

**HIGH COURT OF TRIPURA
AGARTALA**

MAC App.30 of 2025

The National Insurance Company Ltd.

.....Appellant(s)

Versus

Smti. Phul Bhanu Bibi and others

..... Respondent(s)

For Appellant (s) : Mr. Asim Kumar Deb, Advocate

For Respondent(s) : Mr. Sankar Bhattacharjee, Advocate
Mr. Samarjit Bhattacharjee, Advocate
Mr. Bijan Saha, Advocate
Mr. Sanjit Chakraborty, Advocate
Ms. Susmita Paul, Advocate
Mr. Subendu Noatia, Advocate
Mr. Bidyut Ch. Pal, Advocate
Mr. Rahul Debbarma, Advocate
Ms. Jeley Debbarma, Advocate

Date of hearing and delivery of judgment and order : 20.06.2025

Whether fit of reporting : Yes

HON'BLE JUSTICE DR. T. AMARNATH GOUD

JUDGMENT & ORDER (ORAL)

Heard learned counsel appearing for the parties.

[2] The present appeal is filed under Section 173 of the M.V. Act against impugned Award dated 28.11.24 passed in T.S. (MAC) 16 of 2023 by the Member, Motor Accident Claims Tribunal, Sipahijala District, Sonamura, for modification of the award.

[3] The brief fact of the claimants' case is as reflected in the impugned judgment dated 28.11.24 passed by the learned tribunal is

that on 16.06.2023, Washim Zafar(deceased) was going to Melaghar from Sonamura along with a bike bearing registration No.TR07-G6112 (Pulsar) as pillion rider and the aforesaid bike was riding by one Sahidul Islam and at about 3.00 pm when they reached Grantali, Indiranagar near Grantali S.B. School and was negotiating a turning at that time, a Tipper Truck bearing registration No.TR07-A-1838 coming from the opposite direction driven by its driver in a very rash and negligent manner with high speed violently dashed the motor bike causing serious bleeding and fracture injuries to Washim Zafar (deceased) and rider Sahidul Islam and damaged the bike. Soon after the accident, local people called the Melaghar Fire Service man who immediately came to the spot and shifted the Washim Zafar and Sahidul Islam to Melaghar Hospital. From where both the injured was shifted to AGMC and GBP hospital, Agartala. Both the injured was admitted in the hospital as indoor patient on 16.06.2023 but Washim Zafar (deceased) on 18.06.2023 succumbed to his injuries. It was contended that the motor accident occurred solely due to rash and negligent driving of the vehicle No.TR07-A-1838 Tipper Truck with high speed.

[4] It was pleaded that at the time of accident, deceased was contractual worker of Sri Krishna Sweet at Chennai and his salary was Rs. 13,500/- per month and in addition to salary he was also allowed to food allowance Rs.100/- per day and the family of the deceased consisted of his father, mother and two brothers and at the time of death, the deceased was 26 years old.

[5] The learned tribunal below upon hearing the parties and on perusal of the material evidence on record, has decided the case of the claimants by the Award dated 28.11.24 passed in T.S. (MAC) 16 of 2023 in the following manner:

".....Order/Award

It is ordered that, a total amount of Rs.20,59,000/- (Twenty lakh fifty nine thousand only) is awarded in favour of the petitioner as compensation. The OP No.2, the National Insurance Company Limited , the insurer of the offending vehicle bearing Registration No.TR07A1838 (Tipper truck) is hereby directed to pay the compensation as awarded. The OP No.2, is also directed to pay the interest @ 8% per annum on total awarded sum from the date of filing of this petition i.e. on 24.08.2023 till the date of realization.

Distribution of Compensation

Both the claimants are entitled to get compensation equally.

Protection Awarded Compensation

Fifty percent (50%) of the amount of compensation of claimant No.1 and 2 are to be deposited for five years and the rest amount are to be released in their bank account....."

[6] Being aggrieved by the above-quoted award/order dated 28.11.24, the present appeal has been preferred by the appellant insurance-company seeking the following reliefs:

"a). Admit the appeal;

b). Call for the record of T.S. (MAC) 16 of 2023 from the Court of Ld.Member, *****, Motor Accident Claims Tribunal, Sipahijala District, Sonamura.

c). Issue Notice upon the respondents.

And

After hearing both the parties Hon'ble Court would be pleased enough to kindly modify the impugned award dated 28.11.2024 passed in T.S. (MAC) 16 of 2023 by Sri P.Kumar, MACT, Sipahijala District, Sonamura towards just and proper compensation."

[7] Mr. AK Deb, learned counsel appearing for the appellant insurance company submits that the learned Tribunal committed wrong in the eye of law since the claimant-respondent as P.W.1 though stated

that the deceased during his life time used to do private job in Sri Krishna Sweets, Chennai-3, Ashok Nagar, Tamilnadu and used to earn Rs.13,5000/-, but no appointment letter was submitted to substantiate his job in private sector. Without of any appointment letter it cannot be decided whether the deceased was a skilled worker in that workplace or not. He further contends that learned tribunal on the basis of a salary bank account of the deceased showing his said income and even without examining the employer and having no income certificate from the said private concern, wrongly accepted monthly income of the deceased as Rs.13,5000/-.

[8] On perusal of the impugned judgment passed by the learned tribunal, this Court is of the view that since the issue as submitted by the learned counsel for the appellant insurance company has not been raised before the learned tribunal, the same cannot be considered at this belated stage by this Court. Thus, the award as passed by the learned tribunal according to this Court, is just and proper and needs no interference.

[9] On scrutiny of the impugned judgment passed by the learned tribunal it is further noticed that there was no representation from insurance company officials for entering into the witness box(dock) and to depose before the tribunal. The insurance company officials are expected to appear before Court in all matters where public money is involved and to assist Court in the light of the settled principles of law by the Hon'ble Supreme Court of India. No doubt, the compensation that would be awarded is for beneficiaries under the beneficial

legislation but, keeping in view the unprofessional act committed by the insurance company officials, the compensation should be paid by the concerned officials of the insurance company. At this juncture, they cannot move away from their responsibility burdening the policy holders by enhancing the premium on year to year basis and disbursing huge amounts of compensation to the claimants at large and drive insurance company to face loss. This act of the insurance company officials is held responsible for draining away the public money by not performing their duty diligently and also not attending the court proceedings to assist judiciary when it is mostly required to ventilate the true facts of the case as per their records.

[10] Hence, this Court draws an adverse inference with the action of the erred officials of insurance company for not appearing before the respective Court and lead evidence which is their part of duty and for which, they are drawing huge salary and other incentives. For their inaction, the insurance company cannot be burdened to pay the compensation. It is high time that is seen that for non-cooperation of the officers of the insurance company, on the material available, the cases are being decided. This Court is of the opinion that the insurance company cannot be fastened with the liability of paying the compensation for the negligence of its erred officers.

[11] This Court in identical situations in the cases of **(1) MAC App.89 of 2023** in ***The Oriental Insurance Company Ltd. vs. Smt. Aparna Nath*** and others vide order dated **22.07.2024**; **(2) MFA(FA) 2 of 2023** in ***The Tripura State Electricity Corporation Limited***

and others vs. Smti. Kamalapati Kaloi and others vide order dated **11.07.2024;** and in many other cases has taken the view that liability of paying compensation to the claimants be fastened on the erred officers of the agencies who were negligent to perform their duties. Hence, liability is fastened on all the erred officers of the insurance company who are directly or indirectly involved with the present case and the said compensation as awarded by the learned tribunal which shall be paid to the claimants will be recovered from the erred officers by the Insurance Company. The pay & recovery method to be followed.

[12] In view of the above, the compensation of Rs.20,59,000/- (Twenty lakh fifty nine thousand only) awarded by the tribunal below shall be deposited by the insurance company with Registry of the High Court of Tripura as early as possible preferably within a period of one month from today, if not paid already. However, it is made clear that on such deposit, the claimants are at liberty to withdraw the same unconditionally as per procedure.

[13] With the above observation, the appeal stands dismissed. As a sequel, miscellaneous applications pending, if any, shall stand closed. Registry to do the needful as per procedure.

JUDGE

Sabyasachi G.

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GHOSH

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