

**HIGH COURT OF TRIPURA
AGARTALA
M.A.C. App. No.90 of 2024**

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.
AS-10-C-3601 Tata Sumo Gold)

.....Appellant(s)

Versus

- 1. Smt. Pushpa Debbarma (wife of deceased),**
W/o. Late Pradip Debbarma.
- 2. Sri Bhuban Debbarma (son of deceased),**
S/o. Late Pradip Debbarma.
- 3. Smt. Rumi Debbarma (daughter of deceased),**
D/o. Late Pradip Debbarma.
- 4. Sri Prem Debbarma (son of deceased),**
S/o. Late Pradip Debbarma.

-All are resident of Manirampara,
P.S. Teliamura, District- Khowai Tripura.
Presently residing at A.D. Nagar,
Suryapara, P.S.- A.D. Nagar,
District – West Tripura.

(Claimant respondent No.4 is being minor represented
by his mother claimant respondent no.1).

.....Claimant-Respondent(s)

- 5. Sri Dilwar Hussain,**
S/o. Late Ismail Ali,
Resident of Barapunji,
P.O.- Barapunji, P.S.- Nilambazar,
District- Karimganj,
State- Assam, Pin-788781.
(Owner of vehicle bearing No.
AS-10-C-3601, Tata Sumo Gold)

..... Respondent(s)

For Appellant(s)	:	Mr. Gitangshu Sekhar Das, Adv. Mr. Subhankar Deb, Adv.
For Respondent(s)	:	Mr. Samar Das, Adv.
Date of Hearing & Judgment and Order	:	21.05.2025
Date of Delivery of Judgment	:	28.05.2025
Whether fit for Reporting	:	NO

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order(Oral)

This appeal is preferred by the appellant Insurance Company challenging the judgment and award dated 15.04.2024 delivered by Learned Motor Accident Claims Tribunal, Court No.5, West Tripura, Agartala in connection with Case No. T.S.(MAC) No.256 of 2021. By the said judgment and award Learned Tribunal below has awarded a sum of Rs.12,98,000/- in favour of the claimant petitioner and directed the appellant Insurance Company to pay the said amount of compensation to the respondent claimant petitioners with 7% interest per annum from the date of filing the claim petition i.e. from 22.12.2021 to till the date of payment.

2. Heard Learned Counsel, Mr. Gitangshu Sekhar Das along with Learned Counsel, Mr. Subhankar Deb appearing on behalf of the appellant Insurance Company and also heard Learned Counsel, Mr. Samar Das appearing on behalf of the respondent claimant petitioners.

3. At the time of hearing of argument, Learned Counsel, Mr. G. S. Das appearing on behalf of the appellant Insurance Company drawn the attention of this Court that the only point of argument in this appeal is that the Learned Tribunal below at the time of determination of compensation determined the multiplier 11 relying upon the judgment of **Sarla Verma (Smt) and Others Vs. Delhi Transport Corporation and Another** reported in **(2009) 6 SCC 121** treating the age group of the deceased in between 51 to 55 years. But the claimant petitioner No.1 Smt. Pushpa Debbarma in course of her cross-examination by the appellant Insurance Company on 09.06.2023 stated that she is 60 years old and her husband i.e. the deceased was 2 (two) years older than her. According to Learned Counsel, if this evidence of the witnesses is taken into consideration, in that case on the date of alleged accident the age of the deceased was above 60 (sixty) years and in that case, in view of the principle of law laid down by the Hon'ble Supreme Court of India in the present case multiplier would be 9 in place of 11. But the Learned Tribunal below did not consider the same and at the time of delivery of judgment taken into consideration multiplier as 11.

4. Learned Counsel for the appellant Insurance Company further at the time of hearing of argument submitted that the Learned Tribunal below based upon the

PM examination report determined the age of 55 years at the time of death and applied the multiplier of 9 in place of 11 in view of the judgment of Hon'ble Supreme Court India in **Sarla Verma (Supra)**.

5. Furthermore, according to Learned Counsel before the Tribunal below the respondent claimant petitioners did not adduce any documentary evidence to substantiate the age of the deceased. As such, the appeal be allowed and the judgment and award delivered by Learned Tribunal below be interfered with and set aside.

6. On the other hand, Learned Counsel for the respondent claimant petitioners drawn the attention of the Court that in the claim petition the respondent-claimant petitioners stated that the deceased Pradip Debbarma was 46 years at the time of his death. However, the claimant petitioner No.1 i.e. PW-1 Pushpa Debbarma being the wife of the deceased in her examination-in-chief in Para No.3 specifically stated that the deceased was 46 years of age old at the time of his death. But during cross-examination by the appellant Insurance Company, the said petitioner being a rustic lady without understanding the consequences, stated that on the date of deposition before the Tribunal she was 60 years and her husband was 2 (two) years older than her and furthermore, the respondent claimant petitioners before the Tribunal on 09.06.2023 submitted some documents

containing 7 (seven) sheets like other Aadhar Card, Voter ID Card, School Certificate, Death Certificate, Survival Certificate of the deceased including the Voter ID Card and Aadhar Card of the informant PW-1. But surprisingly those documents could not be exhibited and if those documents are scrutinized it would be found that the deceased was 46 years old at the time of his death. To counter this submission of Learned Counsel, Mr. Samar Das for the respondent claimant petitioners, Learned Counsel, Mr. Gitangshu Sekhar Das further submitted that since no cross appeal is preferred by the respondent claimant petitioners so at this stage, this Court cannot take into consideration those documents to remove the defects of the case and urged for setting aside the judgment and award of the Learned Tribunal below by allowing this appeal.

7. Considered.

8. Now let us discuss about the subject matter of the case.

The respondent claimant petitioners filed one claim petition before the Learned Tribunal below under Section 166 of MV Act claiming compensation due to the death of deceased Pradip Debbarma by a road traffic accident on 18.04.2001 in the morning at about 06.00 am near Tuichindrai market on NH-08 road, under Teliamura

Police Station. On 18.04.2001 when the victim Pradip Debbarma was proceeding on foot for morning walk keeping himself on the extreme left side of the road and when he reached at Tuichindrai market on NH-08 road, under Teliamura Police Station, District-Khowai, Tripura that time one vehicle bearing Registration No.AS-10-C-3601, Tata Sumo Gold which was coming from Teliamura being driven very rashly and negligently by its driver suddenly dashed the victim Pradip Debbarma and as a result of which Pradip Debbarma fell down on the road and sustained grievous injuries on its person. Immediately thereafter the victim was brought to Teliamura Sub-divisional Hospital with the help of fire Service where the attending doctor declared him dead. The post mortem was conducted over the dead body of the deceased and it was further submitted that the deceased was 46 years old at the time of accident and used to earned Rs.21,000/- per month being a carpenter and according to the respondent claimant petitioners, the accident took place due to rash and negligent driving of the driver of the offending vehicle bearing Registration No.AS-10-C-3601 and on that issue, a case was registered vide Teliamura P.S. Case No.43 of 2021 under Section-279/304(A) of IPC. Upon receipt of the notice, the O.P. No.1 being the owner of the offending vehicle appeared and filed written statement denying the assertions of the claimant petitioners in their claim petition.

9. It was further submitted that, on the alleged day, the vehicle was duly insured with the Oriental Insurance Company and if any amount is awarded according to the owner that should be borne by the Insurance Company. The Insurance Company also appeared and filed written statement denying the entire assertions of the claimant petitioners in their claim petition and finally submitted that the claim petition was subjected to strict proof by the claimant petitioners.

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

“(i) Whether the case is maintainable?

(ii) Whether the deceased Pradip Debbarma sustained injury on 18.04.2021 at morning about 0600 hours near Tuichindrai market on NH-08 road under Teliamura PS in a Road Traffic accident involving the vehicle bearing No.AS-10-C-3601 (Tata Sumo Gold) due to rash and negligent driving of the driver of said offending vehicle bearing No.AS-10-C-3601 (Tata Sumo Gold) and resulting death of Pradip Debbarma at Teliamura Sub-Divisional hospital?

(iii) Whether the petitioner is entitled to award as claimed for and whether the OP No.2 i.e. Noticee is held liable to pay the same?”

11. For the sake of convenience the names of the witnesses and the documentary evidence of the parties are mentioned herein below:-

Claimant' Witness:-

PW.1- Smti Pushpa Debbarma

Claimant' Exhibits:-

Ext.1:- Certified copy of Printed FIR.

Ext.2:- Certified copy of ejahar.

Ext.3:- Certified copy of computerized FIR.

Ext.4:- Certified copy of handsketch map.

Ext.5:- Certified copy of MVI report and scientific investigation of RTA.

Ext.6:- Certified copy of seizure list.

Ext.7:- Certificate of PM report.

Ext.8:- Certificate of final report.

Opposite party's witness:-

OPW.1- Sri Dilowar Hossen

Exhibits by Opposite party:-

Ext.A:- Death certificate of Ismile Ali

Ext.B:- Certificate of Insurance.

Ext.C:- Driving liscence of Dilowar Hussain

Ext.D:- Certificate of registration.

Ext.E:- Certificate of fitness.

12. Finally on conclusion of enquiry, the Learned Tribunal below allowed the claim petition and passed the award as stated above. The operative portion of the award runs as follows:-

ORDER/AWARD

"The instant application under Section 166 of the Motor Vehicles Act, 1988 is hereby partly allowed and a

sum of Rs.12,98,000/- (Rupees twelve lacs ninety eight thousand only) is awarded in favour of the claimant-petitioners as compensation for the death of Pradip Debbarma, in a road traffic accident, as aforesaid and the opposite party No.2, the New India Assurance Company Limited, being insurer of the offending vehicle bearing registration No.AS-10-C-3601 (Tata Sumo Gold) shall pay the entire amount of compensation within a period of one month from today. The aforesaid amount shall carry interest at the rate of 7% per annum to be paid from the date of filing of the claim application i.e., from 22.12.2021 till the date of payment.

Distribution of Compensation

The claimant Nos.1-4 being legal heirs of the deceased are entitled to get compensation equally.

Protection Awarded Compensation

In the event of the deposit of the awarded amount with interest, 50% of the amount shall be released in favour of claimant No.1, 2 and 3 in their individual bank account and the remaining 50% shall be kept in fixed deposit scheme in any Nationalized Bank for five years in their name.

Claimant No.4 being minor, his entire share will be deposited in the fixed deposit scheme for the period till his attaining the age 21 years or for five years whichever is later.

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 the claimants without any further order from the Tribunal."

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

13. I have heard both the sides and perused the record of the Learned Tribunal below including the judgment and award delivered by the Learned Tribunal below. It is on record that the claimant petitioners in their claim petition mentioned that at the time of death, the age of the deceased was 46 years. Even PW-1 in her examination-in-chief stated that, at the time of death, the age of the deceased was 46 years. But surprisingly said PW-1 in course of her cross-examination by the appellant Insurance Company stated that on 09.06.2023 her age was 60 and her husband was more 2 years older than her. It is surprising that how the said witness deposed the said fact before the Court during her cross-examination. It may so happen that the said PW-1 Smt. Pushpa Debbarma being the wife of the deceased being a rustic lady without understanding the nature of the case or without having any specific idea deposed the said fact before the Tribunal. Now if her that portion of evidence is taken into consideration, in that case it can be presumed that on the day of alleged accident, the age of the victim was almost more than 60 years.

In this regard, I would like to refer Para No.42 of the aforesaid Judgment of the Hon'ble Supreme Court **Sarla Verma (Supra)** wherein the Hon'ble Apex Court observed as under:-

"42. We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table

above (prepared by applying *Susamma Thomas* : (1994) 2 SCC 176, *Trilok Chandra* : (1996) 4 SCC 362 and *Charlie* : (2005) 10 SCC 720), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."

From the aforesaid judgment of the Hon'ble Apex Court it appears that multiplier 11 would be applicable if the age of the deceased is in between 51 to 55 years, multiplier 9 would be applicable if the age is in between 56 to 60 years, multiplier 7 would be applicable the age of the deceased is 61-65 years and multiplier 5 would be available if the age of the deceased is 66 to 70 years.

14. It is on record that in the Post Mortem examination report, the age of the deceased has been shown as 55 years. But it has not been mentioned on what basis the age of 55 years was written. It may so happen that based on the requisition of police the age has been mentioned in the Post Mortem examination report.

15. It is also on record that, on 09.06.2023 some photocopies of documents containing 7 sheets were submitted by the claimant petitioners before the Tribunal by a Firisti and accordingly necessary stamp entry was made. But surprisingly on perusal of the order sheet it appears that, nothing has been mentioned by the Learned Tribunal below

in the order sheet regarding submission of photocopies of documents by the respondent claimant petitioners on that day Learned Tribunal be cautious in passing orders in a case of this nature in near future, so that no such error is committed.

16. On bare perusal of those photocopies of documents, it appears that the age of the deceased on the date of accident was almost 46 years. If it is so then the multiplier would be 13 but the Tribunal determined the multiplier as 11 treating the age in between 51 to 55 years in Para No.17 of the Judgment of the award. In that case the amount may be varied.

17. Learned Counsel for the appellant in course of hearing submitted that the documents cannot be taken into consideration at this stage as no cross objection/appeal is filed by the respondent claimant petitioners. This submission made by Learned Counsel for the appellant cannot be accepted as because it is the respondent claimant petitioners who submitted the documents before the Learned Tribunal below by a Firisti on 09.06.2023. But for any reason the same could not be brought into record but those documents were duly stamped by the concerned staff of the Court. It may so upon that, Learned Counsel for the claimant petitioners over looked the matter and did not make any

submission in this regard before the Tribunal for which the said might have lost sight of the Tribunal.

18. Situated thus, it appears that the respondent claimant petitioners should be given the opportunity to produce the relevant documents to substantiate the age of the deceased before the Tribunal below and to take step for marking exhibits of those documents.

19. In view of the above, the Judgment and award delivered by Learned Motor Accident Claims Tribunal, Court No.5, West Tripura, Agartala needs to be interfered with by setting aside the judgment and award of the Learned Tribunal.

20. In the result, the appeal filed by the appellant is hereby allowed. The Judgment and award dated 15.04.2024 delivered by Learned Motor Accident Claims Tribunal, Court No.5, West Tripura, Agartala in connection with Case No.T.S. (MAC) No.256 of 2021 is hereby set aside. The matter is remanded back to the Learned Tribunal below with a direction to the respondent claimant petitioners to produce the relevant documents in respect of age of the deceased before the Tribunal for marking of exhibits which the respondent claimant petitioners submitted before the Tribunal below on 09.06.2023 by a Firisti. Accordingly, the Learned Tribunal below shall record evidence a fresh of both

the parties both oral/documentary and thereafter shall deliver a fresh judgment in accordance with law within a period of 6 (six) months from the date of passing of this judgment/order. Both the parties shall accordingly appear before the Learned Tribunal below on 24.06.2025.

The appeal is thus disposed of.

Send down the LCR along with a copy of this judgment/order.

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

JUDGE



AMRITA
DEB

Amrita

Digitally signed by
AMRITA DEB
Date: 2025.05.29
12:53:20 +05'30'