

**HIGH COURT OF TRIPURA
AGARTALA**

Mac.app 109 of 2023

The Oriental Insurance Co. Ltd.

---Appellant(s)

Versus

Sri Babul Deb and Ors.

---Respondent(s)

For Appellant(s)	:	Mr. P Gautam, Advocate.
For Respondent(s)	:	Mr. A. De, Advocate.
Date of hearing and date of judgment and order	:	21.06.2024
Whether fit for reporting	:	No

HON'BLE MR. JUSTICE T. AMARNATH GOUD

Judgment and Order (Oral)

Heard Mr. P. Gautam, learned counsel for the appellant also heard Mr. A. De, learned counsel for the respondents.

[2] This is an appeal under Section 173 of the Motor Vehicles Act, 1988, read with Section 168 of the Act ibide, against the impugned judgment and award dated 03.06.2023 passed by the Motor Accident Claims Tribunal, No.5, West Tripura, Agartala in case No.TS(MAC) 235 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 03.06.2023 passed by the Motor Accidents Claims Tribunal, No.5 West Tripura, Agartala in case No.TS(MAC) 235 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 mean time, till disposal of the present appeal.*
- (iv) *After hearing the parties be pleased enough to set aside/quash the impugned judgment and award dated.*
- (v) *Pass such other order or orders as the Hon'ble High Court may deem fit and proper.*

[4] The brief fact of the claimants' case is that on 10.03.2019 at about 1700 hours the FIR named accused namely Sri Pankaj Deb called brother of the complainant namely Bikash Deb with his two wheeler vehicle bearing No. TR-01-AR (TEM)6699 for

going to Bishalgarh. When the accused Pankaj Deb returned back from Bishalgarh to go for his house at night at about 1990 hours by riding the said two wheeler vehicle by Pankaj Deb at that time near A.D Nagar Jain Udhyog near the road divider said Pankaj Deb dashed one pedestrian. Thereafter, the said two wheeler rider dashed with road divider and as a result, the brother of the complainant Bikash Deb fell down who was a pillion rider. Both pedestrian Sahadev Patari and Pillion rider Bikash Deb received grievous injury at the spot. Fire service personnel shifted both the injured persons to IGM hospital and thereafter the concerned doctor referred them to GBP hospital for treatment and while undergoing treatment the brother of the complainant namely Bikash Deb expired. The said pedestrian Sahadev Patari was admitted at ILS hospital and underwent treatment and the complainant of this case stated that due to rash and negligent riding and excessive speed of the Two- wheeler rider namely Pankaj Deb dashed with road divider the said RTA had occurred and brother of the complainant expired and the pedestrian received grievous injury on his person.

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

“The OP No.2 The Oriental Insurance Company Ltd. is directed to deposit the awarded compensation of Rs. Rs.23,78,000/- (Rupees Twenty three lakhs seventy eight thousand only) within 30 days from today with interest thereon at the rate of 8% per annum with effect from date of filing of the claim application i.e., from 27.11.2019 to till realization of the full.

Distribution of Compensation

Claimant No.1 and 2 are entitled to get compensation equally.

Protection Awarded Compensation

Fifty percent (50%) of the amount of compensation of claimant No.1 and 2 are to be fixed deposited for five years and the rest amount are to be released in their favour in their bank account.

In case of necessity, the Tribunal can be approached for withdrawal of fixed deposited amount. On maturity of the fixed deposits the Banker shall credit the amounts to the sole SB Accounts of claimants without any further order from the Tribunal.”

[6] Being aggrieved by and dissatisfied with the judgment and award dated 03.06.2023 passed in connection with T.S.(MAC) 235 of 2019 by the learned Member,

Motor Accident Claims Tribunal No.5, West Tripura, Agartala, the present appeal has been preferred by the appellant.

[7] After perusal of the record, it appears to this court that the deceased was 22 years of age at the time of accident and his monthly income was Rs.21000/- (Rs.15000/-+ Rs.6000/- including the 40% future prospect) being a professional mason. Though there is no proof of evidence in this regard. A mason earning Rs.21000/- per month is not a big amount and that cannot be denied. Moreover, if the driver of the offending vehicle does not possess a valid driving license, the principle of “pay and recover” can be ordered to direct the insurance company to pay the victim and then recover the amount from the owner of the offending vehicle.

[8] In view of the overall analysis made by the learned tribunal below and after going through the material evidence in its entirety, this Court is of the view that the assessment of compensation as awarded by the learned tribunal below is just and proper and needs no interference thus, the findings as arrived by the learned tribunal below stands affirmed. Consequently, the present appeal stands dismissed. As a sequel, miscellaneous applications pending, if any, shall stand closed. Draw the decree accordingly and thereafter, send down the LCRs forthwith.

[9] In so far as statutory amount of Rs.25,000/- as deposited by the appellant- Insurance Company at the time of filing the appeal be returned as per procedure.

JUDGE

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