

**HIGH COURT OF TRIPURA
AGARTALA**

MAC APP No.56 of 2023

National Insurance Company Limited.

Represented by Its Divisional Manager (In Charge),
Agartala Division, 42, Akhaura Road,
P.O: H.P.O. Agartala, P.S: West Agartala,
Dist: West Tripura, Pin: 799001

**(Insurer of the motor bike No. TR-01-X-8678/Super
Splendor)**

..... Appellant

Versus

- 1. Smt. Mampi Goswami (Banerjee),**
W/O: Late Pallab Banerjee.

.....Claimant/Respondent-1.
(Wife of the deceased)

- 2. Sri Pranay Banerjee.**
S/O Late Pallab Banerjee.

.....Claimant/Respondent No-2.
(Minor son of the deceased
represented by his mother
at Sl.no. 1 above)

- 3. Smt. Minati Banerjee,**
W/o: Lt. Probodh Chandra Banerjee.

.....Claimant/Respondent No-3.
(Mother of the deceased)

All the 3 above are residents of Village-
Madhuman, Kathaltali, P.O: Madhuban,
P.S: Amtali, District: West Tripura,
Pin: 799003.

- 4. Sri Parimal Das**
S/o: Rudreswar Das
R/O: Gajaria, P.O: S.D. Mission, P.S: A.D. Nagar,
District: West Tripura, Pin: 799003

.....(Owner of the offending
motor bike No.TR-01-X-8678/
Super Splendor).

- 5. Sri Sumit Das,**
S/O: Sri Parimal Das, R/O: Gajaria,
P.O: S.D. Mission, P.S: A.D. Nagar,
District: West Tripura, Pin: 799003.

.....(Driver of the Offending
motor bike No:TR-01-X-8678/
Super Splendor, as shown in the
claim petition).

- 6. Prasanjit Das,**
S/O: Sri Tapan Das of Gajaria,
P.S: A.D. Nagar, West Tripura, Pin:799003.

.....(**Driver of the Offending motor bike No:TR-01-X-8678/ Super Splendor, as shown in A.D. Nagar P.S. Charge Sheet No:41/2021**)

Along with CO(FA) No.22 of 2023

- 1. Smt. Mampi Goswami (Banerjee),**
W/O: Late Pallab Banerjee.
- 2. Sri Pranay Banerjee.**
S/O Late Pallab Banerjee.
- 3. Smt. Minati Banerjee,**
W/o: Lt. Probodh Chandra Banerjee.

(Petitioner-claimant respondent No.2 being minor son of the deceased, represented by his mother i.e. petitioner-Claimant-respondent No.1.)

All are resident of Vill- Madhuban, Kathaltali,
P.O. Madhuban, P.S. Amtali,
District- West Tripura, Pin 799003.

.....Appellants.

Versus

- 1. Sri Parimal Das**
S/o: Rudreswar Das
Resident of Gajaria, P.O. S.D. Mission,
P.S: A.D. Nagar, District: West Tripura,
Pin: 799003
(Owner of the offending motor bike No.TR-01-X-8678 Super Splendor).
- 2. Sri Sumit Das,**
S/O: Sri Parimal Das,
Resident of Gajaria, P.O. S.D. Mission,
P.S: A.D. Nagar, District: West Tripura,
Pin: 799003.
(Driver of the offending motor bike No.TR-01-X-8678 Super Splendor, as shown in the claim petition).
- 3. National Insurance Company Limited,**
Represented by its Divisional Manager (In Charge),
Agartala Division, 42 Akhaura Road, P.O. Agartala,
P.S: West Agartala, District: West Tripura,
Pin: 799001.
(Insurer of the motor bike No.TR-01-X-8678 Super Splendor)

.....Respondents.

In MAC APP 56 of 2023:

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

For Respondent(s) : Mr. H.K. Bhowmik, Adv,
Mr. A.K. Pal, Adv,
Mr. T.K. Bhattacharjee, Adv.

In CO(FA) No.22 of 2023:

For Appellant(s) : Mr. A.K. Paul, Adv.

For Respondent(s) : Mr. S. Kar Bhowmik, Sr. Adv,
Mr. H.K. Bhowmik, Adv.

Date of Hearing : 25.04.2024

Date of delivery of
Judgment and Order : 07.05.2024

Whether fit for
Reporting : YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

The National Insurance Company being the appellant has preferred this appeal under Section 173 of M.V. Act challenging the award dated 06.04.2023 passed by Learned Member, Motor Accident Claims Tribunal, Court No.5, West Tripura, Agartala in connection with case No. T.S.(MAC) 199 of 2021. On the other side, the claimant-petitioners of the original claim petition have also preferred a cross-appeal under Order 41 Rule 22 of CPC for enhancement of the award dated 06.04.2023 passed by Learned Member, Motor Accident Claims Tribunal, Court No.5, Agartala, West Tripura in connection with the aforesaid case which was numbered as CO(FA) No.22 of 2023. Since, both the appeals have arisen out of a common judgment, so, by this judgment, both the appeals are taken up for disposal.

02. Heard Learned Senior Counsel, Mr. S. Kar Bhowmik assisted by Learned Counsel Mr. E. Darlong and Mr. N. Debnath for the appellant Insurance Company. Heard Learned Counsel, Mr. A. K. Pal appearing on behalf of the respondent-claimant Nos.1 to 3 and also heard Learned Counsel, Mr. H. K. Bhowmik, representing O.P. respondent Nos. 4 and 5, being the owner and rider/driver of the offending bike bearing No.TR-01-X-8678 in connection with case No. MAC App 56 of 2023 and also heard the same parties in the connected cross-appeal.

03. Before conclusion of the appeal, let us project the subject matter of the claim petition filed before the Claims Tribunal. The respondent-claimants filed one application under Section 166 of M.V. Act claiming compensation of Rs.64,53,000/- due to the death of the deceased, Pallab Banerjee, who succumbed to his death by a road traffic accident on 16.04.2021 at about 13.45 hours at Drop Gate, Agartala under A.D. Nagar P.S. The case of the respondent-claimants before the Tribunal was that on the alleged day, the deceased Pallab Banerjee came out of his house with his auto-rickshaw and went to Drop Gate to a garage of one Guddu on 16.04.2021 at about 13.45 hours for the purpose of repairing which is situated near S.T. Pauls School and keeping the auto-rickshaw on the road side, in front of the said garage, the deceased wanted to restart the auto, that time suddenly one Sumit Das, respondent rider/driver, son of

Parimal Das of Gajaria came with another person behind back seat of motor bike bearing No.TR-01-X-8678 rashly dashed the deceased victim who fell down on the hard road and sustained injuries and the local people and the pillion riders shifted the deceased in A.G.M.C and GBP Hospital where said Pallab Banerjee succumbed to his injury on 17.04.2021. Post-mortem examination was done over the dead body of the deceased and according to the claimant-petitioners, the accident occurred due to rash and negligent driving by the driver of the motor bike Sri Sumit Das. It was further submitted that the local witnesses, who were present to the P.O. also stated that the bike was actually driven by Sri Sumit Das, S/o of Parimal Das and in its back seat one Prasanta Das was taken his seat and to save the son of Parimal Das(owner of the bike) the name of one Prasanta was given as a driver, but said Prasanta Das did not ply the bike on that particular time of accident. But the Investigation Officer deliberately and intentionally concealed the name of actual driver Sumit Das and accordingly, laid charge sheet in the name of Prasanta Das against A.D. Nagar P.S. Case No. 2021/ADN/028 dated 17.04.2021 under Section 279/304A of IPC. It was further submitted that the deceased Pallab Banerjee was a young, energetic, fit and sound healthy person of 41 years age and he was the only bread earner of his family, who were entirely depending upon the income of the deceased and the deceased used to earn money by driving his auto rickshaw and also as rubber tapper and in

total he used to earn Rs.40,000/-/42,000/- per month. Hence, the respondent claimant-petitioners No.1 to 3 filed the claim petition. The claim was contested by the owner and the rider of the bike and they submitted that the claimant-petitioners are to prove their case and the accident was occurred not for any rash and negligent driving of the rider of the bike and it was further submitted that on that relevant point of time, the offending bike had all the valid documents including the driving licence of the rider of the bike. So, the owner and driver/rider by the W.S. prayed for dismissal of the claim-petition. The appellant, Insurance Company as OP No.3 contested the case by filing W.S. denying the claim of the claimants and submitted that the accident occurred not for rash and negligent driving of the bike bearing No.TR-01-X-8678 and it was also submitted that the claimants are to prove their case by producing all the relevant documents and Insurance Company was not liable to pay any compensation unless valid driving licence and other relevant documents are produced and proved. The Insurance Company also submitted that any breach of policy could disentitle the Insurance Company to pay any compensation. So, the Insurance Company also prayed for dismissal of the claim petition.

04. Upon the pleadings of the parties, Learned Tribunal below framed the following issues:

(i) Whether the case is maintainable?

(ii) Whether deceased Pallab Banerjee died due to road traffic accident due to rash and

negligent driving of bike TR-01-X-8678 on 16.04.2021 at about 1.15 pm at Drop Gate, A.D. Nagar, Agartala, West Tripura?

(iii) Whether the claimants are entitled to get compensation?

(iv) What should be the amount of compensation?

(v) Who is liable to pay compensation?

05. To substantiate the issues, the respondent-claimant-petitioners have adduced oral/documentary evidence on record and the owner of the bike, Parimal Das was tendered for his examination by O.P.W1 and relied upon some documentary evidence which were marked as exhibits:

APPENDIX

Claimant Witness:-

PW.1- Smt Mampi Goswami (Banerjee).

PW.2- Sri Sanjit Shil.

PW.3- Sri Swapan Kumar Goswami.

PW.4- Sri Nobel Dasgupta.

Claimant' Exhibits:-

Ext.1:- Certified copy of printed FIR.

Ext.2:- Certified copy of FIR.

Ext.3:- Certified copy of computerized FIR.

Ext.4:- Certified copy of postmortem report.

Ext.5:- Certified copy of police statement.

Ext.6:- Certified copy of charge sheet.

Ext.7:- Certified copy of MVI report.

Ext.8:- Death certificate.

Ext.9:- Survival certificate.

Ext.10:- Rubber Board Certificate.

Ext.11:- Trade licence dated 03.11.2017.

Ext.12:- Income certificate.

Ext.13:- Cash memo.

Ext.14:- Postmortem certificate.

Ext.15:- Mark sheet.

Ext.16:- Admit card.

Opposite party's Witness:-

OPW.1- Sri Parimal Das.

Exhibits by Opposite party No.1:-

Ext.A- Photocopy of Insurance Certificate.

Ext.B-Photocopy of Registration Certificate.

Ext.C- Photocopy of Tax token.

Ext.D- Photocopy of Driving licence.

06. The Learned Tribunal after taking evidence and also after hearing of arguments allowed the claim petition by judgment dated 06.04.2023. The operative portion of the order of the Tribunal runs as follows:

"The OP No.3, The National Insurance Company Ltd. is directed to deposit the awarded compensation of Rs.22,65,000/- (Rupees Twenty two lakh sixty five 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 10.11.2021 to till realization of the full.

Distribution of Compensation

The claimant No.1 being widow is entitled to get 50% of the compensation and claimant No.2 and 3 are equally entitled to the rest compensation.

Protection Awarded Compensation

As claimant No.2 is minor the full amount of him is to be fixed deposited for the period till he attain 21 years or for five years whichever is later.

Sixty percent (60%) of the amount of compensation of claimant No.1 and 3 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.

Furnish a copy of the award to both sides.

The case stands disposed of on contest.

Make necessary entry in the TR and CIS."

07. Challenging the award the appellant Insurance Company has preferred this appeal. At the time of hearing, Learned Senior Counsel Mr. S. Kar Bhowmik, assisted by Learned Counsel Mr. E. Darlong and Mr. N. Debnath for the appellant Insurance Company submitted that before the Tribunal, the actual driver who was charge-sheeted in the connected A.D. Nagar P.S. case was not made as party, so,

the claim petition was not maintainable. He further submitted that said Prasenjit Das alias Prasanta Das had no valid driving licence. Now only for gaining compensation, the claimant-petitioners have excluded his name in the claim petition rather impleaded the name of one Sumit Das as the rider of the offending bike and made one Parimal Das, being the father of said Subir Das as owner of the said offending bike. As such, since the original owner has violated the terms and conditions of the policy of the Insurance, so, the Insurance Company was not liable to pay any compensation but the Learned Tribunal below did not consider the same and urged for allowing this appeal by setting aside the award in this respect. Learned Senior Counsel further submitted that Learned Tribunal below determined the amount of monthly income of the deceased at Rs.15,000/- per month. But in this regard, no cogent documentary evidence on record is produced and proved by the respondent-claimant-petitioners before the Tribunal and as such in pursuance of the judgment of Sarala Verma reported in **(2009) 6 SCC 121** and also the judgment of Hon'ble Apex Court in National Insurance Company vs Pranay Shetty and Ors., reported in **(2017) 16 SCC 680**, Learned Senior Counsel further submitted that the determination of calculation by the Tribunal was not proper and lawful in the eye of law and prayed for modifying the award. Learned Senior Counsel also submitted that at the time of calculation of compensation, additional Rs. 15,000/- was awarded but in this regard no

explanation was made by the Tribunal. So, in summing up, Learned Senior Counsel urged for allowing the appeal, setting aside the award/judgment of the Learned Tribunal.

08. On the other hand, Learned Counsel, Mr. H. K. Bhowmik, representing the respondent O.P. Nos.4 and 5 submitted that the submission of Learned Senior Counsel cannot be accepted at this stage, because before the Learned Tribunal at the time of filing of W.S. nothing was submitted by the appellant Insurance Company in this regard that the person who is charge-sheeted was not made as party. Even the Insurance Company did not adduce any oral/documentary evidence on record. Rather Learned Counsel submitted that in the written statement submitted by the Insurance Company in Para No.4, it was specifically mentioned that one Sumit Das was the driver/rider of the bike and at this stage, there is no scope on the part of the appellant Insurance Company to deviate from the said statement. Learned Counsel further submitted that even in the claim petition the respondent-claimant-petitioners arrayed Sumit Das as the rider of the offending motor bike and the witnesses of the claimant-petitioners including the eye witnesses specifically whispered the name of the Sumit Das as the rider of the offending bike and to discredit the said evidence, there was no contrary evidence on record from the appellant Insurance Company. Furthermore, before the High Court also the prayer for making Prasanta Das was rejected by this High Court by order dated 15.02.2024 in

connection with IA No.3 of 2023 arising out of MAC App No.56 of 2023. Finally, Learned Counsel submitted that the Learned Tribunal below rightly and reasonably awarded the claim petition and there is no merit in the appeal and submitted that for determination of compensation, Civil Court is not binding by the order of the Criminal Court rather the findings of MAC Tribunal would prevail over the findings of Criminal Court and referred some citations which would be discussed later on.

09. On the other hand, Learned Counsel, Mr. A. K. Paul, representing the respondent-claimant-petitioners submitted that the respondent-claimant-petitioners have been able to prove the claim petition before the Learned Tribunal both by oral/documentary evidence on record and also submitted that the deceased had monthly income more than Rs.40,000/- but the Tribunal without any basis assessed the monthly income of the deceased at Rs.15,000/- per month, which was insufficient and not satisfactory and urged for enhancing the award/compensation by allowing the cross-appeal and dismissing the appeal preferred by the appellant Insurance Company.

10. I have heard elaborate arguments of Learned Counsels of the interested parties and gone through the record of the Learned Tribunal below. It appears that the Learned Tribunal at the time of determination of compensation assessed the monthly of the deceased at Rs.15,000/- per month. Considering all aspects and relying

upon the judgment of the Hon'ble Supreme Court of India in Sarala Verma and Others vs. Delhi Transport Corporation and Another, determined the multiplier as 14 and thereafter, in pursuance of the judgment of the Hon'ble Supreme Court of India in National Insurance Company Limited Vs. Pranay Sethi and Others reported **AIR (2017) SC 5157** allowed 25% of the amount to be added as future prospect and thereafter, deducted 1/3 amount towards personal expenses of the deceased. Thus, determined the loss of income at Rs.21,00,000/-(Twenty one lakhs) only. Thereafter Learned Tribunal below awarded Rs.1,20,000/-(One lakh twenty thousand) only as consortium, Rs.15,000/-(Rupees fifteen thousand) only as loss of estate and Rs.15,000/- as funeral expenses and further added Rs.15,000/-(Rupees fifteen thousand) only as loss of conventional head. Thus, determined the total amount of compensation as Rs.22,65,000/- (Twenty two lakhs sixty five thousand) only. From the record of the Learned Tribunal below and also from the oral/documentary evidence on record, it appears that the appellant Insurance Company before the Tribunal could not raise any circumstance to disbelieve that said Sumit Das was not the rider/driver of the offending motor bike on the alleged day of accident, rather in the WS filed by the Insurance Company, they specifically stated that the rider/driver of the offending motor bike was Sumit Das.

11. Furthermore, they made similar plea before this Court and this Court in I.A. No.3 of 2023 dated 15.02.2024 discarded that plea of the Insurance Company. So, at this stage, there is no scope to accept the submission made by Learned Senior Counsel representing the appellant Insurance Company.

12. To counter his submission, Learned Counsel, Mr. H. K. Bhowmik relied upon one judgment of this High Court in connection with **MAC App No.07 of 2012** dated 14.10.2016 in para No.9, 10 and 11 observed as under:

"9. The question as to how far the decision of a criminal case or the police report can influence the decision of a civil case was discussed by the Division Bench of Madhya Pradesh High Court in Mahila Dhanwanti and others v. Kulwan and others, AIR 1994 MP 44, and it was held therein:

10. Coming to the other contention that the deceased was travelling as a passenger and, therefore, the Insurance Company was not liable to pay any compensation, it has also no merit. True, the F.I.R. (Ex. D/2-C) and the statement of the Investigating Officer gives a version which support the case of the Insurance Company, but even assuming that the F.I.R. is a public document, but it is the rule of law that it is not a substantive piece of evidence. It can be used only for the purposes of corroboration or contradiction of the maker only. The maker having not been examined by either side, the statement of A. S. Yadav carries no weight as he only investigated the occurrence. He is not an eyewitness to the occurrence. His testimony is of hearsay evidence, therefore, the conclusions which he drew after investigation cannot be taken into consideration unless supported by proper material, It is well settled proposition of law that evidence recorded in criminal Court and the findings arrived at thereon should not be used in claim cases. Such evidence, for the purposes of claim cases is inadmissible. (See Shabbir Ahmad v. M.P.S.R.T.C., Bhopal, AIR 1984 MP 173)."

10. In R.P. Gautam v. R.N.M. Singh and another, AIR 2008 MP 68, the Madhya Pradesh High Court lucidly summed up the proposition of law in the following manner:

13. It is settled proposition of law that every civil case is decided on its own facts and evidence without influencing the papers and decision of the criminal case. In such premises registration of the offence and police investigation is not a condition precedent for awarding the claim. Besides this due to one reason or another if the first information report of vehicular accident is not lodged with the police or the same was given at later stage and police neither registered the offence nor investigated the same, it does not mean that right of the victim for compensation who suffered the vehicular accident is washed away. The victim remains entitled for compensation on proving the facts and circumstances regarding such accident and factum of injuries sustained by him, he could not be deprived from such right, provided by the Motor Vehicles Act, although such compensation may be awarded only on proving all relevant facts with all probabilities."

11. Motor accident claim case is in the nature of a civil suit and certainly not a criminal case. Therefore, the Tribunal has grossly erred in law in relying on the contents of the ejahar and the Police investigation report to disbelieve and discard the case of the claimant. The claimant, on the contrary, is entitled to prove her case on the basis of the evidence adduced by her, which was corroborated in material particulars by the evidence of PW-2, who personally saw the accident resulting in the death of the deceased, in the course of trial. On my above findings, I have no hesitation in holding that the deceased was killed in the vehicular accident on 2-4-2004 due to the rash and negligent driving of the driver of the respondent No. 1. Resultantly, the insurer, who admittedly insured the vehicle in question at the time of the accident, is vicariously liable to satisfy the award."

13. From the principle of the said citation, it is crystal clear that although the police charge-sheeted the name of one Prasenjit Das, son of Tapan Das of Gajaria as the driver/rider of the offending bike on the day of accident but the Tribunal was not bound by the said decision in absence

of valid, cogent and documentary evidence on record. Rather, I find force on the submission of Learned Counsel, representing the O.P. owner and rider/driver of the offending motor bike. More so, the appellant Insurance Company to substantiate their contention could not raise any doubt to disbelieve the evidence of the claimant-petitioners and their evidence.

14. Now, regarding the actual monthly income of the deceased, the respondent-claimant-petitioners could not adduce any documentary evidence on record. They relied upon Exhibit-10 i.e. the certificate of Rubber Board, from which it appears that the deceased had undergo training for a period w.e.f. 01.12.2005 to 09.12.2005 as rubber tapper. The claimant-petitioner also relied upon Exhibit-12 which was issued by the Secretary and President of Tripura Auto Ricksha Shramik Sangha, wherein it was stated that the deceased used to earn Rs.40,000/-/42,000/- per month but that certificate was not issued by any Authority of the Government to place any reliance, even the Issuing Authority was also not tendered for examination by the respondent-claimant-petitioners. But it is on record that he was an auto driver and also he used to do some earning from rubber tapping business but in this regard, no specific evidence on record could be adduced by the respondent-claimant-petitioners. So, in my considered view, Learned Tribunal below rightly determined the amount of monthly income of the deceased as Rs.15,000/- (Rupees fifteen thousand)only

per month. So, I find no scope to interfere with the judgment of the Learned Tribunal below in this regard. It was the admitted position that there was no dispute on record in respect of the death of the deceased and also in respect of age of the deceased as 41 years on the day of accident or occurrence of offence.

15. Learned Tribunal below admittedly could not give any specific finding as to how he determined the monthly income of the deceased as Rs.15,000/- per month. It is on record that the deceased was a driver side by side he was also a rubber tapper. So, considering the position and status of the deceased, it can be safely concluded that the Tribunal after considering all the factors in absence of cogent evidence on record rightly determined the monthly income of the deceased Rs.15,000/- per month. Because a auto-driver easily can earn Rs.500/- per day. More so, he used to earn some money as rubber tapper. So, even for 25 days if the deceased used to ply his vehicle, i.e. auto-rickshaw for 25 days in that case also his earning comes to Rs.12,000/- and the rest amount he could easily earn from rubber tapper.

16. In course of argument, Learned Senior Counsel, Mr. Bhowmik also submitted that the Learned Tribunal below at the time of determination of calculation awarded 15,000/- (Rupees fifteen thousand only) more without any basis for which no specific head was mentioned. In this regard, I would like to refer herein below the judgment of our Hon'ble

Supreme Court reported in **(2017) 16 SCC 680, National Insurance Company Limited vs. Pranay Sethi and Ors.**

in Para No.52 of the said judgment, Hon'ble the Apex Court observed as under:

"52. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in *Rajesh: Rajesh v. Rajbir Singh*, (2003) 9 SCC 54. It has granted Rs 25,000/- towards funeral expenses, Rs 1,00,000/- loss of consortium and Rs. 1,00,000/- towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though *Rajesh: Rajesh v. Rajbir Singh*, (2003) 9 SCC 54 refers to *Santosh Devi: Santosh Devi v. National Insurance Co. Ltd.*, (2012) 6 SCC 421, it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads."

17. From the aforesaid principle of law, it appears that the Learned Tribunal below in delivering the judgment, determined the compensation under conventional heads i.e.

the loss of estate, funeral expenses and loss of consortium,
Rs.1,50,000/-(Rs.1,20,000/- + Rs.15,000/- + Rs.15,000/-)
=Rs.1,50,000/- x 10% of the said amount= Rs.15,000/-.

18. So, in my considered view, Learned Tribunal rightly determined the said amount as the accident took place on 16.04.2021. So, after prolong hearing of the Learned Counsels of the contesting parties, it appears that there is no merit in the appeal filed by the appellant Insurance Company and at the same time the appellant-claimant-petitioner in the connected cross-appeal also could not place any materials before this Court to enhance the amount of compensation awarded by the Tribunal. Thus, both the appeals filed by the appellant Insurance Company and the respondent-claimant-petitioners fails being devoid of merit.

19. In the result, the appeal filed by the appellant Insurance Company fails and accordingly, it is hereby dismissed on contest and also the cross-appeal filed by the respondent-claimant-petitioners stands rejected being devoid of merit. The judgment and award of the Learned Tribunal dated 06.04.2023 is hereby affirmed and accordingly, it is upheld.

20. From the record, it appears that the Insurance Company has already deposited 50% of the amount before the Registry of this High Court which has been disbursed in pursuance of the order passed by this High Court on

15.02.2024 in connection with I.A. No.2 of 2023 arising out of MAC App No.56 of 2023. So, the appellant Insurance Company be asked to deposit the balance amount with interest to the Registry of the High Court as per award given by Learned Tribunal within a period of two months from the date of passing this judgment/order. The disbursal of amount to the claimant-petitioners would be made as per direction given by the Learned Tribunal below vide judgment and award dated 06.04.2023.

21. A copy of this judgment/order be furnished free of cost to Learned Counsel for the appellant Insurance Company and to the owner/rider of the offending motor bike as well as to the Learned Counsel, representing the respondent-claimant-petitioners.

22. With this observation, these appeals stands disposed of on contest. A copy of this judgment/order be kept in the connected CO(FA) No.22 of 2023.

Pending application(s), if any, also stands disposed of.

JUDGE

SABYASACHI
BHATTACHARJEE

Purnita

Digitally signed by
SABYASACHI BHATTACHARJEE
Date: 2024.05.09 17:11:08
+05'30'