

**HIGH COURT OF TRIPURA
AGARTALA
MAC. APP. NO.116 OF 2023**

Smt. Sabitri Sarkar & Ors.

.....Appellant(s)

Versus

Sri Nandalal Debbarma & Anr.

.....Respondent(s)

For the Petitioner(s) : Mr. J. Majumder, Advocate.

For the Respondent(s) : Ms. R. Majumder, Advocate.

Date of hearing and delivery of
Judgment & Order : 21.06.2024

Whether fit for reporting : NO.

**HON'BLE MR. JUSTICE T. AMARNATH GOUD
J U D G M E N T & O R D E R (O R A L)**

This present appeal has been filed under Section 173 of the M.V. Act 1988 against the award and order dated 26.09.2023 passed in T.S.(MAC) 33 of 2020 by learned Motor Accident Claims Tribunal no.1, Gomati Judicial District, Udaipur.

2. The appellant has prayed for the following reliefs:-

- i. Admit the appeal.
- ii. Issue notice upon the responden;
- iii. Call for the records of Case No. T.S (MAC) 33 of 2020 from the Learned Motor Accident Claims Tribunal No.1 (Mr. A.Pandey), Gomati Judicial District, Udaipur;
- iv. After hearing the respondents findings, reasoning and Award of the Learned Tribunal dated 26.09.2023 in Case No. T.S. (MAC) 33 of 2020 is required to be interfered by this Hon'ble Court by enhancing awarded amount including the interest;
- v. Pass Judgment and Decree allowing the appeal;
- vi. Allow the appellants to withdraw the whole amount that is to be passed by this Hon'ble Court;"

3. The case of the petitioners as discernible from the claim petition is that on 02.01.2020 at around 20.00 hours when the husband of the petitioner No.1 was standing near his vegetable shop by the side of NH 8 Road at Gakulpur Bazar at that time a vehicle bearing No.TR-03- J-9214 (Motor Cycle) coming from the side of Dhajanagar with high speed dash him and caused an accident.

Resultantly, the husband of the petitioner No.1 sustained grievous injuries on his person and he was taken to Gomati District Hospital. From District Hospital the injured was referred to GBP Hospital, Agartala where during treatment on the same day he succumbed to his injuries. It is stated that due to the accident the husband of the petitioner No.1 sustained fatal injuries on his head, chest, face and other parts of the body. It is alleged that the accident took place due to rash and negligent driving of the vehicle bearing No.TR-03-J-9214 (Motor Cycle) by its rider. Concerning the accident a police case bearing No.04/2020 under Sections 279/304A of IPC and Sections 177/184/187 of M.V.Act was registered at R.K.Pur P.S. based on the FIR lodged by the son of the deceased i.e. petitioner No.2 Rakesh Sarkar. At the time of accident the deceased was a man of 57 years and used to deal in vegetable business and his earning was Rs.15,000/- per month. Deceased was the sole earning member of the family and the petitioners were dependent upon his income. Finally, they claimed compensation to the tune of Rs.31,10,000/- from the opposite-parties.

4. The learned Tribunal below as against the claim of Rs.31,10,000/- passed the award in favour of the claimants in the following terms:-

"O R D E R

21. In view of the above findings it is ordered that the petitioners namely, Smt. Sabitri Sarkar, Sri Rakesh Sarkar, Sri Akash Sarkar and Smt. Sikha Sarkar are entitled to a compensation of Rs.9,78,000/- (Rupees Nine Lac Seventy-eight Thousand) only. The O.P. No.2 I.e, Reliance General Insurance Company Ltd., the insurer of vehicle No.TR-03-J-9214 (Motor Cycle) is directed to pay the compensation so determined within two months from the date of this judgment along with interest @ 6% per annum thereupon from the date of filing of claim petition i.e. from 16.10.2020 till payment/realization of the same.

22. Out of the total amount of compensation, a sum of Rs.3,78,000/- (Rupees Three Lacs Seventy-eight Thousand) including treatment/transportation cost, loss of consortium, funeral expenses etc. will be paid to the petitioner no.1, the wif of the deceased.

The petitioner Nos.2, 3 and 4 are the sons and daughter of the deceased and they shall get Rs.2,00,000/- (Rupees Two Lacs) each.

The interest accrued from the compensation shall be divided amongst the petitioners proportionately as per their respective shares.

23. That apart, 50% of the share of the petitioner No.1 and 50% of the shares of petitioners Nos.2 to 4 shall be kept in a fixed deposit scheme in any Nationalized Bank for a period of 5 years with liberty to withdraw the interest derived from the fixed deposit, if required.

24. The case is disposed of on contest.

25. Enter the result in the relevant register/CIS.

26. Supply copy of the award to the parties free of cost".

5. Being aggrieved and dissatisfied with the judgment and award dated 26.09.2023 passed by the learned Motor Accident Claims Tribunal no.1,

Gomati Judicial District, Udaipur in T.S (MAC) No. 33 of 2020, the present appeal has been preferred by the appellant. Since the matter is coming up for final hearing this court heard both sides.

6. When the case is called Mr. J. Majumder, learned counsel appearing for the appellant is present before this Court. Ms. R. Majumder, learned counsel is also present on behalf of respondent no. 1. None appears on behalf of the respondent no.2 i.e. Reliance General Insurance Company.

7. It is contended by the counsel for the appellant that the learned Tribunal has not considered that the children have not been extended any benefit in the form of compensation owing to the death of their deceased father. This Court cannot shut its eyes when the legitimate right has not been extended to the litigant, regardless of their age. In the present case the appellant nos. 2,3 and 4 appears to be the children of the deceased father.

8. After perusing the record, it is seen that the appellant nos.2,3 and 4 respectively are the children of the deceased and they have not been given compensation in any head therefore, this court provides 40,000/- each as per **Magma General Insurance Company Limited versus Nanu Ram Alias Chuhru Ram and Ors.** reported in **(2018) 18 SCC 130**. Thus the computation of the compensation would be as follows:

9. After adding Rs.40,000/- to each of the children the conventional amount which should be increased by 10% every 3 years, would come to spousal consortium = Rs.40,000/- + Rs.1,20,000 (including compensation given to the children Rs.40,000/- each) = Rs.1,60,000/- + 10% increased in conventional amount (Rs.16,000/-)= 1,76,000/-

The head wise compensation is given below in the tabular form"-

Head	Amount of Compensation
Cost of treatment/transportation	Rs.10,000/-
Loss of dependency	Rs.08,10,000/-
Future Prospective income	Rs.81,000/-
Conventional amounts	1,76,000/-

Therefore, in total, the claimant-appellants are entitled to compensation of Rs.1,077,000/-.

10. This Court in all matters 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 indicated above along with 7.5% interest per annum instead of 9% as awarded by the learned tribunal below, with effect from the date of presentation of the claim petition till the date of actual payment. The awarded amount shall be deposited by the insurance company 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 at liberty to withdraw the same unconditionally as per procedure.

11. In the light of the above, the present appeal stands partly allowed. As a sequel, miscellaneous application pending, if any, shall stand closed. Draw the decree accordingly and thereafter, send down the LCRs forthwith.

JUDGE