

**HIGH COURT OF TRIPURA
AGARTALA**

MAC APP 87 OF 2025

The Divisional Manager, Reliance General Insurance Company Limited, 5th Floor, Prag Plaza, 100 G.S. Road, Bhangagarh, Guwahati, Assam-781005

-----Appellant(s)

Versus

1. Sri Chayan Das, son of Sri Chinmoy Das, resident of Durganagar, P.S. Khowai, District- Khowai, Tripura

-----Claimant-Respondent

2. Sri Ashok Dey, son of Abinash Chandra Dey, resident of Barabil, Ward No.5, P.S. Khowai, District- Khowai, Tripura.

----- Respondents

For Appellant(s)	:	Ms. S. Nag, Advocate
For Respondent(s)	:	Mr. S. Lodh, Advocate
Date of hearing & delivery of Judgment & Order	:	06.11.2025
Whether fit for reporting	:	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 judgment and award dated 18.01.2025 passed by the Motor Accident Claims Tribunal, Khowai, Tripura, in case No. T.S. (MAC) 11 of 2023, whereby learned Tribunal directed the appellant-Insurance Company to pay compensation to the claimant-respondent to the tune of Rs. 8,48,454/- alongwith interest @9% per annum w.e.f. the date of filing of the claim petition i.e. 10.05.2023 till realization of the same.

2. Heard Ms. S. Nag, learned counsel appearing for the appellant-Insurance Company. Also heard Mr. S. Lodh, learned counsel appearing for the respondents.

3. The facts of the case, in a short compass, is that, on 06.01.2023 at about 8.00 p.m. while the claimant respondent was proceeding towards his house at Khowai from Gandacherra with his vehicle bearing registration No. TR-01-BR-0587, on the way at Kakrachara, the said vehicle has fallen into a ditch due to rash and negligent driving of the driver resulting which the claimant-respondent sustained grievous injuries on various parts of his body. After the accident, he was under medical supervision at AGMC & GBP hospital, ILS hospital, Agartala and also at CMRI, Kolkata, where he had undergone three major operations. After discharge on 17.01.2023, he was under periodical treatment. On to that issue, the claimant-respondent has claimed Rs.25 lakhs as compensation under different heads.

On receipt of the claim application, the appellant-insurance company by filing written statement contested the claim application denying the averments of the claimant-respondent brought forth in the claim petition. In course of the proceeding, the claimant-respondent has examined himself as witness and exhibited some documents. On the other hand, no evidence, either oral or documentary was adduced by the appellant-insurance company.

The Tribunal, after analyzing the entire evidence on record, passed an award for a sum of Rs.8,48,454/- as compensation along with interest @9% per annum from the date

of filing of the claim application till the date of actual realization imposing some other withdrawal conditions, and directed the appellant- Insurance Company to make the payment within 30 days from the date of passing of the judgment and award.

Being aggrieved by and dis-satisfied with the said award dated 18.01.2025 passed by the learned Tribunal in T.S. (MAC) 11 of 2023, the appellant-insurance company has preferred this appeal with a prayer for setting aside the said judgment and award passed by the learned Tribunal

4. Ms. Nag, learned counsel appearing for the appellant-insurance company, has contended that the compensation awarded by the learned Tribunal is not in accordance with law. Learned counsel further contended that there is contributory negligence on the part of the claimant-respondent, and therefore, the award passed by the learned Tribunal is liable to be set aside and prays to exonerate the appellant-Insurance Company from its liability.

5. On the other hand, learned counsel for the respondent has submitted that during trial, the insurance company being OP No.2 has not taken the plea of contributory negligence in their written statement, in other words, there is no legal evidence on record. Learned counsel for the respondents, thus, 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 concept of contributory negligence. The documents submitted by the claimant-respondent before the learned Tribunal were being exhibited and from the documents viz. police report it is revealed that the accident took place due to rash and negligent driving of the offending vehicle and there is no negligence on the part of the claimant-respondent. The evidence of PW-1 i.e. the claimant-respondent could not be shaken by the insurance company during trial. Learned Tribunal accepted the final report to arrive at a conclusion that the insured vehicle was involved in the accident and that the accident occurred because of the negligence on the part of the driver of the insured vehicle. It is pertinent to note that the appellant-insurance company has not adduced any evidence before the Tribunal to challenge the conclusion drawn by the Investigating Officer. In that circumstance, I find no error or illegality on the part of the Tribunal in recording a findings regarding negligence and involvement of the insured vehicle in the accident.

8. This court is of the opinion that when there is contributory negligence, the burden lies on the Insurance Company to prove the same. In this case, none was examined on behalf of the Insurance Company to prove the same. The appellant-insurance company in trial failed to adduce any evidence, either oral or documentary, on to this aspect and, thus, failed to discharge its burden. Thus, this court is not inclined to interfere with the findings returned by the learned Tribunal.

At the time of hearing, learned counsel for the appellant-insurance company has submitted that interest @9% per annum as imposed by the learned Tribunal is higher in side and the same may be reduced to 7.5%.

Considering the said submission made by the learned counsel appearing on behalf of the appellant-insurance company, the interest is reduced from 9% per annum to 7.5% per annum. It is made clear that all other statutory benefits, as awarded by the learned tribunal shall remain unaltered, and the same are affirmed accordingly.

It is made clear that 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 18.01.2025 passed in T.S.(MAC)11 of 2023 with the rate of interest as altered by this Court.

9. In the result, the judgment and award dated 18.01.2025 is interfered with to the extent as indicated above, and the appeal, therefore, stands allowed in-part.

Pending application(s), if any, also stands disposed.

JUDGE

SAIKAT KAR

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