

HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A
MAC. App. No.110 of 2023

1. The Divisional Manager, The Oriental Insurance Company Limited.

..... Appellant

-VERSUS-

1. Smti. Lakshmi Namasudra and Others.

..... Respondents.

B_E_F_O_R_E
HON'BLE MR. JUSTICE T. AMARNATH GOUD

For Appellant(s)	:	Mr. P.S. Roy, Advocate.
For Respondent(s)	:	Mr. B. Nath, Advocate.
		Mr. S. Das, Advocate.
Whether fit for reporting	:	<u>YES/NO</u>

Judgment and order dated 24th June, 2024

JUDGMENT & ORDER [ORAL]

Heard Mr. P.S. Roy, learned counsel appearing for the appellant also heard Mr. B. Nath, learned counsel and Mr. S. Das, learned counsel appearing for the respondents.

[2] This is an appeal filed under Section-173 of the Motor Vehicles Act, 1988 against the award dated 20.06.2023 passed by the learned Motor Accident Claims Tribunal No.1, West Tripura, Agartala in connection with case No. T.S.(MAC)170 of 2020.

[3] As per the impugned judgment, the facts in brief are that on 16.10.2020 at about 6.30 a.m., the victim Riya Namasudra along with another girl was going to her home tuition as a home tutor/teacher on daily routine basis as a private job and when they reached near the house of one Bikram Das, at that time, a twelve wheeler Truck bearing registration No. NL-01-N-0176 coming from Manu side towards Agartala being driven very rashly, negligently and at a very high speed lost control over the vehicle and dashed against one motor cycle bearing registration No. TR-02-F-5664 and thereafter, the driver of the said truck was trying to flee away with the said truck driving the vehicle with more high speed to avoid the mob of the local people and as a result, the

driver of the said truck also lost control over the vehicle and again dashed the victim Riya Namasudra and further met with an accident and the vehicle was outlined from the road and capsized thereby.

[4] As a result, the victim Riya Namasudra sustained serious fracture injuries on her person and died at the spot. Thereafter, post mortem examination was done over the dead body of the deceased Riya Namasudra by the doctor of Kulai Hospital, Ambassa, Dhalai District on the same day. The said accident had occurred due to rash and negligent driving with a very high speed by the driver of the offending truck bearing registration No. NL- 01-N-0176. Concerning the said accident, on 16.10.2020 a police case was registered with the Ambassa Police Station vide Ambassa P.S. Case No.45 of 2020 under Sections 279/338/304(A) of L.P.C. According to them, the deceased was a Private Tutor by profession having a monthly income of Rs.20,000/- and was 19 years old.

[5] The opposite party No.1 by filing written statement stated that the averments made by the claimant petitioners in their claim petition are matters of record and also pleaded that the claimant petitioners shall have to prove the same by adducing evidence. The opposite party No.1 by filing written statement admitted the averments of the claimant petitioners made in their claim petition. The opposite party No.1 by filing written statement stated that the driver of the offending vehicle bearing registration No. NL-01-N-0176 had no negligence in driving the said vehicle and he was driving the vehicle carefully with normal speed. In his written statement he further stated that the vehicle was loaded with goods and there was no chance of driving the vehicle very rashly and negligently.

[6] The opposite party No.1 in his written statement also stated that when the said truck reached near the house of Bikram Das under Ambassa Police Station, the Motor Cycle bearing registration No. TR-02-F- 5664 coming from Ambassa bazar with a high speed dashed against the victim Riya Namasudra who was standing by the side of the road and subsequently the said motor cycle dashed against the truck bearing registration No. NL-01-N-0176. As a result, Riya Namasudra sustained fracture injuries and died. In his written statement he further stated that the alleged accident took place due to rash and

negligent driving by the rider of the Motor Bike bearing registration No. TR-02-F-5664. However, in his written statement he also stated that at the time of accident the Truck bearing registration No. NL-01-N-0176 was duly insured with the Oriental Insurance Company Ltd. and as such if any compensation is awarded, that should be paid by the insurer of the said truck.

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

“It is, therefore, held that the claimant petitioners are entitled to get compensation of Rs.19,35,400/- (Rupees Nineteen Lakh Thirtyfive Thousand Four Hundred only) with interest @ 9% per annum from 24.11.2020 i.e. from the date of filing of the claim petition till the date of actual payment. The Noticee No.2 Oriental Insurance Company Ltd. is directed to make the payment of compensation with interest within 30 days from today.

Out of the awarded amount of compensation inclusive of interest, the claimant petitioner no.1 being mother of the deceased will get 60% and the claimant petitioner no.2 being father of the deceased will get 40%. Out of the respective share of the claimant petitioners no.1 and 2, 50% each of their respective share shall be kept in a fixed deposit scheme in their respective names in any Nationalized Bank of their locality for a period of five years each and rest 50% of their respective share shall be paid to them through their respective Bank Account. However, the claimant petitioners No.1 and 2 shall be entitled to receive monthly interest therefrom for their day to day expenses. No loan or premature withdrawal shall be permitted from any of the fixed deposit accounts without prior permission of this Tribunal.”

[8] Being aggrieved by and dissatisfied with the judgment and award dated 20.06.2023 passed by the learned Motor Accident Claims Tribunal No.1, West Tripura, Agartala in connection with case No. T.S. (MAC)170 of 2020, the present appeal has been preferred by the appellant.

[9] It is already decided that the accident had occurred due to heavy speed by the driver of the truck bearing registration No. NL-01-N-0176 which amounts to rash and negligent driving by the driver of the said truck. Thus, liability of payment of compensation should be borne either by the owner or the insurer of the said truck. As per Exbt. A (Insurance policy), the vehicle bearing registration No. NL-01-N-0176 (Truck) was duly insured with the Oriental Insurance Company Ltd. covering the period from 02.07.2020 to 01.07.2021 and the accident had

occurred on 16.10.2020 i.e. within the period of policy. As per Exbt.D (Driving Licence of Jashim Uddin) he was authorized to drive MCWG/LMV/TRANS w.e.f. 25.05.2007 having validity up to 31.03.2022 for transport vehicle and validity up to 24.05.2027 for non transport vehicle and the accident had occurred on 16.10.2020. So, the driving licence of the driver was also valid at the time of accident. Moreover, there is no evidence from the side of the insurance company that the insured has violated any terms of policy. Thus, the liability of payment of compensation is fixed upon the Oriental Insurance Company Ltd.

[10] Having regard to the assessment of compensation as assessed by the learned tribunal is just and proper and needs no interference as the reasoning given in the award itself is sufficient as such, the assessment of award shall remain unaltered. Regarding the interest part, the learned tribunal below has awarded 9% per annum which is obviously on the higher side. This Court in all matters is fixing 7.5% interest and to maintain uniformity while comparing the bank rate of interest which is also much less. Consequently, the claimants would be entitled compensation as observed by the learned tribunal below along with 7.5% interest per annum instead of 9% interest as awarded by the learned tribunal below, with effect from the date of presentation of the claim petition till the date of actual payment. Thus, the present appeal stands partly allowed as indicated above. 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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