

**HIGH COURT OF TRIPURA
AGARTALA**

MAC.App 47 of 2025

The National Insurance Company Ltd.

---Appellant(s)

Versus

Smt. Indra Datta Ghosh and 3 Ors.

---Respondent(s)

For Appellant(s)	:	Mr. Asim Kumar Deb, Advocate.
For Respondent(s)	:	Mr. P.K. Biswas, Sr. Advocate.
		Mr. Saikat Saha, Advocate.
		Mr. Saugat Datta, Advocate.
Date of hearing and date of judgment and order	:	11.08.2025
Whether fit for reporting	:	No

HON'BLE JUSTICE DR. T. AMARNATH GOUD

Judgment & Order (Oral)

[1] This is an appeal under Section 173 of the M.V. Act against impugned Award dated 06.11.2024 passed in T.S. (MAC) 40 of 2022 by Member, Motor Accident Claims Tribunal, South Tripura, Belonia (Tribunal No.1), for modifying the award.

[2] Brief facts leading to this case, as projected in the claim petition, is that on 22.12.2021 at about 1740 hours the deceased was having talk with a lady standing in front of their house at that time one bus bearing registration No.TR-03-1377, herein after referred as the offending vehicle, coming at a high speed and being driven in a rash and negligent manner knocked down the deceased causing severe injuries. Immediately deceased was taken to Baikhora Hospital where he was declared dead. It has been alleged that the driver of the offending vehicle in spite of having knowledge that said area is a crowded and heavily populated area had driven the offending vehicle at a high speed. In this connection a criminal case vide Baikhora PS case No.2021 BKR 035 was also registered. The claimant petitioner being the wife, mother and son of deceased, therefore approached this court seeking compensation to the tune of Rs.30,38,000/-.

[3] The OP No.1 being the owner of the offending vehicle has contested the suit by filing written statement and apart from denying all the allegations has contended that he was holding all the relevant documents of the offending vehicle and it was insured with the OP No.2 (National Insurance Company Ltd).

[4] OP No.2 has also contested the suit and put the other parties in strict proof of their respective claim.

[5] With a view to decide the claim of the claimant petitioners following issues were framed :-

ISSUES

(a) Whether Rajjit Ghosh died in a road traffic accident which occurred on 12.12.2021 at about 1740 hours at West Charakbai under Baikhora PS due to rash and negligent driving of the bus bearing registration No.TR-03-1377?

(b) Whether the claimant petitioners are the legal representative of deceased Ranjit Ghosh?

(c) Whether the claimant petitioners are entitle to get any compensation under MV Act and if so, to what extent and who shall be liable to pay the same?

[6] The learned court below after dealing with the issues so framed and after examining the records has passed the impugned order dated 06.11.2024 in the following manner:

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

(i) Claimant petitioners are entitled to get the award of Rs.20,86,000/- only(Twenty lacks Eighty Six thousand) only with 6% Simple interest per annum from the date of registration of claim i.e, w.e.f. 08.08.2022 till the date of realization thereof.

(ii) 50% of the share each of the claimant petitioner Nos.1 and 2 in the award be invested by purchasing separate Fixed Deposit certificate from any Nationalized Bank at least for the next 5 years and no loan or advance or premature withdrawal shall be allowed without prior sanction of this Tribunal. However, the claimant petitioner shall have the liberty to withdraw the monthly interest therefrom. Rest part of award be directly transferred to her individual bank account;

(iii) 75% of the share of the claimant petitioner No.3 in the award also be invested by purchasing separate Fixed Deposit certificate with auto renewal facility from any Nationalized Bank at least for the next 5 years and no loan or advance or premature withdrawal shall be allowed without prior sanction of this Tribunal. However, the claimant petitioner No.1 shall have the liberty to withdraw the

monthly interest therefrom. Rest part of award be directly transferred to her individual bank account;

The OP No.1 being the spouse of the deceased shall exclusively be entitled to get the amount awarded under the head loss of consortium.

The OP No.2, i.e., The National Insurance Company Limited shall deposit the awarded amount along with interest thereon within one month to this Tribunal.

[7] It is contended by the counsel for the appellant that, O.P.No.1 as owner-respondent No.1 of this appeal of the registered offending Bus bearing registration No.TR-03-1377 contested the claim petition by filing written statement denying all the allegations of the claim petition contended that at the time of alleged accident the vehicle had all the valid documents of the offending vehicle and the said vehicle was insured with the O.P.No.2, the National Insurance Company Lt. (appellant of this appeal) covering the period of accident.

[8] It is further contended that appellant, National Insurance Co. Ltd., as Opposite Party No.2, also contested the claim petition by filing written statement and denying all the allegations made in the claim petition particularly stating in paragraph No.3 that at the time of alleged accident, the victim (who subsequently expired) was not at the age of 33 years and also that he was an employee under M/S.Debnath Rubber of Baikhora Bazar having monthly income of Rs.15,000/- and thus prayed for strictly proof to that matters with supporting documents during trial. O.P.No.2, also denied in paragraph No.15 of the written statement stating that the Driver of offending vehicle had no valid driving license at the time of driving the offending vehicle on the date of alleged accident and moreover, the alleged accident was occurred outside the route permit area i.e. at Bikhora under Belonia Sub-Division since as per route permit, Exbt.C, the said vehicle was permitted to drive the vehicle from Rajarbag to Nagerjala Motorstand (i.e. Agartala) via Bisramganj and thereby the O.P.No.2, National Insurance Company Ltd. is not liable to pay compensation to the claimants, but the owner of the vehicle is liable to pay compensation, if any awarded by the Ld.Tribunal. The O.P.Insurance Company also denied stating that compensation claimed by the

claimant-respondents amounting to Rs.30,38,000/- is highly exorbitant and excessive.

[9] To support his case, learned counsel for the appellant has placed his reliance in paragraph 13 of the judgment of the apex court dated 18.12.2008 in **National Insurance Co.Ltd versus Rattani and others** where the apex court has observed in the following manner:

13. The question as to whether burden of proof has been discharged by a party to the lis or not would depend upon the facts and circumstances of the case. If the facts are admitted or, if otherwise, sufficient materials have been brought on record so as to enable a court to arrive at a definite conclusion, it is idle to contend that the party on whom the burden of proof lay would still be liable to produce direct evidence to establish that the deceased and the injured passengers were gratuitous passengers.

As indicated hereinbefore, the First Information Report as such may or may not be taken into consideration for the purpose of arriving at a finding in regard to the question raised by the appellant herein, but, when the First Information Report itself has been made a part of the claim petition, there cannot be any doubt whatsoever that the same can be looked into for the aforementioned purpose.

[10] On the contrary, learned counsel appearing for the claimant-respondents has contended before this court that the impugned order dated 06.11.2024 is just and proper and needs no interference from this court. He further prays to dismiss the appeal of the court by confirming the impugned order of the learned court below.

[11] Heard learned counsel for the parties.

[12] The arguments now sought to be urged by the learned counsel for the appellant, having not been advanced before the learned Tribunal, cannot be permitted to be raised for the first time in appeal, particularly when they pertain to factual issues already adjudicated upon. An appellate court, in exercise of its jurisdiction, ordinarily refrains from entertaining fresh contentions of a factual nature that were never urged or substantiated at the trial stage. Moreover, the reliance placed by the learned counsel for the appellant on Para 13 is held to be misconceived and inapplicable to the present case.

[13] In view of the above, and there being no illegality, perversity, or material irregularity in the findings of the learned Tribunal, the appeal is

found to be devoid of merit and is accordingly dismissed. The impugned Award dated 06.11.2024 passed in T.S. (MAC) 40 of 2022 by Member, Motor Accident Claims Tribunal, South Tripura, Belonia (Tribunal No.1). As a sequel, stay, if any, stands vacated. Pending application(s), if any, also stands closed.

[14] The deposit of the awarded amount, if not already made, shall be effected within one month from today. The claimants shall be at liberty to withdraw the awarded sum unconditionally, in accordance with the procedure prescribed by law.

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