

**HIGH COURT OF TRIPURA
AGARTALA**

Mac.app 104 of 2023

Sri Gopesh Sarkar and Anr.

---Appellant(s)

Versus

The Manager, Bargang Tea Company Private Limited

---Respondent(s)

For Appellant(s)	:	Mr. S. Lodh, Advocate.
For Respondent(s)	:	Mr. Samar Das, 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. S. Lodh, learned counsel for the appellant also heard Mr. Samar Das, learned counsel for the respondents.

[2] This is an application under Section 173 of the Motor Vehicles Act, 1988, against the judgment & Award dated 21.06.2023, passed by the learned Member, Motor Accident Claims Tribunal, Tribunal No.2, West Tripura, Agartala in TS (MAC) 37 of 2021 for enhancement of the compensation.

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

- (i) *Admit the appeal;*
- (ii) *Call for the case records;*
- (iii) *After hearing the parties set aside the impugned Judgment & Award dated 21.06.2023 passed by the Ld. Member, Motor Accident Claims Tribunal, Court No.2, West Tripura, Agartala in TS(MAC) 37 of 2021 and pass an adequate award, in terms of the claim petition.*

[4] Briefly stated the case of the claimant-respondents is that on 15-12-2019 at about 17.10 hrs, the deceased Brinda Rani Sarkar was proceeding towards her parental house on foot and at 17-10 hrs when she reached at Saharo Bari near Kalibazar on Agartala-Bamutia Road at that time one Motor Cycle bearing registration No. TR-01-F-7277 was coming towards opposite direction being driven very rashly and negligently at a

very high speed and lost control due to excessive speed and subsequently dashed Brinda Rani Sarkar. As a result, she sustained fatal injuries on various parts of her body and thereafter she was taken to AGMC & GBP Hospital for treatment where the attending doctor declared her as dead. It was further asserted that the accident occurred because of rash and negligent riding by the rider of the aforesaid Motor Cycle and that at the time of accident the deceased was 39 years old and a private tutor and was earning Rs.20,000/- per month. Thus, the claimant-petitioners being the legal representatives of the deceased claimed Rs.38,45,000/- as compensation.

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

“The instant application under Section-166 of the Motor Vehicles Act, 1988 filed by the claimant-petitioners is hereby partly allowed and a sum of Rs.9,50,060.00 (Rupees Nine Lakh fifty thousand and sixty) only is awarded in favour of claimant - petitioners as compensation for the death of late Brinda Rani Sarkar, in a Road Traffic Accident, as aforesaid, and this amount of compensation shall be paid by OP within a period of one month. The aforesaid amount shall carry interest @ 6% per annum to be paid from the date of filing of claim-petition, i.e., from 22.02.2021 till the date of payment.”

[6] Being aggrieved by and dissatisfied with the judgment and award dated 21.06.2023 passed in connection with T.S.(MAC) 37 of 2021 by the learned Member, Motor Accident Claims Tribunal No.2, West Tripura District, Agartala, the present appeal has been preferred by the appellant.

[7] When the case is called Mr. Samar Das, learned counsel appeared for the respondent-Insurance Company and contended that the present appeal does not require any interference from this Court. The notional income was fixed at Rs.5000/- per month by the learned tribunal below since the deceased was unemployed and there was no proof of evidence. Considering Rs.5000/- as notional income was itself unjust and prayed to dismiss the appeal. Since it is not open for the respondent to contend that considering notional income of Rs.5000/- is also excessive since they have not preferred any appeal, this court is not entertaining such argument. In so far as fixing the amount Rs.5000/- as

notional income is concerned, placing reliance on *Shiv Kumar and Others vs Gaiinda Lal and Others* reported in (2022) 14 SCC 342 which is placed on record by Mr. S. Lodh, learned counsel for the appellant wherein the Hon'ble Supreme Court has fixed the notional income as Rs.7500/- to an unemployed housewife who was a private tutor in the case cited (supra). Since the present case also falls under the same ambit where the petitioner has studied upto HSLC and also taking private tuitions at residence, the notional income is fixed at Rs.7500/- as per the judgment cited (supra). Thus the computation would be as follows:

- (i) Monthly income Rs.7500/-
- (ii) Rs.7500/- + Rs. 3000(40% future prospect) = Rs.10500/-
- (iii) One third deduction Rs.10500/- - Rs.3500/- = Rs.7000/-
- (iv) So, the loss of dependency is Rs.7000 x 12 x 15 = Rs.12,60,000/- (Rupees twelve lakhs sixty thousand and six hundred) only.
- (v) Loss of Estate = Rs.15000/-
- (vi) Funeral expenses = Rs.15,000/-
- (vii) Spousal consortium and Parental Consortium = Rs.80,000/- (Rs.40000 each to husband and son)

[8] Thus the claimants are entitled to get Rs.12,60,000/- + (loss of dependency) + Rs.15000/- (for funeral expenses) + Rs.15000/- (for loss of estate) + Rs.80,000 (for loss of spousal consortium and parental consortium) totaling Rs.13,70,000/- (rupees thirteen lakhs and seventy thousand) only. The aforesaid amount shall carry interest @ 6% per annum to be paid for the date of filing of claim petition i.e. from 22.02.2021 till the date of payment. The awarded amount shall be deposited by the respondent herein within a period of one month from the date of receipt of the copy of this order, if not deposited. However, it is made clear that on such deposit, the appellant is liberty to withdraw the same unconditionally as per procedure.

[9] In the light of the above, the present appeal stands allowed to the extent as indicate above. As a sequel miscellaneous applications pending, if any, shall stand closed. Draw the decree accordingly and thereafter, send down the LCRs forthwith.

JUDGE

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