

**HIGH COURT OF TRIPURA
AGARTALA
MFA(EC) NO.4 OF 2025**

The New India Assurance Company Ltd., Agartala Division, 4, Mantribari Road, P.S. West Agartala, District West Tripura, Pin-799001.

Represented by its Divisional Manager,

(Insurer of vehicle bearing No.NL-01-K-4098 (Truck).

..... Appellant.

VERSUS

1. Sri Paresh Sabdakar,
Father of Late Nripendra Sabdakar,
resident of Sudhangshu Ghosh Para,
P.S. Ambassa, P.O. Ambassa,
District Dhalai Tripura,
Pin 799289.

.....Respondent Petitioner.

Sri Subir Saha,
S/o.Pulin Behari Saha,
resident of South Indranagar,
P.S. East Agartala,
P.O. Dhaleswar,
District - West Tripura,
Pin 799007.

(Owner of the vehicle bearing No. No.NL-01-K-4098 (Truck).

..... Respondent Owner.

For the Appellant(s)	: Mr. G. S. Das, Advocate. Mr. K. Deb, Advocate. Mr. S. Deb, Advocate. Ms. Monoswae Dey, Advocate.
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For the Respondent(s)	: Mr. S. Das, Advocate. Mr. S. Talapatra, Advocate.
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Date of hearing and delivery of Judgment & Order	: 31.10.2025
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<u>Whether fit for reporting</u>	: YES/NO.
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HON'BLE JUSTICE DR. T. AMARNATH GOUD
J U D G M E N T & O R D E R (O R A L)

1. This present appeal has been filed under Section 30 of the Employees' Compensation Act, 1923, against the award dated 11.06.2024 passed by the learned Commissioner for Employees' Compensation, Dhalai Judicial District, Ambassa, in case bearing No. T.S. (E.C.) 02 of 2023.

2. The brief facts of the case are that the son of the respondent-petitioner, namely Nripendra Sabdakar (since deceased), was the driver of a truck bearing registration No. NL-01-K-4098 under the employment of the respondent-owner. On 08.02.2021, at about 11:40 p.m., the deceased was proceeding towards Agartala from Meghalaya while driving the said vehicle loaded with cement. When he reached Patharkandi Bypass, the vehicle dashed against the bridge guard wall beside National Highway 37, as a result of which the said Nripendra Sabdakar sustained severe injuries. Immediately after the accident, he was taken to Patharkandi Primary Health Centre, where he was declared dead. Thereafter, a claim petition was filed. After considering the pleadings of the parties, the learned Commissioner passed the impugned award as stated hereinabove. Aggrieved thereby, the appellant has preferred this present appeal seeking the following reliefs:-

“a) Admit the appeal.

b) Call for the records from the Ld. Commissioner for Employees' Compensation, Dhalai Judicial District, Ambassa of the case bearing no. T.S. (E.C.) 02 of 2023.

c) Issue notices to the respondents.

AND

d) After hearing the parties, your Lordships would be pleased to dismiss the claim petition of the respondent petitioner as time barred, otherwise to reduce the awarded amount from Rs.27,09,000/-to Rs.11,48,890/- considering the admitted income of the deceased.

e) Pass such other order/orders as your Lordships may deem fit and proper as per grounds of the appeal.

3. Heard Mr. G.S. Das, learned counsel appearing for the appellant, as well as Mr. S. Talapatra, learned counsel appearing for the respondent-petitioner.

4. Mr. G.S. Das, learned counsel for the appellant, submitted that the deceased used to work under P.W.-1. The claimants also admitted that he was working with OPW-1, who used to pay his salary, and the claimant himself confirmed the amount of income. Hence, this fact cannot be denied. The owner of the vehicle, who was the employer of the deceased, categorically stated that his monthly salary was Rs.5,000/- plus Rs.1,200/- per trip for 4 to 5 trips per month. Accordingly, his monthly income should be considered as Rs.11,000/- instead of Rs.26,000/-.

5. On the other hand, Mr. S. Talapatra, learned counsel for the respondents, submitted that the Court below rightly assessed the monthly income of the deceased at Rs.26,000/- in terms of the Notification of the Hon'ble High Court of Tripura dated 04.03.2023. Since the accident occurred in 2021 and the High Court notification has been in force since 2015, a truck driver is entitled to Rs.26,000/- as monthly income.

To support of argument, learned counsel relied upon the Judgment of the Hon'ble Supreme Court titled as *Jaya Biswal and ors. Vs. Branch Manager, IFFCO TOKIO General Insurance Company Ltd.*, reported in AIR 216 SC 956 dated 4th February, 2016 and the same is produced here-in-under:-

“ On the question of the monthly wages being earned by the deceased at the time of his death, the learned Commissioner concluded that the contentions advanced by Respondent no. 2 that he was being paid wages of Rs. 100/- per day and bhatta of Rs. 50/- per day cannot be believed. The vehicle in which the accident had occurred possessed a National Route Permit, and the deceased often drove the vehicle to destinations outside the state. He was also a highly skilled workman. In the light of the said fact stated by the appellants, the wages of Rs. 4,000/- per month and bhatta of Rs. 200/- per day and trip charges of Rs. 3,000/- per month (i.e. Rs. 13,000/- per month) seemed genuine. Accordingly, the learned Commissioner calculated the compensation as under: Rs. 8,000/- (wage limited to) $\times$ 50% $\times$ 213.57 (27 years of age factor) = Rs. 8,54,280/-.

xxxxxx Since neither of the parties produced any document on record to prove the exact amount of wages being earned by the deceased at the time of the accident, to arrive at the amount of wages, the learned Commissioner took into consideration the fact that the deceased was a highly skilled workman and would often be required to undertake long journeys outside the state in the line of duty, especially considering the fact that the vehicle in question had a registered National Route Permit. The wages of the deceased were accepted as Rs. 4,000/- per month + daily bhatta of Rs. 6,000/- per month, which amounts to a total of Rs. 10,000/-. The High Court did not give any reason on which basis it interfered with the finding recorded by the Commissioner on the aspect of monthly wages earned by the deceased. The impugned judgment does not even mention what according to the High Court, the wages of the deceased were at the time of the accident. Such an unnecessary interference on part of the High Court was absolutely uncalled for, especially in light of the fact that the appellant Nos. 1 and 2 are old and have lost their elder son and they have become destitutes. Further, under the Payment of Wages Act, 1936, the onus is on the employer to maintain the register and records of wages, Section 13A of which reads as under:

“13-A. Maintenance of registers and records-

(1) Every employer shall maintain such registers and records giving such particulars of persons employed by him, the work performed by them, the wages paid to them, the deductions made from their wages, the receipts given by them and such other particulars and in such form as may be prescribed.

(2) Every register and record required to be maintained under this section shall, for the purposes of this Act, be preserved for a period of three years after the date of the last entry made therein.”

31. From a perusal of the aforementioned section it becomes clear that the onus to maintain the wage roll was on the employer, i.e. Respondent No. 2. Since in the instant case, the employer has failed in his duty to maintain the proper records of wages of the deceased, the appellants cannot be made to suffer for it.

32. In view of the foregoing, the judgment and order of the High Court suffers from gross infirmity as it has been passed not only in ignorance of the decisions of this Court referred to supra, but also the provisions of the E.C. Act and therefore, the same is liable to be set aside and accordingly set aside.

33. The monthly wage of the deceased arrived at by the learned Commissioner was Rs. 10,000/-. The date of birth of the deceased according to the Driver's License produced on record is 01.07.1984. The date of death of the deceased is 19.07.2011. Thus, according to Schedule IV of the E.C. Act, the 'completed years of age on the last birthday of the employee immediately preceding the date on which the compensation fell due', is 27 years, the factor for which is 213.57. Hence, the amount of compensation payable to the appellants is calculated as under:

Rs. 10,000/- × 50% × Rs. 213.57 = Rs. 10,67,850/-.

Funeral expenses to the tune of Rs. 25,000/- are also awarded.

The total amount of compensation payable thus comes to Rs. 10,92,850/-.”

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6. Learned counsel further relied upon the following Judgments of the Hon'ble Supreme Court to support his arguments:-

6.1. *Pratap Narain Singh Deo Vs. Srinivas Sabata and anrs.*, reported in *AIR 1976 SC 222* dated *04.12.1975*.

6.2. *Para-9 of Sanjay Kumar Vs. Ashok Kumaer and anr.*, reported in *(2014) 5 SCC 330* dated *24th January 2014* the same is produced here-in-under:-

“9. We have heard the rival legal contentions advanced on behalf of the parties. In our considered view, the appellant is entitled to be awarded compensation based on the wages for a skilled worker, as he is an embroiderer and the same cannot be considered as an unskilled work. The minimum wages in Delhi for a skilled worker as on 01.08.2005 was [pic]3589.90/- per month. The appellant has claimed that he was earning [pic]4,500/- per month from his work as an embroiderer. We will accept his claim as it is not practical to expect a worker in the unorganized sector to provide documentary evidence of his monthly income as per decision of this Court in the case of Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Company Limited [1], wherein it was held as under:-

"13. In the instant case, it is not in dispute that the appellant was aged about 35 years and was working as a coolie and was earning Rs. 4500/- per month at the time of the accident. This claim is reduced by the Tribunal to a sum of Rs. 3000/- only on the assumption that the wages of a labourer during the relevant period viz. in the year 2004, was Rs. 100/- per day. This assumption in our view has no basis. Before the Tribunal, though the Insurance Company was served, it did not choose to appear before the court nor did it repudiate the claim of the claimant. Therefore, there was no reason for the Tribunal to have reduced the claim of the claimant and determined the monthly earning to be a sum of Rs 3000/- per month. Secondly, the appellant was working as a coolie and therefore, we cannot expect him to produce any documentary evidence to substantiate his claim. In the absence of any other evidence contrary to the claim made by the claimant, in our view, in the facts of the present case, the Tribunal should have accepted the claim of the claimant.

14. We hasten to add that in all cases and in all circumstances, the Tribunal need not accept the claim of the claimant in the absence of supporting material. It depends on the facts of each case. In a given case, if the claim made is so exorbitant or if the claim made is contrary to ground realities, the Tribunal may not accept the claim and may proceed to determine the possible income by resorting to some guesswork, which may include the ground realities prevailing at the relevant point of time.

15. In the present case, the appellant was working as a coolie and in and around the date of the accident, the wage of a labourer was between Rs. 100/- to Rs 150/- per day or Rs. 4500/- per month. In our view, the claim was honest and bona fide and, therefore, there was no reason for the Tribunal to have reduced the monthly earning of the appellant from Rs. 4500/- to Rs. 3000/- per month. We, therefore, accept his statement that his monthly earning was Rs. 4500/-."

7. Heard and perused the evidence on record.

8. The judgments cited by the learned counsel are not applicable to the facts of the present case. The evidence of OPW-1, Subir Saha, who claimed to be the owner of the vehicle and the employer of the deceased, clearly indicated that the monthly salary of the deceased was Rs.5,000/- plus Rs.1,200/- per trip for 4 to 5 trips per month. Accordingly, Rs.11,000/- per

month is considered to be his income, and the assessed amount of Rs.26,000/- is reduced to Rs.11,000/-. The High Court notification is applicable only in cases where there is no proof of income. However, in the present case, the evidence of OPW-3, who is the employer, has been duly recorded, and the claimants themselves have admitted the relationship between the deceased and the employer (OPW-1).

9. Accordingly, the revised award shall be calculated as follows:- $50\% \text{ of Rs.11,000/-} = \text{Rs.5,500/-} \times 207.98 = \text{Rs.11,43,890/-} + \text{Rs.5,000/-} = \text{Rs.11,48,890/-}$ (Rupees Eleven Lakh Forty-Eight Thousand Eight Hundred Ninety only). The other parts of the judgment and award, except as modified above, shall remain unaltered.

10. With the above observation and direction, the impugned the present appeal stand disposed of. As a sequel stay if any stands vacated. Pending application(s), if any also stands closed.

DR. T. AMARNATH GOUD, J

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