

**HIGH COURT OF TRIPURA
AGARTALA**

M.A.C. App. No.11 of 2024

National Insurance Company Ltd.

Agartala Divisional Office, 42, Akhaura Road,
PO- Agartala, PS-West Agartala,
Sub-Division- Agartala,
District-West Tripura, PIN-799001,
Represented by its DIVISIONAL MANAGER;
[Insurer of the offending vehicle bearing
Registration no.TR-01-C-3084 (Bajaj Auto Rickshaw)].

.....Appellant(s)

Versus

- 1. Smt. Sebika Nama (Modak),**
Wife of late Prasanta Modak,
Resident of Chanpur, Khayerpur,
Near Trinath Temple, P.S.-East Agartala,
District- West Tripura;
- 2. Smt. Kajal Rani Modak,**
Wife of late Bishnupada Modak,
Resident of Chanpur, Khayerpur,
Near Trinath Temple, P.S.-East Agartala,
District- West Tripura;
- 3. Master Debasish Modak,**
Son of late Prasanta Modak,
Resident of Chanpur, Khayerpur,
Near Trinath Temple, P.S.- East Agartala,
District- West Tripura;
(claimant respondent No.3 being minor,
Represented by his mother,
claimant-respondent no.2);
- 4. Sri Kamal Sarkar,**
Son of Kalipada Sarkar,
Resident of Noagaon, Krishnanagar,
P.S.- Bodhjungnagar, Agartala,
District-West Tripura
(Owner of the offending vehicle bearing
Registration No.TR-01-C-3084 (Bajaj Auto Rickshaw);
[Owner of the offending vehicle bearing
Registration No.TR-03-2224 (Commander Jeep)]).

.....Respondent(s)

For Appellant(s)	:	Mr. Sankar Lodh, Adv.
For Respondent(s)	:	Mr. Rana Gopal Chakraborty, Adv.
Date of Hearing & Delivery of Judgment and Order	:	28.07.2025
Whether fit for Reporting	:	NO

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order(Oral)

This appeal is preferred challenging the judgment and award dated 03.04.2023 delivered by Learned Member, Motor Accident Claims Tribunal, West Tripura, Agartala Court No.5 in connection with T.S. (MAC) 132 of 2021.

2. Heard Learned Counsel, Mr. S. Lodh appearing on behalf of the appellant-Insurance Company and also heard Learned Counsel, Mr. R. G. Chakraborty appearing on behalf of the respondent claimant petitioner Nos. 1, 2 and 3. But none appeared on behalf of the owner of the offending vehicle bearing registration no.TR-03-2224 (Commander Jeep).

3. At the time of hearing, Learned Counsel for the appellant-Insurance Company drawn the attention of the Court referring the claim petition filed by the respondent claimant petitioners wherein in column no.4 they have mentioned the occupation of the deceased as Mason and in column no.5 they have mentioned the monthly income of the

deceased at Rs.15,000/-. Thereafter, Learned Counsel further drawn the attention of the Court referring the page 26 of the Paper Book wherein in PW-1 i.e. one of the claimant petitioners Smt. Sebika Nama (Modak) has asserted the following facts:-

"3. That, my husband was a good and healthy person. At the time of death my husband was 34 years old.

4. That, my husband is the only one earning member of our family. My husband earn Rs.15000/- per month from his work."

Referring the said paras, Learned Counsel drawn the attention of the Court that the aforesaid claimant petitioner in her examination-in-chief nowhere stated that her husband was a mason and also nowhere stated that how her husband used to earn Rs.15000/- per month from his work. Even the Learned Tribunal below at the time of determination and delivery of judgment in absence of any documentary evidence on record simply considered the monthly income of the deceased at Rs.15000/- per month. Even the Learned Tribunal could not give any specific account as to how he has determined the monthly income of the deceased at Rs.15000/- per month for which according to Learned Counsel for the appellant the interference of the Court is required.

4. Learned Counsel for the appellant-Insurance Company again submitted that Learned Tribunal also

awarded interest @ 8% per annum which was also too high rather it should be 7.5% per annum. So, Learned Counsel for the appellant only on those grounds urged for interference of the judgment delivered by Learned Tribunal.

Learned Counsel further drawn the attention of the Court referring the notification dated 04.08.2023 delivered by High Court wherein this High Court determined the monthly income of unskilled workers at Rs.10,000/- per month. So, Learned Counsel urged for considering the said notification of this High Court in disposal of the appeal.

5. On the other hand, Learned Counsel for the respondent claimant petitioners submitted that the claimants admittedly, could not submit any documentary evidence to substantiate the monthly income of the deceased before the Learned Tribunal but it is the admitted position that the deceased was a Mason by profession and now a days in our state one Mason earns Rs.700/- per day. In such a situation his monthly income could be assessed to atleast Rs.20,000/- but the Learned Tribunal rightly assessed the monthly income of the deceased at Rs.15,000/- per month for which there is no scope to interfere with the judgment. In respect of rate of interest he submitted that in some cases 9% interest has been awarded by the Tribunals, so here in the case at hand, Learned Tribunal rightly awarded 8% interest

as such there was no infirmity in the award of the Tribunal and prays for dismissal of this appeal.

6. This present case arose out of a claim petition filed by the respondent claimant petitioners with the assertions that on 12.11.2020, the deceased Prasanta Modak was returning back to home from his workplace and when he reached near Trinath Ration shop, Khayerpur through Assam Agartala main road at about 9.30 pm at that time one Auto rickshaw bearing No.TR-01-C-3084 which was coming at a very high speed from Khayerpur through Assam Agartala Road with excessive speed suddenly dashed against Prasanta Modak from his backside. As a result, he sustained injury on his head and other parts of the body and immediately he was taken to the AGMC and GBP hospital at Agartala in critical condition by Fire service. The attending-doctor treated him till 14.11.2020 but in course of treatment he expired on 14.11.2020 and on this issue an FIR was filed and accordingly BJN PS Case No.2020/BJN/050 was registered under Section 279/304A of IPC.

7. The claim petition was contested by the OP No.1 i.e. the owner of the offending vehicle who denied the assertions of the claimant petitioners in the claim petition and further took the plea that on the alleged day of accident the vehicle had relevant valid documents including the driving licence.

8. The Insurance Company i.e. the present appellant herein also contested the case by filling written statement denying the assertions of the claimant petitioners and the Insurance Company also took the plea that the claim petition was subjected to strict proof by the claimant petitioners.

9. Upon the pleadings of the parties Learned Tribunal below framed the following issues:-

(i) Whether the case is maintainable?

(ii) Whether deceased Prasanta Modak died due to road traffic accident due to rash and negligent driving of Auto Rickshaw TR01C3084 on 12.11.2020 at 9.30 pm near Trinath Rationshop, Khayerpur on Assam-Agartala Road?

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

(iv) What should be the amount of compensation?

(v) Who is liable to pay compensation?

In order to prove the issues, the respondent claimant petitioner adduced one witness PW-1, Smt. Sebika Nama (Modak) and relied upon some documents which were marked as exhibits and the respondent O.P. No.1, Kamal Sarkar also examined as OPW.1 and relied upon some documents which were also marked as exhibits. For the sake of convenience I would like to refer herein below the name of witnesses and their exhibited documents which are as follows:-

Claimant' Witness:-

PW.1 – Smt. Sebika Nama Modak.

Claimant- Exhibits:-

Ext.1:- Certified copy of printed FIR.

Ext.2:- Certified copy of FIR.

Ext.3:- Photocopy of death certificate.

Ext.4:- Photocopy of postmortem report.

Ext.5:- Certified copy of seizure list.

Ext.6:- Certified copy of PM report.

Ext.7:- Certified copy of Charge sheet.

Opposite party's Witness:-

OPW.1- Sri Kamal Sarkar.

Exhibits by Opposite party No.1:-

Ext.A- Photocopy of Registration certificate.

Ext.B- Photocopy of driving licence.

Ext.C- Photocopy of Insurance certificate.

Ext.D- Photocopy of fitness certificate.

10. Finally, on conclusion of the enquiry the Learned Tribunal below by the judgment and award dated 03.04.2023 allowed the claim petition. The operative portion of the Order/Award runs as follows:-

Order/Award

The OP No.2, The National Insurance Company Ltd. is directed to deposit the awarded compensation of Rs.28,53,000/- (Rupees twenty eight lakh fifty three 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 20.08.2021 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.3 is minor the full amount of him is to be fixed deposited for the period of 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 2 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.

Challenging that award the appellant Insurance Company has preferred this appeal.

11. I have heard both the sides at length and also perused the judgment delivered by the Learned Tribunal below. There is no dispute on record in respect of the fact of accident on the alleged day and also the fact of death of the deceased due to accident. Admittedly, before the Learned Tribunal the respondent claimant petitioners could not produce any monthly income certificate of the deceased at Rs.15000/- also they could not produce and prove any documentary evidence on record that the deceased was a Mason. However, to substantiate the said contention there was no contrary evidence on record from the side of the

contesting respondents. Situated thus, we can safely presume that the deceased was mason by profession.

12. Now regarding determination of the monthly income it appears that the Learned Tribunal below without assigning any cogent reasons determined the monthly income of the deceased at Rs.15000/- per month which in the considered opinion of this Court was not proper. However, the accident took place on 12.11.2020 and during that period if we admit that the deceased was a Mason and his daily wages was not less than Rs.500/- per day and considering his status we also could assess that he used to perform his job atleast for 25 days in a month. So in such a situation we can safely assess his monthly income on that relevant point of time at Rs.12500/- (rounded off Rs.13000/-). It is also on record that the deceased was 35 years old at the time of accident. The appellant and also the owner of the vehicle did not dispute anything regarding the age of the deceased. However, considering the facts and circumstances of the case this Court determines the monthly income of the deceased at the time of his death at Rs.13000/- per month and with that amount in view of the judgment of **National Insurance Company Ltd. Vs. Pranay Shethi** reported in **AIR 2017 SC 5157**, 40% of amount be added towards future income which stands at Rs.5200/- (Rupees five thousand two hundred). Hence, loss of income comes to

Rs.(13000+5200)/- = Rs.18,200/- (Rupees eighteen thousand two hundred) only.

As the deceased was a family man so towards personal expenses $\frac{1}{3}^{\text{rd}}$ amount be deducted, in that case the same comes to Rs. (18200/3)/- = Rs.6066/- (Rupees six thousand sixty six). So after deduction loss of income would come to Rs.(18200-6067)/- = Rs.12,133/- (Rupees twelve thousand one hundred thirty three). With the aforesaid amount after applying multiplier of 16 the total loss of income of the deceased would come to Rs.(12133x12x16)/- = Rs.23,29,536/- (Rupees twenty three lakhs twenty nine thousand five hundred thirty six). With that amount towards consortium the respondent claimant petitioners would get Rs.1,20,000/- (Rupees one lakh twenty thousand) i.e. Rs.(40,000x3)/-.

The respondent claimants were further awarded loss of estate Rs.15000/- and towards funeral expenses Rs.15000/-. So, in view of the judgment of **Pranay Shethi (supra)**, the aforesaid amount should be enhanced at the rate of 10% in every 3 years. Thus, the total amount of compensation in respect of loss of estate, funeral expenses and loss of consortium would come to Rs.1,65,000/- (Rupees one lakh sixty five thousand). Thus, the total compensation after calculation would stand at Rs.(23,29,536+1,65,000)/- = Rs.24,94,536/- (Rupees twenty

four lakhs ninety four thousand five hundred thirty six). So, after modification, the respondent claimant petitioners would be entitled to get Rs.24,94,536/- (rupees twenty four lakhs ninety four thousand five hundred thirty six) only which the appellant Insurance Company shall pay that amount to the respondent claimant petitioners.

Further considering the judgments of the Hon'ble Supreme Court in different cases, the respondent claimant petitioners would also get interest @7.5% in place of 8% as awarded by the Learned Tribunal.

13. Since the notification dated 04.08.2023 was issued by the Registrar General, High Court of Tripura was for the purpose of Lok Adalat. So, the same is not taken into consideration at the time of delivery of this judgment. However, it is worthwhile to mention here that in most of the cases it is found that sometimes it becomes difficult on the part of day labourer, mason, rickshaw puller or any other workers of like nature and the workers of the unorganized sector those who are not enrolled to any establishment and also are earning daily wages in absence of any regular employment. In such a case, in the event of death of any worker it becomes difficult on the part of their family members to produce any income certificate to substantiate their case before the Tribunal. It is also the admitted position that due to change of market condition the daily wages of

those workers have been increased accordingly. So, it is expected that the Labour Department of the State may address this issue by issuing a SOP like the circular issued by the High Court vide notification dated 04.08.2023 which may assist family members of the deceased/workers to approach to the Court or Tribunal, if any, to substantiate their respective claim petitions/petition in near future.

Registrar (Judicial), High Court of Tripura be asked to communicate a order to the Commissioner, Labour, State of Tripura to look into the matter and to pass an administrative order in this regard with intimation to the Registry of the High Court within a period of 3 (three) months.

14. In the result, the appeal filed by the appellant Insurance Company is partly allowed with the modification that the respondent claimant petitioners would be entitled to get total amount of compensation of Rs.24,94,536/- (Rupees twenty four lakhs ninety four thousand five hundred thirty six) along with 7.5% interest per annum from the date of filing the claim petition that is on and from 20.08.2021 to till the date of realization/payment.

The appellant Insurance Company shall deposit the amount to the Learned Tribunal below within a period of 2 months from the date of delivery of judgment if not

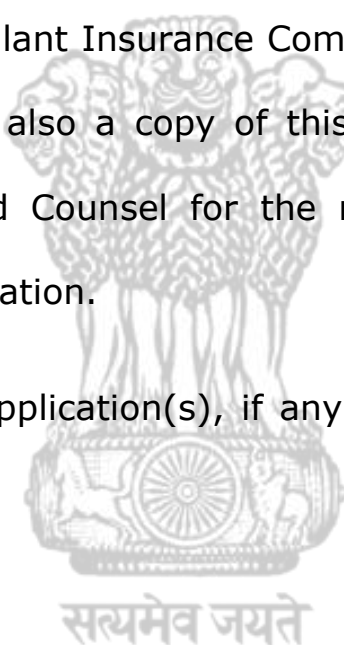
deposited. However, the disbursal of payment would be made in pursuance of the judgment delivered by the Learned Tribunal below on 03.04.2023.

With this observation, this present appeal stands disposed of.

Send down the record to the Learned Tribunal below along with a copy of this judgment/order.

Supply a copy of this judgment/order to Learned Counsel for the appellant Insurance Company for information and compliance and also a copy of this judgment/order be furnished to Learned Counsel for the respondent claimant petitioners for information.

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



JUDGE

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