

**HIGH COURT OF TRIPURA
AGARTALA
MAC. APP. NO.02 OF 2023**

**ICICI LOMBARD GENERAL INSURANCE COMPANY LIMITED
.....Appellant(s)
Versus
Sri. KHOKAN DEBNATH & Ors. Respondent(s)**

For the Appellant(s) : Mr. R. Saha , Advocate.
Mr. B,Paul, Advocate.

For the Respondent(s) : Mr. D. Bhattacharya, Sr. Advocate.
Mr. S. Saha, Advocate.
Mr. Samar Das, Advocate.

Date of hearing and delivery of
Judgment & Order : 05.07.2024

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)**

Heard Mr. R. Saha, learned counsel appearing for the appellant-Insurance Company also heard Mr. D. Bhattacharya, learned Senior counsel assisted by Mr. Samar Das, learned counsel appearing for the respondents.

2. This present appeal has been filed under Section 173 of the M.V. Act 1988 read with section 168 of the Act, filed by the appellant challenging the judgment and award dated 06.08.2022, passed by the Learned Motor Accident Claims Tribunal Court No.2, West Tripura Judicial District in Case No. T.S. (MAC) 174 of 2018.

3. The appellant have prayed for the following reliefs:-

- i. Admit the appeal after condoning the delay of 27 days in preferring the present appeal before this Hon'ble Court.
- ii. Call for the case records from the Learned Motor Accident Claims Tribunal, Court No.2, West Tripura, Agartala pertaining to the case No. T.S(MAC) 174 of 2018.
- iii. After hearing the parties be pleased enough to set aside/quash and modify the impugned judgment and award dated 06.08.2022, passed by the Learned Tribunal below and may be kind enough to pass an appropriate

order in terms of the law laid down by the Hon'ble Apex Court and this Hon'ble Court by passing the various judgments in this regard, for the fair ends of justice.

- iv. Pending disposal of the present appeal, stay the operation of the impugned judgment and award dated 06.08.2022 in case No.T.S(MAC) 174 of 2018, passed by the Learned Motor Accident Claims Tribunal, Court no.2, West Tripura, Agartala.

4. Brief facts leading to this case is that on 23.05.2017 at about 1800 hrs. victim came at Charilam market on foot and when he reached near Charilam Bus stand at that time one Motor cycle bearing registration No. TR-08-A-4713 (here-in-after called the offending vehicle) came there with excessive speed and in negligent manner dashed the victim and as a result victim received fatal injuries. Immediately after the accident victim was taken to DR BRAM teaching Hospital, Hapania but considering the seriousness of injury he was referred to AGMC & GBP Hospital where he was admitted as an indoor patient and succumbed to his injuries on the same day. Accordingly postmortem was done over the body of the victim. In this connection Bishalgarh PS Case No. 2017 BLG 030 dated 24.05.2017 u/s 279/304A of IPC was also registered. Claimant petitioners (claimant-respondents herein) further stated that the accident occurred due to rash and negligent driving on the part of the driver of the offending vehicle. Claimant petitioners (claimant-respondents herein) also stated that victim was aged about 53 years and he was a vegetable seller and used to earn Rs. 15,000/- per month before the accident.

The claimant petitioners, (claimant-respondents herein) therefore, approached the Learned Court below seeking compensation due to death of the victim and quantified their claim to the tune of Rs.39,70,000/-.

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

"O R D E R

In the result, claim is awarded in following terms :-

(i) Claimant petitioners are entitled to get the award of Rs.6,96,468/-(Six lacs ninety six thousand four hundred sixty eight) only in equal share along with 9% simple interest per annum from the date of registration of claim i.e, w.e.f. 20.11.2018 till the date of realization thereof.

The amount so awarded shall be divided in four parts and paid to the claimant-petitioners. The claimant-petitioner Nos. 1, 2 and 4 shall have one fourth share each in the award and the claimant-petitioner Nos. 3(a) and 3(b) shall have one fourth share jointly in the award.

The Noticee, i.e., the ICICI Lombard General Insurance Company Limited shall deposit the awarded amount along with interest thereon within one month to this Tribunal.

Supply a copy of this award free of cost to the parties by not later than 15 days from the date of the award.

The case stands disposed off on contest."

6. Being aggrieved and dissatisfied with the judgment and award dated 06.08.2022 passed by the Ld. Motor Accident Claims Tribunal, West Tripura, Agartala, Court No.2 in T.S (MAC) No. 174 of 2018, the present appeal has been preferred by the appellant-Insurance Company.

7. Mr. R. Saha, learned counsel appearing for the appellant-Insurance company submits before this court that at the time of death the victim was a bachelor hence the question of legal heirs and dependency does not arise but the learned tribunal below failed to appreciate the matter. He further submits that the claimant-petitioners (claimant respondents herein) failed to establish the legal ground of compensation.

8. On the other hand, Mr. D. Bhattacharya, learned senior counsel assisted by Mr. Samar Das, learned counsel apprised this court that claimant petitioner no.1 (claimant respondent no. 1) as brother of the victim along with other legal heirs have sought for compensation.

9. Heard and perused the evidence on record.

10. This court *prima facie* is not convinced with regard to the findings that the tribunal in declaring the claimants as the legal heirs and dependants as claimed by them in the absence of lack of sufficient

evidence on the point of dependency and legal heirs, unless the same is established through proper documentary and oral evidence. Apart from the claimants there cannot be a decision in this regard, hence the impugned order dated 06.08.2022 is set aside and the matter is remanded back to the Court below for fresh adjudication. Liberty is given to both sides to adduce evidence and also to place sufficient records.

11. As a sequel, miscellaneous application(s) pending if any, shall stand closed.

JUDGE



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Paritosh

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