

**HIGH COURT OF TRIPURA
AGARTALA
MAC App. No.96 of 2024**

The Manager,
The Bajaj Allianz General Insurance Co. Ltd.
Shreeji Tower, 2nd Floor, IFE Walford,
Adjacent to Mahindra & Mahindra,
Guwahati (Assam)-781005
(Insurer of vehicle No.NL-01-AC-8432 Truck)

----Appellant(s)

Versus

- 1. Md. Habibur Rahaman,**
S/o Late Abdur Bari
- 2. Mst. Monwara Khanam,**
W/o Md. Habibur Rahaman,
Both are resident of vill.-Bhagan,
Ward No.-4, P.S.: Churaibari,
Dist.: North Tripura.

----Claimant Respondent(s)

- 3. Md. Abul Hasan @ Abdul Hasan,**
S/o Lt. Qudush Khan, of Vill.-Kathadih,
P.O.: Hirodih, P.S.: Jainagar, Dist.-Koderma,
State-Jharkhand
(Owner of vehicle No.NL-01-AC-8432 Truck)

----Owner Respondent(s)

- 4. Md. Azad Khan,**
S/o Md. Anwar Khan,
Of vill.-Kathadih, P.O.:Hirodih, Ward No.-2,
P.S.:Jainagar, Dist.-Koderma,
State-Jharkhand, Pin: 825409
(Driver of vehicle No.NL-01-AC-8432 Truck)

----Driver Respondent(s)

For Appellant(s)	:	Mr. Shubhajit Chakraborty, Adv.
For Respondent(s)	:	Mr. Alik Das, Adv.
Date of hearing and delivery of Judgment & Order	:	26.08.2025
Whether fit for reporting	:	YES

HON'BLE MR. JUSTICE BISWAJIT PALIT
Judgment & Order (Oral)

This appeal is preferred challenging the judgment and
award dated 18.06.2024 delivered by Learned Member, Motor
Accident Claims Tribunal, North Tripura, Dharmanagar in connection

with case No.T.S. (MAC) 29 of 2022. By the said judgment and award, Learned Tribunal has awarded a sum of Rs.30,94,000/- in favour of the respondents-claimant petitioners with interest at the rate of 6% per annum from the date of filing of the claim petition before the Learned Tribunal i.e. w.e.f. 17.08.2022 till the date of realization.

2. Heard Learned Counsel, Mr. Shubhajit Chakraborty appearing on behalf of the appellant-Insurance Company. Also heard Learned Counsel, Mr. Alik Das appearing on behalf of the respondents-claimant petitioners.

3. At the time of hearing, Learned Counsel for the appellant-Insurance Company drawn the attention of this court that the Learned Tribunal below in absence of any documentary evidence on record, at the time of delivery of judgment determined the monthly income of the deceased at Rs.15,000/- per month which needs to be interfered with. Learned Counsel for the appellant-Insurance Company further submitted that since the deceased was a bachelor at the time of his death, so, the Learned Tribunal below deducted one-third of amount from his income towards personal and living expenses which according to Learned Counsel for the appellant should be 50%. So, Learned Counsel for the appellant-Insurance Company arguing on the aforesaid points urged for interfering the judgment and award passed by Learned Tribunal below by allowing the present appeal.

4. On the other hand, Learned Counsel for the respondents-claimant petitioners submitted that the deceased was a driver by profession and in support of his contention, Learned Counsel drawn the attention of this Court referring the seizure list dated 09.04.2022 (Exbt. 16(iii)) wherein the I.O. in course of

investigation seized a Maruti Alto vehicle bearing number TR0-2F-0338 and a xerox copy of the driving license of the deceased vide DL No.TR0520190000695. Learned Counsel for the respondents-claimant petitioners referring the charge-sheet further drawn the attention of this court that during investigation it is revealed that at the time of accident the victim, Sahadat Hussain (since dead) was proceeding towards Sanicherra from Churaibari through NH-08 by driving a vehicle bearing registration No.TR0-2F-0338(Maruti Alto) which remained unrebutted by the appellant-Insurance Company. So, there is no scope to take any adverse inference that he was an unskilled worker not a driver. Learned Counsel further submitted that the Learned Tribunal below considering the profession of the deceased rightly determined the income of the deceased at Rs.15,000/- per month. Learned Counsel for the respondents-claimant petitioners also drawn the attention of this Court referring the examination-in-chief of one of the claimant petitioner wherein in para No.5 it was clearly mentioned that not only the claimant petitioners but also two sisters of the deceased were dependent upon his income and due to his sudden death they became helpless. So, Learned Counsel, Mr. Das finally submitted before this Court that the Learned Tribunal below after considering the oral/documentary evidence on record rightly delivered the judgment and award and there is no scope to interfere with the same and finally urged for dismissal of this appeal.

5. In the case at hand, the respondents-claimant petitioners filed one claim petition before the Learned Tribunal below alleging *inter alia* that on 09.04.2022 at about 3:00 p.m., one Sahadat Husan @ Hussain (the deceased) was proceeding towards

Sanicherra from Churaibari by driving a Maruti Alto vehicle bearing No.TR0-2F-0338 and on the way when he reached at Chandpur, that time from the opposite direction one Truck bearing registration No.NL 01 AC 8432 being driven by Md. Azad Khan came and rashly and negligently dashed against the vehicle bearing No. TR0-2F-0338 being driven by said Sahadat Husan (since dead) and due to dashing of his vehicle said Sahadat Husan sustained fatal injuries and he was immediately shifted to Dharmanagar Hospital when the attending doctor declared him as dead. It was further stated that the deceased was 23 years old at the time of accident. He was a skilled driver and was doing Poultry business in his house and was earning Rs.30,000/- per month. Hence, the respondents-claimant petitioners filed the claim petition. The owner and driver of the vehicle in spite of receipt of notice did not contest the proceeding so, the case was proceeded *ex-parte* against them.

The appellant-Insurance Company as OP No.3 contested the case by filing written statement denying the entire assertions of the respondents-claimant petitioners. It was submitted by the appellant-Insurance Company that the claim petition was subjected to strict proof and the claim was bad for misjoinder and non joinder of necessary party.

Upon the pleadings of the parties following points were taken up for determination by the Learned Tribunal below:

“(i) Whether the suit is maintainable in its present form and nature?

(ii) Whether there was an accident took place on 09.04.2022 at about 1500 hours on NH-08 road at Chandpur under Churaibari PS due to rash and negligent driving of NL-01 AC 8432 (Truck) and deceased Sahadat Husan @ Hussain died as a result of the incident?

(iii) Whether the claimants are entitled to get compensation due to death of Sahadat Husan @ Hussain for death and what should be the quantum of compensation and who shall be liable to pay the same?

(iv) Any other relief/ reliefs the claimants are entitled to get?"

To substantiate the points for determination, the respondents-claimant petitioners have adduced three witnesses and relied upon some documents which were marked as exhibits.

"Exhibit-1: Certified copy of the FIR,

Exhibit - 2: Certified copy of ejahar

Exhibit - 3: Certified copy of forwarding report,

Exhibit - 4: MVI report in c/w Churaibari PS case no. 15 of 2022.

Exhibit- 5:- Photocopy of the birth certificate of deceased Sahadat Hussen

Exhibit 6: Voter ID card of deceased Sahadat Hussen

Exhibit 7: Aadhaar card of deceased Sahadat Hussen

Exhibit - 8: Driving license of deceased Sahadat Hussen

Exhibit 9: Aadhaar card of petitioner Habibur Rahaman

Exhibit 10: Aadhaar card of Manowara Khanam.

Exhibit- 11: Original postal receipt copies dated 15-09-2022,

Exhibit-12: original received copy of the prayer dated 19-12-2022 addressed to the Superintendent of Posts, Dharmanagar Division,

Exhibit-13: Original tracking report issued from the Office of the Superintendent of Posts, Dharmanagar Division dated 19-12-2022 and 02-01-2023,

Exhibit-14: One envelope issued from the office of the Superintendent of Posts, Dharmanagar Division,

Exhibit-15: certified copy of the PM report of the deceased,

Exhibit-16(i)-16(v): Certified copy of the five seizure lists,

Exhibit-17: Charge sheet in c/w Churaibari PS case no. 15/2022.

Exhibit-18: Digitally signed computer generated order sheet dated 23-11-2022 in PRC(SP) 60 of 2022."

6. On the other hand, the appellant-Insurance Company although filed written statement but did not adduce any oral/documentary evidence on record and finally on conclusion of the proceeding, Learned Tribunal below allowed the claim petition filed by the respondents-claimant petitioners and passed the award as stated above. For the sake of convenience, the operative portion of

the judgment and award of the Learned Tribunal below is reproduced hereinbelow:

"ORDER

29. In view of the above discussion and findings, the application under Section 166 of the Motor Vehicles Act, 1988 filed by the claimant-petitioners is allowed on contest.

The Opposite Party No.3, The Bajaj Allianz General Insurance Co. Ltd, Shreeji Tower, Second Floor, IFE Walford adjacent to Mahindra & Mahindra, Guwahati, Assam-781005 shall pay the compensation of Rs.30,94,000/- (Rupees thirty lakh ninety four thousand) only to the claimant-petitioners within a period of 30 days from this day of award. This award of compensation shall carry interest at the rate of 6% per annum from the date of presentation of the claim petition before this Tribunal i.e. 17.08.2022 till the date of realization. Both the claimant petitioners will get equal share of the total compensation together with accrued interest."

7. Challenging the said judgment and award the appellant-Insurance Company has preferred this present appeal.

8. At the time of hearing of argument, Learned Counsel for the appellant-Insurance Company took the plea that the Learned Tribunal below without any basis determined the monthly income of the deceased at Rs.15,000/- per month.

9. However, on perusal of the judgment of the Learned Tribunal below it appears that the deceased was a driver by profession and to rebut this contention neither the OP owner and the driver nor the appellant-Insurance Company did adduce any contrary evidence on record. Furthermore, from the report of I.O. it also appears that at the time of accident, the deceased was driving a private car bearing No.TR0-2F-0338. Since the evidence of the respondents-claimant petitioners remained unrebutted by the present appellant-Insurance Company, so there is no scope to disbelieve that the deceased was a skilled worker/driver by profession at the time of accident.

10. Now, regarding determination of monthly income of the deceased, it was the observation of the Learned Tribunal below in para No.19 of the judgment and award that since the deceased was self-employed and he was aged about 23 years at the time of accident so as a day labourer he could easily earn Rs.15,000/- per month. So, Learned Tribunal determined his monthly income at Rs.15,000/-. But in the said paragraph it was not specifically mentioned by the Learned Tribunal below as to how the Learned Tribunal assessed the monthly income of the deceased at Rs.15,000/-. However, since the deceased was admittedly a driver by profession and the accident took place in the year 2022, so, if it is assume that as a driver he used to work for 25 days in a month in that case during the year 2022 he could easily earn Rs.500/- to Rs.600/- per day for 25 days and in such a situation, his monthly income could be easily assessed to Rs.13,000/- per month during that period. But, the Learned Tribunal below without assigning any specific reasons and treating him as a day labourer determined his monthly income to the tune of Rs.15,000/- which according to this Court appears not to be proper. In the considered view of this Court, the amount should be Rs.13,000/- per month.

With that amount, in view of the judgment of the Hon'ble Supreme Court of India in **National Insurance Company Limited vs. Pranay Sethi & Ors.**, reported in **(2017) 16 SCC 680**, 40% of his income be added as future prospects. Taking into account the same, the monthly income of the deceased for the purpose of the claim would stand at Rs.13,000/- + 40% (Rs.5,200)=Rs.18,200/-. In that ratio, the yearly income of the deceased is assessed at Rs.2,18,400/- (Rs.18,200 x 12).

11. In course of hearing, it was submitted by Learned Counsel for the appellant-Insurance Company that the Learned Tribunal below deducted one-third of yearly income of the deceased towards his personal expenditure which should be 50%.

In this regard, Hon'ble the Apex Court in the aforementioned case in para No.37 observed as under:

"37. Before we proceed to analyse the principle for addition of future prospects, we think it seemly to clear the maze which is vividly reflectible from Sarla Verma [Sarala Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] , Reshma Kumari [Reshma Kumari v. Madan Mohan, (2013) 9 SCC 65 : (2013) 4 SCC (Civ) 191 : (2013) 3 SCC (Cri) 826] , Rajesh [Rajesh v. Rajbir Singh, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149] and Munna Lal Jain [Munna Lal Jain v. Vipin Kumar Sharma, (2015) 6 SCC 347 : (2015) 3 SCC (Civ) 315 : (2015) 4 SCC (Cri) 195] . Three aspects need to be clarified. The first one pertains to deduction towards personal and living expenses. In paras 30, 31 and 32, Sarla Verma [Sarala Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] lays down : (SCC p. 136)

"30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra [UP SRTC v. Trilok Chandra, (1996) 4 SCC 362] , the general practice is to apply standardised deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.

31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.

32. Thus even if the deceased is survived by parents and siblings, only the mother would be

considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third."

12. From the aforesaid judgment, it appears that Hon'ble the Apex Court in the said case clearly observed that father cannot be considered as a dependent family member, only the mother can be considered as dependent and brothers and sisters will also not be considered as dependent because they will either be independent and earning or married or be dependent on the father.

13. Here, in the case at hand, there was no clear explanation in this regard by the respondents-claimant petitioners. So, in my considered view, the deduction of one-third income by the Learned Tribunal below was not proper rather it should be 50% towards personal and living expenses. Thus, after deduction of 50% of amount the yearly contribution of the deceased towards his parents is assessed at Rs.1,09,200/- which he would have contributed towards his parents had he been alive.

14. Further, it is on record that the deceased was 23 years old at the time of accident so, he appears to come under the range of 21-25 years and in view of the judgment of Hon'ble the Apex Court in **Sarala Verma(Smt) & Ors. vs. Delhi Transport Corporation & Anr.** reported in **(2009) 6 SCC 121** the multiplier would be 18 i.e. Rs.1,09,200/- x 18= Rs.19,65,600/- and it is the actual loss of income due to the death of the deceased. So, after revised calculation under the head loss of income the respondents-claimant petitioners are entitled to Rs.19,65,600/-.

15. Reliance is also placed upon the judgment of Hon'ble Supreme Court of India in **Magma General Insurance Company**

Limited vs. Nanu Ram alias Chuhru Ram & Ors. reported in **(2018) 18 SCC 130** wherein in para Nos.21.3, 22, 23 and 24 Hon'ble the Apex Court observed as under:

"21.3. Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.

22. Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world-over have recognised that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.

23. The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of filial consortium. Parental consortium is awarded to children who lose their parents in motor vehicle accidents under the Act. A few High Courts have awarded compensation on this count [Rajasthan High Court in Jagmala Ram v. Sohi Ram, 2017 SCC OnLine Raj 3848 : (2017) 4 RLW 3368; Uttarakhand High Court in Rita Rana v. Pradeep Kumar, 2013 SCC OnLine Utt 2435 : (2014) 3 UC 1687; Karnataka High Court in Lakshman v. Susheela Chand Choudhary, 1996 SCC OnLine Kar 74 : (1996) 3 Kant LJ 570] . However, there was no clarity with respect to the principles on which compensation could be awarded on loss of filial consortium.

24. The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under "loss of consortium" as laid down in Pranay Sethi [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] . In the present case, we deem it appropriate to award the father and the sister of the deceased, an amount of Rs 40,000 each for loss of filial consortium."

In view of the above, the respondents-claimant petitioners in addition to the amount of Rs.19,65,600/- as stated above are also entitled to loss of estate, loss of filial consortium and funeral expenses to the tune of Rs.15,000/-, Rs.80,000/-(Rs.40,000

× 2 for parents) and Rs.15,000/- respectively. However, the accident took place on 09.04.2022. So, in view of the judgment of Hon'ble Apex Court in **Pranay Sethi(supra)** in para No.59.8, the respondents-claimant petitioners are also entitled to 10% enhancement for 3(three) years. The relevant para is reproduced here under:

"59.8. Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs 15,000, Rs 40,000 and Rs 15,000 respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."

Thus, the said amount of Rs.15,000 + Rs.80,000 + Rs.15,000=Rs.1,10,000/- and 10% of this i.e. Rs.11,000/- be awarded towards loss of estate, loss of filial consortium and funeral expenses respectively. So, the respondents-claimant petitioners would be entitled to Rs.1,10,000 + Rs.11,000=Rs.1,21,000/-. So, after revised calculation the respondents-claimant petitioners are entitled to Rs.19,65,600 + Rs.1,21,000= Rs.20,86,600/- and the same is accordingly awarded in favour of the respondents-claimant petitioners. Accordingly, the same amount is also awarded in favour of the respondents-claimant petitioners as no objection was raised by the appellant-Insurance Company in this regard at the time of hearing of argument. Further, since the appellant-Insurance Company did not dispute anything regarding liability of payment of compensation, so, based upon the detailed accident report vide Misc. Petition (AIR) No.09 of 2022 arising out of Churaibari PS case No.15/2022 and on the ground that during investigation of the said case the I.O. collected all the relevant documents including the insurance policy of the Maruti Alto vehicle and the offending Truck bearing No. NL-01-AC-8432 which is duly insured with the present appellant-Insurance Company, the Learned Tribunal below fastened the liability of payment of compensation upon the present appellant-

Insurance Company. So, the appellant being the insurer of the offending Truck is to indemnify the said amount of compensation to the present respondents-claimant petitioners.

Further, from the judgment it appears that the Learned Tribunal below at the time to determination of compensation and at the time of delivery of judgment awarded rate of interest @6% per annum, which in my considered view was too less. The same should be 7.5% per annum from the date of filing the claim petition till the date of realization.

16. In view of the above, the present appeal filed by the appellant-Insurance Company is partly modified to the extent that the appellant-Insurance Company shall pay an amount of Rs.20,86,600/- along with interest @ 7.5% per annum from the date of filing the claim petition i.e. w.e.f. 17.08.2022 to till the date of realization to the respondents-claimant petitioners.

The aforesaid amount be deposited by the appellant-Insurance Company to the Learned Tribunal below within a period of 2(two) months from the date of delivery of this judgment.

A copy of this judgment be furnished free of cost to the Learned Counsel for the appellant-Insurance Company for information and compliance. Also a copy of this judgment be supplied to Learned Counsel for the respondents-claimant petitioners. Send down the LCR to the Learned Tribunal below along with a copy of this judgment and order.

With this observation, the instant appeal is disposed of.

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

JUDGE

Snigdha

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