

**HIGH COURT OF TRIPURA
AGARTALA
MAC APP. No.95 of 2024**

The Branch Manager,
Bajaj Allianz General Insurance Company Limited,
having its Branch Office at Agartala,
3rd Floor, Aitorma Centrum Agartala,
Sakuntala Road, Pin-799001,
P.S. West Agartala, District-West Tripura
(Insurer of the Vehicle No.TR-08-2312 Auto Rickshaw)

---- Appellant(s)

Versus

1. Smt. Mani Das,
wife of Late Ranjit Das

2. Sri Akash Das,
son of Late Ranjit Das

3. Miss Sagarika Das,
daughter of Late Ranjit Das

(Respondent No.3 being minor will be represented by her natural mother and guardian)

----Claimant Respondent(s)

4. Sri Pradip Das,
son of Atul Chandra Das,
resident of Village-North Doulbari,
P.O. Doulbari, P.S. Sabroom, District-South Tripura
(Owner and Driver of the Vehicle No.TR-08-2312 Auto Rickshaw)

----Owner Respondent(s)

For Appellant (s)	:	Mr. S. Chakraborty, Adv.
For Respondent(s)	:	Mr. Ratan Datta, Adv. Mr. A. Baidya, Adv.
Date of Hearing	:	20.01.2025.
Date of Judgment & Order	:	24.01.2025
Whether fit for reporting	:	NO

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This is an appeal filed by the appellant-Insurance Company under Section 173 of M.V. Act challenging the judgment and award dated 28.02.2024 delivered by Learned Member, MACT, South Tripura, Sabroom in connection with Case No.T.S.(MAC)12 of 2023. By the said judgment and award, the Learned Tribunal has awarded a sum of Rs.17,55,000/- and fastened the

liability of payment of compensation upon the present appellant-Insurance Company.

[2] Heard Mr. S. Chakraborty, Learned counsel appearing on behalf of the appellant-Insurance Company and also heard Mr. Ratan Datta, Learned counsel appearing on behalf of the respondent-claimants and also heard Mr. A. Baidya, Learned counsel appearing on behalf of the owner-respondent.

[3] At the time of hearing of argument, Learned counsel appearing on behalf of the appellant-Insurance Company first of all drawn the attention of the Court that the judgment and award of Learned Tribunal below suffers from infirmity as because Learned Tribunal at the time of determination of monthly income of the deceased, determined the monthly income @ Rs.15000/- per month in absence of any oral and documentary evidence on record and also the said determination of monthly income by the Tribunal was without any basis because according to the Tribunal, the deceased was a Carpenter by profession but in this regard, the claimants could not adduce any documentary evidence on record for which the judgment suffers from infirmity and the same needs to be interfered with.

[4] Learned counsel for the appellant-Insurance Company further submitted that the Tribunal awarded interest @ 9% p.a. which was also too high in view of the different judgments of the Hon'ble Apex Court and by this High Court also. So, Learned counsel in summing up of his argument submitted that the case may be remanded back to the Tribunal to take fresh evidence on record to determine the monthly income of the deceased and also to revisit the rate of interest imposed/awarded in view of the judgments of the Hon'ble Apex Court.

[5] On the other hand, Mr. Ratan Datta, Learned counsel appearing on behalf of the respondent-claimants submitted that the accident took place in the year 2022 and in the year 2022, in our State a Carpenter by profession could easily earn not less than Rs.700/- per day. So, considering his daily wages @ Rs.700/- per day his monthly income on an average was not less

than Rs.20000/- per month. But the Tribunal below after considering the facts and circumstances of the case only awarded Rs.15000/- per month which was rational and reasonable and there was no infirmity on that. Furthermore, the rate of interest was rightly imposed by the Tribunal because this High Court also in so many cases has awarded interest @ 9% p.a. So, in summing up his submission, Learned counsel for the respondent-claimants urged for dismissal of this appeal with costs.

[6] Learned counsel for the owner-respondent also submitted that there was no infirmity in the judgment delivered by Learned Tribunal below.

[7] Here in the given case, as already stated, the Tribunal totally assessed the amount of compensation at Rs.17,55,000/- in favour of the respondent claimant-petitioners. However, before coming to the conclusion, let us discuss about the subject matter of the claim petition filed before the Tribunal below. According to the respondent claimant-petitioner on 03.10.2022 at about 11 p.m. on Sabroom-Agartala Road (NH-8) at Manubazar area under Manubazar police station a road traffic accident took place when an auto-rickshaw bearing registration No.TR-08-2312 came there driven by its owner rashly and negligently and it capsized on the road resulting which one of the passenger Ranjit Das severely sustained multiple injury on his body and immediately he was brought to nearby hospital when the attending doctor declared him as dead. On this issue, Manubazar P.S. Case No.39/2022 under Section 279, 338, 304(A) of IPC read with Section 184 of M.V. Act was registered and after that, the respondent claimant-petitioners filed the claim petition. The respondent-owner took the plea that there was no negligence on his part and it was also submitted that his vehicle was insured with the present appellant and as such, according to the respondent-owner, if any liability arises that should be borne by the Insurance Company. The Insurance Company i.e. the present appellant also contested the case and also took the plea that the claim petition was subjected to strict proof by the claimant petitioners.

However, upon the pleadings of the parties, Learned Tribunal below framed the following issues :

- “(i) Whether the instant suit is maintainable in its present form and nature ?**
- (ii) Whether there was any cause of action ?**
- (iii) Whether on 03.10.2022 at about 11 pm. On Sabroom-Agartala Highway at Manubazar under Manubazar police station any road traffic accident occurred due to rash and/or negligent driving of an Auto-Rickshaw bearing registration No.TR-08-2312 by respondent No.1 resulting in death of one Ranjit Das ?**
- (iv) Whether claimant petitioners are entitled to any compensation being legal heirs of Ranjit Das who succumbed to injuries in alleged road traffic accident ?**
- (v) Whether Respondents are liable to pay compensation?**
- (vi) To what other relief(s) the parties are entitled ?”**

[8] To substantiate the issues, the respondent claimant petitioners adduced oral/documentary evidence on record and the respondent-owner also adduced oral/documentary evidence on record. Finally, on conclusion of the inquiry, Learned Tribunal below allowed the claim petition filed by the respondent claimant petitioners. The operative portion of the judgment/award of the Learned Tribunal below runs as follows :

“20. So, total amount of compensation would stand at Rs.17,55,000/- (seventeen lac fifty-five thousand) only along with interest to be added at the rate of 9% per annum from the filing date of petition (04.04.2023) till realization of awarded compensation and the same shall be paid by Respondent No.2 to Claimant-Petitioners who would be entitled to in equal amount. The shared amount of compensation of petitioner No.3 being minor shall remain deposited in fixed deposit bank account till she attains her majority.”

Challenging that judgment, the present appellant has preferred this appeal.

[9] I have heard argument of both the sides and perused the judgment/award delivered by the Learned Tribunal below along with other relevant papers. It is the admitted position that the deceased Ranjit Das was aged about 41 years at the time of accident. In the claim petition the respondent claimant petitioners shown the monthly income of the deceased at Rs.20,000/- per month but the Learned Tribunal at the time of determination of the monthly income of the deceased it appears that without any basis determined the monthly income of the deceased at Rs.15,000/- per month

which was not proper because in determination of monthly income of the deceased by the Tribunal it was duty of the Tribunal to give a reasoning with specific finding as to why the amount was determined by the Tribunal in delivering the judgment. It is also on record that the contesting respondents in their written statement save and except denial did not take any other plea. However, the respondent claimant petitioners before the Tribunal could not prove any documentary evidence on record showing the actual monthly income of the deceased. As already stated, the deceased was a Carpenter by profession and the incident took place in the year 2022, however, considering the market condition at that relevant point of time and after hearing both the sides the monthly income is determined @ Rs.14,000/- per month. Situated thus, the revised calculation would be as follows :

The Learned Tribunal below in deciding the case relied upon the judgment of the Hon'ble Supreme Court of India in **Smt. Sarla Verma and Others Vs Delhi Transport Corporation and Another** reported in **AIR 2009 SC 3104**. Applying the said principle of law Learned Tribunal deducted $\frac{1}{3}^{\text{rd}}$ of the income towards personal and living expenses from said amount of Rs.15,000/-. Here, since the monthly income is determined at Rs.14,000/- so after deduction the same would be $14,000 - 4,667 = \text{Rs.}9,333/-$ and taking into account the age of the deceased being 42 years at the time of death the Learned Tribunal below applied the multiplier 14 relying upon the said judgment of the Hon'ble Apex Court. Thus, the loss of dependency would come to $\text{Rs.}9,333 \times 14 \times 12 = \text{Rs.}15,67,944/-$. Along with the amount the Tribunal below determined the loss of consortium Rs.40,000/-, determined the Funeral expenses Rs.15,000/-, determined the loss of estate Rs.15,000/- and determined the expenses for transportation of dead body Rs.5,000/-. So, since there was no argument on those components, the total amount would be as under :

- 1) Loss of dependency : Rs.15,67,944/-**
- 2) Loss of consortium : Rs.40,000/-**
- 3) Funeral expenses : Rs.15,000/-**

4) Loss of estate	:	Rs.15,000/-
5) Expenses for transportation of dead body	:	Rs.5,000/-
		<u>Rs.16,42,944/-</u>

Thus, the total amount of compensation comes to Rs.16,42,944/- and along with that amount, the rate of interest would be @ 9% p.a. from the date of filing the claim petition i.e. w.e.f.04.04.2023 to till the date of realization which the respondent claimant petitioners would get in this case. In absence of material evidence on record I find no scope to interfere with the rate of interest awarded by the Tribunal.

[10] In the result, the appeal is allowed and modified to the extent that the appellant Insurance-Company would pay to the respondent claimant petitioners at Rs.16,42,944/- and along with that amount, the rate of interest would be @ 9% p.a. from the date of filing the claim petition i.e. w.e.f.04.04.2023 to till the date of realization. The disbursal of amount would be made as per the observation made by the Tribunal in the said judgment and award dated 28.02.2024. From the record it appears that a sum of Rs.8,77,500/- has already been deposited by the Insurance-Company to the Registrar(Judicial), High Court of Tripura. So, the appellant Insurance-Company be asked to deposit the balance amount after deducting the said amount as per award made by this Court to the Registry of the High Court within a period of 6(six) weeks from today i.e. from the date of delivery of the judgment/order.

A copy of this judgment/order be furnished to Learned counsel for the Insurance Company immediately for information and compliance.

Send down the record of the Learned Tribunal below along with a copy of this judgment/order.

The appeal is thus disposed of accordingly in terms of the above.