowmik, Sr. Advocate
Mr. N. Debnath, Advocate.
Mr. E. L Darlong, Advocate

HON'BLE MR. JUSTICE T. AMARNATH GOUD
ORDER

08.04.2024

This is an appeal filed under Section 173 of the M.V Act, 1988 against the award dated 26.04.2023 passed by the Ld. Member, Motor Accident Claims Tribunal, Sepahijala District Sonamura in case No. T.S (MAC) 28 of 2021 whereby the appellant National Insurance Co. Ltd. has been directed to pay an awarded amount of Rs. 16,88,125/- within 30 days from the date of award along with 8% interest from 01.09.2021 (date of filing of the claim petition) till

payment is made. It is further directed that in case of default of making payment within 30 days, the award shall carry additional interest @ 9% till realization of the amount. And a Cross Objection has been filed under Order 41 Rule 22 of the Code of Civil Procedure, 1908 read with Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Award dated 26.04.2023, passed by the Learned Motor Accident Claims Tribunal, Sonamura, Sepahijala Tripura, in Case No. T.S.(MAC) No. 28 of 2021.

[2] Brief facts leading to this case in short is that on 09.05.2021 at about 1730 while the victim Tulsi Saha (now deceased) was proceeding towards Melaghar from Dhanpur Bazar by boarding an auto rickshaw bearing No.TR07-2500 and when they reached in front of Bejimara Bricks Industries at that time the offending vehicle bearing No.TR01-AZ-0382 (WagonR) coming from opposite direction in a rash and negligent way and dashed the said auto rickshaw, as a result of which the victim along with other passengers sustained severe injuries on their persons. Thereafter, the injured persons were taken to Sonamura CHC with the help of local people where from the victim Tulsi Saha was referred to AGMC & GBP Hospital, Agartala on the same day as the victim was in serious condition and thereafter he was further referred to ILS Hospital, Agartala for his survival and on 10.05.2021 at about 1825 hours the victim succumbed to his injury. According to the claimant petitioners at the time of accident the victim is aged about 54 years and he was a businessman by profession and also used to earn Rs.35,000/- per month. According to the claimant petitioners the accident took place due to rash and negligent driving by the driver of offending vehicle bearing No.TR01-AZ0382 (WagonR). According to the claimant petitioners after the said accident, a police case was registered Sonamura P.S case No.47/2021 under Section 279/338/304(A) of IPC and Section 177/184 of M.V. Act was registered against the driver of

vehicle No.TR01-AZ-0382 (WagonR).

[3] The claimant petitioners, therefore, approached the court below seeking compensation due to death of the deceased and quantified their claim to the tune of Rs.60,00,000/- due to the death of victim Tulsi Saha.

[4] The owner of the offending vehicle bearing No.TR01-AZ-0382(WagonR) contested the suit by submitting written statement and denied the averments made in the claim petition. She also stated that at the time of alleged accident, the offending vehicle having valid registration and insurance policy. It is further contended that at the time of accident the offending vehicle was insured with National Insurance Company Ltd. vide policy No.20300031206160011199 valid w.e.f. 22.09.2020 to 21.09.2021 and at the time of accident one Rubai Debnath was the driver of the offending vehicle having valid driving license No.TR0720150006308 w.e.f. 17.12.2015 to 16.12.2035 and as such if any award is given, it should be borne by the said insurance company.

[5] The National Insurance Company Ltd. also contested the suit by filing written statement on some technical grounds, and stated that in absence of the complete policy particulars and fulfillment of all the terms and condition of the policy, the insurance company will not be liable to indemnify the responsibility of the OP owner.

[6] Having heard the Ld. Counsel appearing for the parties and having gone through the materials evidence on record, the Ld. Court below has observed thus :

"A W A R D

22. In the result, the petition under Section 166 of M.V. Act is hereby allowed on contest. The claimant petitioners are entitled to get compensation of Rs.16,88,125/-(Rupees sixteen lacs eighty eight thousand one hundred twenty five) only equally being the legal heirs of the deceased Tulsi Saha. The award shall carry interest @ 8% per annum from the date of filing of this claim petition i.e. 01.09.2021 till the date of payment.

23. The OP No.2 being the insurer of the offending vehicle bearing No.TR01-AZ-0382(WagonR) is hereby directed to make the payment of compensation together with interest as stated above to

the claimant petitioners within a period of 30(thirty) days from the date of judgment. If the amount is not paid within the statutory period in that case the Insurance Company (OP No.2) shall have to pay additional interest @ 9% per annum till realization of the amount.

24. The 50% of the awarded amount of compensation shall be kept in fixed Scheme in the name of claimant-petitioners any Nationalized Bank for 5(five) years. The claimant petitioners granted at liberty to withdraw the monthly interest from the 50% of compensation so deposited directly to the bank account to the claimant petitioners for their livelihood. The rest 50% of the awarded amount shall be released in favour of the claimant petitioners by transmitting it directly from the Court to their individual bank account.

25. The claimant-petitioners are directed 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.

26. Supply a copy of this judgment to the claimant petitioner and also OP No.2 for information and compliance.

27. The case is, thus, disposed of on contest.

Make necessary entry in the Trial Register."

[7] Being aggrieved and dissatisfied with, the appellant insurance company has preferred this appeal.

[8] Mr. N. Debnath, learned counsel appearing for the appellant-insurance company submits that the award passed by the Ld. Tribunal is illegal, unjust and exorbitant for which the same is liable to be set aside. The award so passed favouring the claimants is not only exorbitant but perverse, since the same is beyond evidence.

[9] Mr. N. Debnath, learned counsel further submits that Ld. Tribunal has failed to appreciate the fact that since the deceased was 50-60 years old and was self employed, as per judgment of 'Pranay Sethi' as reported in 2017 (16) SCC 680, an amount of 10% of income should have been added as future prospect instead of 15% as wrongly imposed by the Ld. Tribunal.

[10] Mr. T.D Majumder, learned senior counsel assisted by Mr. D. Kalai, learned counsel appearing for the claimant respondents who are the Cross Objectors in CO (FA) 20 of 2023 submits before this Court that the award of the learned Tribunal fixing income of the deceased at Rs.12,500/- is

already in the lower side and the same needs to be enhanced as the assessment of Rs.500/- per day for a skilled worker is in the lower side.

[11] Heard learned counsel appearing for the parties.

[12] This court feels that in terms of the Notification dated 04th August, 2023 a skilled worker may get Rs. 12,000/- per month instead of Rs. 12,500/-, in that way his annual income comes to $(Rs.12,000 \times 12) = Rs. 1,44,000/-$. As per decision of Hon'ble Apex Court in **National Insurance Company Limited Vs. Pranay Sethi and Ors**, reported in **(2017) 16 SCC 680**, further 10% to be added with that monthly income as future prospect as the deceased was a skilled worker and his age was in between 50 to 60 years at the time of his death. Therefore an amount of $Rs. 1,44,000 \times 10\% = Rs. 14,400/-$ is to be added along with his annual income. Thus, his annual income comes to $Rs.1,44,000/- + Rs. 14,400/- = Rs.1,58,400/-$ and this amount would be multiplied by 11 as per Sarala Verma case as he died at the age of about 55 years. So the total loss of income of the deceased is $Rs.1,58,400/- \times 11 = Rs.17,42,400/-$ out of which $1/4^{th}$ (One-fourth) would be deducted as his personal expenses i.e. $1/4^{th}$ of Rs. 17,42,400/- ($Rs. 17,42,400/- - 4,35,600 = Rs.13,06,800/-$).

[13] In that view of the matter, the total compensation as would be entitled by the claimant-respondents are Rs. 13,06,800/-/- (Rupees Thirteen lakhs six thousand and Eight Hundred). The award shall carry 9% interest per annum instead of 8% as awarded by the Ld. Court below. Consequently, the insurance company i.e. National Insurance Company Ltd. is liable to pay the modified amount as stated supra in favour of the claimant- respondents within a period of 30 days from today. However, it is made clear that if the amount is already deposited, the claimant-respondents are at liberty to withdraw the same unconditionally.

[14] In view of the above, the award is modified to the extent as indicated above and thus the appeal is allowed. Consequently, the CO(FA) No. 20 of 2023 stands dismissed. As a sequel, miscellaneous applications pending, if any, shall stand closed. Draw the decree accordingly and thereafter, send down the LCRs forthwith.

JUDGE



Paritosh

**SABYASACHI
I GHOSH**

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