

**HIGH COURT OF TRIPURA**  
**\_A\_G\_A\_R\_T\_A\_L\_A\_**

**MAC. App. No.94 of 2023**

The United India Insurance Co. Ltd.

**.....Appellant**

**\_V\_E\_R\_S\_U\_S\_**

Smti. Champa Rani Saha and Others

**.....Respondents**

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|---------------------------|---|--------------------------|
| For Appellant(s)          | : | Mr. P. Gautam, Advocate. |
| For Respondent(s)         | : | Mr. D. Biswas, Advocate. |
| Date of hearing and       |   |                          |
| Judgment and order        | : | <b>17.01.2025</b>        |
| Whether fit for reporting | : | <b>YES</b>               |

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**HON'BLE MR. JUSTICE T. AMARNATH GOUD**

**\_F\_I\_N\_A\_L\_O\_R\_D\_E\_R\_**

Heard Mr. P. Gautam, learned counsel appearing for the appellant-insurance company also heard Mr. D. Biswas, learned counsel appearing for the respondents.

[2] This is an application filed under Section-173 of Motor Vehicles Act, 1988 read with Section-168 of the Act ibide, against the impugned judgment and award dated 30.09.2022 passed by the learned Motor Accident Claims Tribunal No.2, Dhalai Judicial District, Ambassa, in connection with case No. TS(MAC) 06 of 2017.

[3] The facts in brief are that on 01.03.2016 at about 01.30 pm when the driver namely Kajal Saha (Now deceased) was returning from FCI Go-down in Thalcherra in a TATA Truck bearing registration No. TR-02C-1655 (TATA-709) near the Thalcherra TSR Camp, he lost control over the vehicle and met with an accident as a result of which both he and his assistant suffered serious injuries. Subsequently they were shifted to GBP Hospital for medical treatment. But unfortunately the driver Kajal Saha succumbed to his injuries on 03.03.2016. After that a written complain qua the said accident was registered at Chawmanu P.S vide case No. 04/2016 U/S 279/338/427/304(A) of IPC, dated 03.03.2016. Thereafter the claimants filed a claim petition before the learned Motor Accident Claims Tribunal, Tribunal No.2, Dhalai Judicial District, Ambassa vide Case No. T.S. (MAC) 06 of 2017 and the learned Tribunal awarded a compensation of Rs. 18,47,700/- in favour of the claimants.

[4] The learned Tribunal after hearing the parties and on perusal of the material evidence on record has observed as under:

“26. The instant application u/s 166 of the Motor Vehicle Act filed by the claimants/ petitioners is thus partly allowed and a sum of Rs. Rs. 18,47,700/- (rupees eighteen lacs forty seven thousand and seven hundred) only along with interest @ 6% per annum from the date of filing of the claim petition i.e. from 06.05.2017 till the date of payment is awarded in favour of the claimants/ petitioners as compensation for the death of Kajal Saha, S/O-Late Chitta Ranjan Saha in a road traffic accident as aforesaid and this amount shall be paid wholly by the O.P No.2 (United India Assurance Co. Ltd.) within a period of one month from today.

27. Out of the said amount of Rs.18,47,700/-, 40% i.e. Rs. 7,39,080/- shall be payable to the widow of the deceased and 20% of the awarded amount i.e. Rs. 3,69,540/- shall be payable to each of the three daughters of the deceased. In the event of deposit of the awarded amount, Rs. 1,00,000/- (rupees one lakh) shall be released in favour of the wife of the deceased namely Smt. Champa Rani Saha(out of her respective share) and Rs. 50,000/- (rupees fifty thousand) shall be released in favour of his major daughter Miss. Chameli Saha (year of Birth 2003/ out of her respective share) in their bank accounts immediately for enabling them to meet any necessary / urgent expenses and the rest of the amount shall be kept in Fixed Deposit Schemes in any nationalized bank for a period of 05 (five) years in the separate names of the wife and the major daughter as per their respective shares. The greater amount of Rs.1,00,000/- (rupees one lakh) is purposely being released in favour of the wife of the deceased as the primary responsibility of looking after her other minor daughters falls on her.

28. As far as the youngest minor daughter (namely Miss. Purnima Saha, year of Birth 2010) is concerned, her share (20% of the total awarded amount) shall be kept in a Fixed Deposit Scheme in any nationalized bank till the date of her attaining majority (2028).

29. As far as the minor daughter Miss. Sneha Saha year of birth 2007 is concerned, her share (20% of the total awarded amount) shall be kept in a Fixed Deposit Scheme (in her separate name) in any nationalized bank for a period of 05 (five years i.e. till October, 2027).

30. No loan or advance or pre-mature withdrawal of the Fixed Deposited Amount shall be permitted against the concerned Fixed Deposit Accounts nor shall any joint name be allowed nor shall any check-book/ ATM/ Debit Card/ Credit Card be issued against the said Fixed Deposit Accounts without the permission of this Tribunal.

31. Interest of all the Fixed Deposits is to be released in favour of all the claimants as and when it accrues by direct credit in their respective bank accounts. All the original F.Ds shall be retained by the bank for a period of 05 years.

32. However, the Periodical Bank Statements containing the Fixed Deposit numbers, the Deposited amount, dates, maturity amounts, etc. shall be furnished by the bank to the claimants/ petitioners as and when they are due.

33. The claimants/ petitioners shall be at liberty to approach this Tribunal for a release of any further extra amount in the event of financial exigency.

34. Let a copy of this award be furnished to all the parties through their Ld. Counsels.

35. The claim is thus disposed of on contest and stands partly allowed.”

[5] Being aggrieved by the perverse, mechanical and illegal Judgment and award dated 30.09.2022, passed by the learned Motor Accident Claims Tribunal, Dhalai Judicial District the appellant, The United India insurance co. filed the present appeal.

[6] Learned counsel appearing for the appellant has submitted that from the final report it transpires that the accident took place due to rash and negligent driving of the deceased being the husband of claimant No.1 and father of the claimant respondent Nos.2, 3 and 4 and to succeeded a claim under 166 of the MV Act, rash and negligent driving is a condition precedent but in the present case when the deceased driving himself was responsible for the accident and the accident took place due to own negligence of the driving as such the claim petition under Section-166 of the MV Act is not at all maintainable.

[7] It has been further contended that the claim ought to have been filed as per provision of Employees Compensation Act. As the instant policy of the appellant was a package policy and there was additional coverage of paid driver. So as per policy the driver had wider liability and the learned tribunal is to consider this aspect of the statutory provision of MV Act. As well as policy conditions in deciding the claim petition or the instant claim petition ought to have been filed under Section-163 A of the MV Act, but without doing so most illegally in contrary to the provision of MV Act and the policy conditions and the nature of policy, the tribunal in a perverse and arbitrary manner decided the case under Section-166 of the M.V. Act and awarded compensation of Rs.18,47,700/-.

[8] Without following the statutory provision of MV Act, nature of the policy and the final report wherein it is established that due to own fault of the deceased being the driver the accident occurred and most illegally decided the case under Section-166 of the MV Act and passed an exorbitant amount of compensation along with stipulated rate of interest is unsustainable and does not stand in law and is liable to be interfered with for the ends of justice.

[9] Having heard the learned counsel appearing for the parties and gone through the observations in its entirety, it is seen that the insurance company, the appellant herein, has not pleaded the applicability of Section-163A of the MV Act as against the claim petition which has been filed under Section-166. The insurance

company has not made itself available for leading the evidence as a defendant. There is no supportive evidence to plea that it was the rash and negligent driving and the mistake of the driver. In the absence of such documents and the evidence before the Court, this Court finds no force to re-appreciate the evidences once again.

[10] In the light of the above, this Court is of the view that the learned Court below has assessed the compensation in a reasonable and justifiable way. In view of above discussion and observation, the present appeal stands dismissed consequently, the award of compensation as assessed by the learned tribunal stands affirmed. The awarded amount shall be deposited within a period of one month from the date of receipt of the copy of this order, if not deposited earlier and on such deposit; the claimant-respondents are at liberty to withdraw the same unconditionally.

[11] However, it is seen from the record that on behalf of the insurance company written statement is filed and no person entered into the witness dock to adduce their evidence. It is to be seen that the amount of compensation which is being disbursed is from the insurance company and it runs with the premiums paid by the policy holders and obviously the amounts of disbursement would again fall as a burden on the subsequent year for making the payment of premium upon the other policy holders of the insurance company. It is undoubtedly the public money. But for the non-functioning of the erred officers the insurance companies are facing the disbursement of huge amounts. No doubt genuine claimants might be entitled for the compensation as decided by the Hon'ble Apex Court of India and even under Act and rules. But it is not right on the part of the officers not to avoid pursuing the litigation before the Courts and for statistical purpose, to file appeals in the High Court and to wash away with their responsibility.

[12] Mere filing of an appeal does not exonerate the concerned officers from not performing their duties and not cooperating with the accident tribunal in its judicial proceedings. This Court takes a serious note of the same and directs the insurance company to pay the amounts of compensation to the appellants and recover the said amount of compensation from the concerned employees who are responsible by all means dealing with this O.P. But for the lapses of the officers of insurance company drawing salaries, pension and incentives, the institution, the

United India Insurance Company Ltd., should not be burdened to pay the compensation.

[13] The copy of this order be communicated to the (i) Chairman of the United India Insurance Company Ltd. 24 Whites Road, Chennai, 600014, (ii) Managing Director, 24 Whites Road, Chennai, 600014, (iii) Regional Manager, Chibbar House, Floor No.1, G.S. Road near Dispur Post Office, Kamrup, Assam, Guwahati-781005 (iv) Zonal Manager and (v) Branch Manager Agartala Divisional Office, Old RMS Chowmohani.

**T. AMARNATH GOUD, J**

*A. Ghosh*

