

**HIGH COURT OF TRIPURA
AGARTALA
MAC APP 66 OF 2025**

National Insurance Company Limited,
represented by its Administrative Officer, Agartala Division,
42 Akhaura Road, P.O. H.P.O. Agartala-799001, P.S. West
Agartala, District- West Tripura,
(Insurer of the vehicle No. TR-01-AW-0630)

-----Appellant(s)

Versus

- 1. Smt. Mousumi Biswas,**
W/O Late Nirmal Sen
- 2. Master Nishan Sen,**
S/o late Nirmal Sen,
both are residents of Dhaleswar Road No.2, P.O. Dhaleswar,
P.S. East Agartala, District- West Tripura, Pin-799007.
[petitioner No.2 being minor, he may be represented by his mother,
the petitioner No.1]
- 3. Smt. Anjali Sen,**
W/o late Suresh Chandra Sen, resident of South Bharat
Chandranagar, P.O. Belonia, District- South Tripura
Pin- 799115

-----Claimant-Respondents

- 4. Smt. Dipali Debbarma,**
W/o Sri Shiku Debbarma, resident of West Champahwar,
P.S. Champahwar, District- Khowai, Tripura, Pin-799201
Pin- 799115
[Owner of vehicle No. TR-01-AM-0457 (Maruti Alto K-10)]

For Appellant(s)	:	Mr. N. Debnath, Advocate
For Respondent(s)	:	Mr. S. Lodh, Advocate Mr. S. Datta, Advocate
Date of hearing & delivery of Judgment & Order	:	06.11.2025
Whether fit for reporting	:	Yes / No

**BEFORE
HON'BLE JUSTICE DR. T. AMARNATH GOUD
Judgment & Order (Oral)**

06/11/2025

This is an appeal preferred by the appellant- National Insurance Company Limited challenging the award dated 27.06.2024 passed by the Motor Accident Claims Tribunal No.1,

West Tripura, Agartala in case No. T.S. (MAC) 24 of 2020 praying for dismissal of the award to the tune of Rs. 95,51,306/- only alongwith interest @9% per annum w.e.f. the date of filing of the claim petition i.e. 05.02.2020.

2. Heard Mr. N. Debnath, learned counsel appearing for the appellant-Insurance Company. Also heard Mr. S. Lodh, learned counsel appearing for the respondent Nos. 1 and 2 as well as Mr. S. Datta, learned counsel appearing for the respondent no.3.

3. The facts of the case as projected by the learned trial court, herein, are as under:

"On 20.10.2019, victim Nirmal Sen was coming from his school after completion of TET examination duty by riding his motorcycle through Agartala-Airport Road keeping left side of the road. It was Sunday. On the way at about 04.30/05.00 p.m when he reached at Gurkhabasti Traffic Post, one Maruti vehicle bearing registration No.TR-01-AM-0457 which at the relevant time was moving from Agartala towards Airport with a high speed being driven rashly and negligently, suddenly dashed his motorcycle going into the wrong side of the road. As a result, Nirmal Sen fell down on the road and sustained severe injury on his person. Immediately. he was shifted to AGMC & GBP Hospital, Agartala by the local people and got him admitted there but during treatment, on 22.10.2019 in the morning at about 05.30 am Nirmal Sen died in that hospital. Accordingly, post mortem examination was held over the dead body of the deceased and thereafter, his body was handed over to the relatives of the deceased. It is stated that deceased Nirmal Sen was aged about

46 years old at the time of death and as a Govt. School Teacher (PTC), he used to draw salary of Rs.80,000/-, per month. It is stated that deceased had a bright future in his profession. It is also stated that claimant petitioners were fully dependent upon the income of the deceased Nirmal Sen but due to his unfortunate death, the future of the claimant petitioners have become at stake. the accident occurred due to rash and negligent driving of the driver of the vehicle bearing registration No.TR-01-AM-0457 and concerning the said accident, a police case was also registered at NCC Police Station vide NCC P.S. Case No.2019NCC141 U/Sa. 279/338/304(A) of I.P.C. Finally, the claimant petitioners claimed compensation to the tune of Rs.1,00,00,000/-only on different heads along with interest @ 12%, per annum from the date of accident till the date of payment.”

On receipt of the claim application, the appellant-insurance company as well as the owner of the vehicle by filing their respective written objection contested the claim application. In course of the proceeding, the claimant-respondents have examined as many as 3 witnesses and exhibited some documents. On the other hand, the owner-respondent examined herself as OPW-1 and proved certain documents.

All the witnesses were examined and cross-examined and the documents were also taken into consideration by the learned trial Court.

Following the settled principles of law, the learned Tribunal has quantified the compensation to the tune of Rs.

95,51,306/- along with interest @9% per annum from the date of filing of the claim application till the date of actual realization.

Being aggrieved by and dis-satisfied with the said award dated 27.06.2024 passed by the learned Tribunal in T.S. (MAC) 24 of 2020, the insurance company has preferred this appeal with the following reliefs:

- "a) Admit the appeal;**
- b) Call for the records of TS.(MAC) 24 of 2020 from the Court of Ld. Member, Motor Accident Claim Tribunal No.1, West Tripura, Agartala, Sri S. Sharma Roy;**
- c) Stay the operation of the impugned award dated 27.06.2024 passed in T.S.(MAC) 24 of 2020;**
- d) After hearing the parties be kind enough to set aside/quash the impugned award appealed against."**

4. Mr. Debnath, learned counsel appearing for the appellant-insurance company for the first time has raised the issue of obtaining double benefit by the legal heirs of the deceased. Learned counsel has urged that the deceased was a government employee serving as School Teacher and relating to his accidental death, the claimant-respondents were extended with monetary benefits to the tune of Rs.10 lakhs by the State Government and, hence, they cannot get further compensation from the insurance company. Learned counsel also submitted that the claimant-respondents are not entitled to be afforded with double benefit for the accidental death of deceased Nirmal Sen. Learned counsel for the appellant has further submitted that the amount of compensation is in the higher side and has prayed for setting-aside the award dated 27.06.2024.

5. Per contra, learned counsel for the respondents unanimously have submitted that the appellant-insurance company for the very first time has raised the issue of double

benefit. They have also submitted that the appellant-insurance company in their pleading has not raised the issue of double benefit and, such fresh pleading cannot be introduced at the appeal stage, as appeals are meant to review the lower court's judgment based on the evidence and arguments presented during the trial, not to retry the case. Learned Counsel for the respondent has cited a judgment rendered by this Court in **MAC App. No. 61 of 2025 [National Insurance Company Limited vs. Sri Sribash Chandra Debnath & ors.]** wherein it was held that if the insurance company do not adduce evidence on an issue, they cannot raise the same for the first time in the appellate stage. Finally, learned counsel for the respondents, has urged before this Court to maintain with the findings of the learned Tribunal.

6. I have perused the entire record including the award passed by the learned Tribunal.

7. On bare perusal of the record, it is evident that the appellant-insurance company could not establish the issue of double benefit obtained by the claimant-respondents for untimely death of the deceased, which they have taken for the first time. Even the appellant also has not taken any step to lead their evidence and flatten the case of the claimant-respondents. Without availing opportunity to make pleadings in the trial Court, now the appellant cannot deviate from the provision of law and substitute pleadings in the appeal stage. Thus, the appellant-insurance company is barred from raising the issue of double benefit at this appellate stage.

8. From the entirety, this court is of the view that the appellant-insurance-company cannot escape from the liability of paying the compensation to the legal heirs/dependants of the deceased. This court is of the view that the assessment of compensation by the learned Tribunal below is just and proper and the appellant-insurance company is liable to make the compensation to the claimant-respondents, as decided by the learned Tribunal. Accordingly, it is made clear that the finding of the learned Tribunal regarding the entitlement of the claimant-respondents to receive the compensation to the tune of Rs.95,51,306/- shall remain unaltered. However, in so far as the interest is concerned, this court is fixing 7.5% interest considering as reasonable invariably in all cases. Accordingly, the compensation amount of Rs.95,51,306/- shall carry interest @ 7.5% per annum w.e.f. from the date of filing of the claim petition till its actual payment. The appellant-insurance company shall deposit the entire amount, if not paid, with the Registry of this Court within 1(one) months from today.

However, it is made clear that on such deposit, the claimant-respondents would be at liberty to withdraw the same in terms of the conditions as laid down in Order dated 27.06.2024 passed in T.S.(MAC)24 of 2020.

9. Accordingly, the appeal preferred by the appellant-insurance company stands disposed. Pending application(s), if any, also stands disposed.

JUDGE