

**HIGH COURT OF TRIPURA
AGARTALA
MAC App. No.02 of 2024**

The Divisional Manager,

The Oriental Insurance Company Ltd.
B.C. Dharmanagar Branch, Raj Bari, P.S. Dharmanagar,
District-North Tripura. A company registered under the
Companies Act, 1956, represented by the Assistant Manager
cum Officer in Legal Hub/Authorized Signatory, Agartala,
Division Office, H.G.B. Road, (Near Sarkar Nursing Home),
Agartala, West Tripura.

-----Appellant(s)

Versus

1. Sri Surja Kumar Das,

S/o: Late Swarbananada Das,
F/o: Late Sarajit Das.

2. Smti. Aparna Das,

W/o: Sri Surja Kumar Das,
M/o: Late Sarajit Das.

3. Sri Sukanta Das,

S/o: Sri Surja Kumar Das,
Brother of Late Sarajit Das,

All are the residents of Kabiraj Tilla,
North Kachucharra, P.O. & P.S. Salema,
District Dhalai, Tripura.

Presently residing under the C/o Sri Apurba Poddar,
Pratima Bhavan near Jogesh Mahal,
Dhaleswar Road No.13, Agartala, West Tripura.

----- Respondent/Claimant(s)

4. Sri Sushanta Debnath,

S/o: Sri Mahesh Debnath,
Resident of village Salema,
P.O. & P.S. Salema, District-Dhalai, Tripura.

(Owner of the vehicle bearing No.TR-04-B-0779)

----- Respondent (s)

**Along with
CO (FA) No.06 of 2025**

1. Sri Surja Kumar Das,

S/o: Late Swarbananada Das,
F/o: Late Sarajit Das.

2. Smti. Aparna Das,

W/o: Sri Surja Kumar Das,
M/o: Late Sarajit Das.

3. Sri Sukanta Das,

S/o: Sri Surja Kumar Das,
Brother of Late Sarajit Das,

All are the residents of Kabiraj Tilla,
North Kachucharra, P.O. & P.S. Salema,
District Dhalai, Tripura.

Presently residing under the C/o Apurba Poddar,

Pratima Bhavan near Jogesh Mahal,
Dhaleswar Road No.13, Agartala, West Tripura.

---- Respondent Petitioner/Cross Objector

Versus

1. Sri Sushanta Debnath,

S/o: Sri Mahesh Debnath,
Resident of village Salema,
P.O. & P.S. Salema, District-Dhalai, Tripura.

(Owner of the vehicle bearing No.TR-04-B-0779)

----Owner Respondent(s)

2. The Divisional Manager,

The Oriental Insurance Company Ltd.
B.C. Dharmanagar Branch, Raj Bari, P.S. Dharmanagar,
District-North Tripura.
A company registered under the Act, 1956,
represented by the Assistant Manager cum
Officer in Legal Hub/Authorized Signatory, Agartala,
Division Office, H.G.B. Road (Near Sarkar Nursing Home),
Agartala, West Tripura.

----Appellant Respondent(s)

In MAC App. No.2 of 2024

For Appellant(s) : Mr. Karnajit De, Adv.
For Respondent(s) : Mr. Debalay Bhattacharya, Sr. Adv.
Mr. Soumyadeep Saha, Adv.
Ms. Sarama Deb, Adv.

In CO(FA) No.06 of 2025

For Cross Objector(s) : Mr. Debalay Bhattacharya, Sr. Adv.
Mr. Soumyadeep Saha, Adv.
Ms. Sarama Deb, Adv.

For Respondent(s) : Mr. Karnajit De, Adv.

Date of hearing
and delivery of
Judgment & Order : 15.09.2025

Whether fit for
reporting : YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order (Oral)

Both the appeal and the cross-objection are taken up together
for hearing and decision, and accordingly, by this common judgment the
appeal and the cross-objection are disposed of.

2. The appeal under Section 173 of the Motor Vehicles Act, 1988 is preferred by the appellant-Insurance Company challenging the judgment and award dated 05.07.2023 delivered by Learned Member, Motor Accident Claims Tribunal No. 1, West Tripura, Agartala in T.S. (MAC) No.250 of 2019 and the cross-objection is filed by the respondent-claimant petitioners under Order XLI, Rule 22 of CPC, 1908 for enhancement of the award delivered by the Learned Member, MAC Tribunal No. 1, West Tripura, Agartala.

3. Heard Learned Counsel, Mr. Karnajit De appearing on behalf of the appellant-Insurance Company. Also Heard Learned Senior Counsel Mr. Debalay Bhattacharya assisted by Learned Counsel, Ms. Sarama Deb appearing on behalf of the respondent-claimant petitioners and the cross-objectors. None appeared on behalf of the owner of the offending vehicle bearing number TR-04-B-0779.

4. Taking part in the hearing, Learned Counsel for the appellant-Insurance Company first of all has drawn the attention of this court referring Exbt.B, i.e., the insurance policy certificate containing two sheets, from which it appears that the policy was issued only for personal use and not for any commercial purpose/use because in the policy it was clearly stated that the policy covers use of the vehicle for any purpose other than: a) Hire or Reward b) Carriage of goods (other than samples or personal luggage) c) Organized racing d) Pace making e) Speed testing f) Reliability Trials g) use in connection with Motor Trade. But, here in the case at hand, on the alleged day the vehicle was being driven by the driver along with passengers, which was not permitted by the terms and conditions of the policy. However, Learned Tribunal below at the time of delivery of judgment did not consider the same. Learned counsel has

further drawn the attention of this Court referring point No.23 of the claim petition, which runs as follows:

"23. Any other information : The fact of the case in brief is that may helpful in that on 13/07/2019 at about disposal of the claim petition; 1717 hrs, S.I. Sri Sujit Rudrapal of Kamalpur PS (Duty Officer) received a

telephonic information from one unknown caller that one road traffic accident incident occurred at Erarpar on Ambassa to Kamalpur main road. Accordingly on this information, SI Jakir Hussain, along with staff rushed at Erarpar to verify the information. On arrival at spot found that one vehicle TR04-B-0779 (Honda Xcent) had fallen down into the nala (right side of the road). The I.O. also found that the Fire Service Staffs are trying to bring out the passengers and including driver from the said vehicle. Thereafter Fire Service team shifted total three passengers i.e. travellers and driver of the said vehicle from Erarpar to Kamalpur BSM Hospital for immediate medical treatment. Due to this accident all the passengers including deceased Sarajit Das (23yrs) succumbed while undergone treatment at Kamalpur Hospital. On enquiry I.O. learnt that on 13.07.2019 at 16.30 hrs the deceased Sarajit Das was travelling in vehicle bearing registration number TR04-B-0779 (Honda Xcent) from Kamalpur side to Ambassa side and the said vehicle was being driven very rashly and negligently with high speed by the driver and the vehicle while reached at Erarpar then hit the road side tree and fallen down into the nala."

Referring the same, Learned Counsel submitted that from the above relevant portion of para No.23 it appears that on the alleged day, the driver of the vehicle had carried passengers, which was not permitted by the policy coverage. The same was not considered by Learned Tribunal below. Learned Counsel has further drawn the attention of this court referring para No.12 of the written statement wherein it was stated as under:

"12. That in reply to the statement made in col. No. 13, 14, 15, 16 and 17 of the claim petition, the answering -opp.-party submits that though the vehicle was insured with Oriental Insurance Company Ltd. at that material time, but there is violation of terms of policy in as much as the policy prohibits the use of the said vehicle for carrying hire passengers for commercial purpose concerned. The driving license of the driver of the said vehicle namely Shri Litan Das had not been possessing valid driving license who drove the said vehicle. Therefore, the answering opposite e-party cannot be held liable to indemnify the claimant-petitioners and as such the instant claim petition is liable to be dismissed in favour of the answering-opp.-party No.2."

Referring to the same para, Learned Counsel further submitted that there was breach of terms and conditions of the policy, and

as such, the appellant-Insurance Company could not be fastened with the liability of payment of compensation. Learned Counsel has further drawn the attention of this court referring para No.3 of the Examination-in-Chief in affidavit filed by one Surja Kumar Das, wherein it was mentioned as under:

"3. I say that, on 13.07.2019 at about 4.30 p.m. my son Sarajit Das (now deceased) along with other passengers was returning home at Salema by boarding the vehicle bearing Regn. No.TR-04-B-0779 (Hondacent) from Kamalpur side towards Ambassa side and when the said vehicle reached at Erarpar, then hit the road side tree and fallen down into a nala and the accident took place."

Referring the said paragraph, Learned Counsel submitted that in the said paragraph also it was clearly stated that the deceased along with others had boarded in the said vehicle as passengers and since it was a clear admission on the part of the claimant petitioner that the vehicle was used for commercial purpose, not for personal use, which was not covered by the policy. As such, the insurance company i.e. the present appellant is not liable for making payment of compensation to the respondent-claimant petitioners.

4.1. Learned Counsel again drawn the attention of this Court referring Examination-in-Chief in affidavit of another witness, Sukanta Das wherein in para No.3 of his Examination-in-Chief, said witness also reiterated the same fact.

4.2. Thereafter, Learned Counsel for the appellant-Insurance Company further referred the cross-examination of OPW-1, Sri Susanta Debnath i.e. the owner of the vehicle, wherein it was clearly admitted by him that the vehicle had a private registration certificate and the insurance policy was issued by O.P. No.2 i.e. the present appellant herein as a private car. He further admitted that as per terms of the policy certificate there was clear bar to give the vehicle on hire to any person/passenger. In such a situation, where there was clear violation of

the terms and conditions of the policy, according to the Learned Counsel, Learned Tribunal below without appreciating the evidence on record awarded compensation and fastened the liability upon the Insurance Company for which the interference of this Court is required.

4.3. Learned Counsel, Mr. De again drawn the attention of this court referring the *suo moto* complaint laid by one S.I. Jakir Hossain on 13.07.2019 to O/C Kamalpur PS from which it was clear that the deceased of this case along with others boarded in the said offending vehicle as a passenger and the said document (i.e. the F.I.R.) has been relied upon by the respondent-claimant petitioners but the Learned Tribunal below did not consider the same and asked the appellant-Insurance Company to pay compensation to the respondent-claimant petitioners. Moreso, no valid driving license of the driver was produced and proved by the owner in this case. Situated thus, according to Learned Counsel for the appellant-Insurance, the judgment and award delivered by Learned Tribunal below suffers from infirmity which needs to be interfered with.

4.4. In respect of cross-objection, Learned Counsel for the appellant-Insurance Company submitted that Learned Tribunal below considering the evidence on record determined the monthly income of the deceased as because the claimant-petitioners before the Learned Tribunal below could not adduce any cogent evidence on record, both oral/documentary, to substantiate the monthly income of the deceased. So, Learned Tribunal below rightly determined the monthly income of the deceased and there is no chance to enhance the award in absence of evidence on record. So, Learned Counsel urged for dismissal of the cross-objection filed by the respondent-claimant petitioners and also to allow the appeal by setting aside the judgment and award of the Learned Tribunal below.

5. On the other hand, Learned Senior Counsel, Mr. Bhattacharya appearing on behalf of the respondent-claimant petitioners first of all drawn the attention of this Court that here in the case at hand, before the Learned Tribunal, the appellant was not a noticee rather, the appellant contested the case by filing written statement. Learned Senior Counsel further drawn the attention of this Court referring para No.6 of the claim petition wherein the monthly income of the deceased was shown as Rs.25,000/-. Learned Senior Counsel further drawn the attention of this Court, referring the Examination-in-Chief in affidavit of PW-1, Surja Kumar Das wherein para No. 5 he stated that the monthly income of the deceased was Rs. 25,000/-. Similarly, PW-2, Sukanta Das also in his Examination-in-Chief in affidavit, in para no. 5, reiterated the same fact. The appellant-Insurance Company by the style of cross-examination, save and except denial, could not dismantle the evidence on record of the respondent-claimant petitioners regarding monthly income of the deceased. But, the Learned Tribunal below at the time of determination of the monthly income of the deceased, in para No. 16 of the judgment and award dated 05.07.2023, only determined Rs.10,500/- as monthly income which was too less, so the same needs to be enhanced.

5.1. Learned Senior Counsel further submitted that as per notification of the High Court of Tripura dated 04.08.2023 since the accident took place after 31.12.2015, the monthly income ought to have been determined at the rate of Rs.18,000/- per month but the same was not taken into consideration by the Learned Tribunal below. Learned Senior Counsel also submitted that as referred by Learned Counsel for the appellant-Insurance Company, the information as mentioned in point No.23 of the claim petition was based on the report of police because at the time of accident, the claimant petitioners were not present at the

place of occurrence and it is the police who laid *suo moto* complaint of the accident and on the basis of *suo moto* complaint the case was registered.

5.2. Again, Learned Senior Counsel submitted that the appellant-Insurance Company before the Learned Tribunal below did not adduce any oral or documentary evidence on record to substantiate that the insurance package does not cover the present liability and as such, the appellant-Insurance Company is not liable for making payment of compensation to the respondent-claimant petitioners as per direction of the Learned Tribunal below. Learned Senior Counsel further submitted that since the monthly income of the deceased was not rebutted by adducing any contrary evidence on record so, the award needs to be modified and enhanced by setting aside the judgment and award of the Learned Tribunal below. In support of his contention Learned Senior Counsel further drawn the attention of this court referring another judgment of the co-ordinate Bench of this Court dated 20.07.2023 in connection with MAC App. No.82 of 2022 wherein a co-ordinate Bench of this Court affirmed the award delivered by Learned Tribunal only reducing the rate of interest and directed the payment of compensation upon the Insurance Company i.e. the appellant herein and that case arose out of the same accident on the basis of same police case bearing Kamalpur PS Case No. 61 of 2019 registered under Sections 279, 338, 304(A) of IPC read with Section 184 of MV Act. The said judgment has not been challenged by the appellant-Insurance Company and at the time of hearing of argument of that appeal, no such plea was taken by the appellant-Insurance Company which has been taken in this case. Furthermore, Learned Tribunal below in in Para No. 25 of the judgment and award dated 05.07.2023 made a clear observation in this regard. According to Learned Senior Counsel for the respondent-claimant petitioners, at this stage, the appellant-Insurance

Company be estopped from making assertions on the ground of violation of the terms and conditions of the policy by the owner of the offending vehicle and finally, Learned Senior Council urged for enhancement of the award by dismissal of the appeal filed by the appellant-Insurance Company.

6. I have heard argument of both the sides at length and perused the judgment and award delivered by the Learned Tribunal below.

7. The subject matter of the claim petition was that on 13.07.2019, at about 1717 hours, SI Sujit Rudrapaul of Kamalpur PS received one telephonic information from an unknown person that a road traffic accident took place at Erarpar on Ambassa-Kamalpur main Road. Accordingly, on receipt of information, SI Jakir Hossain along with staff rushed to Erarpar to verify the information and on arrival to the PO, they found a vehicle bearing registration No. TR-04-B-0779 had fallen down into the roadside nala (right side) and the fire service staff after rescuing the passengers including the driver shifted them to Kamalpur BSM Hospital for their treatment wherein all the passengers including deceased Sarajit Das succumbed to their injuries except the driver while undergoing treatment at Kamalpur Hospital. On enquiry, the I.O. came to learn that on 13.07.2019, at about 1630 hours, the deceased Sarajit Das was travelling in the said vehicle from Kamalpur towards Ambassa which was driven by the driver very rashly and negligently with high speed and when the vehicle reached at Erarpar, it dashed against the roadside tree and fell down into the roadside nala (right side). The accident took place due to rash and negligent driving of the said vehicle. After the accident, the victim was taken to Kamalpur Hospital by the fire service personnel wherein victim succumbed to his injuries. The post-mortem was conducted over the dead body of the deceased and in this regard,

Kamalpur PS Case No. 61 of 2019 under Sections 279, 338, 304(A) of IPC read with Section 184 of MV Act was registered. In the claim petition it was stated that the monthly income of the deceased was Rs. 25,000/- and the deceased was 23 years old at the time of his death. So, the claim petition was filed.

7.1. The OP No. 1 i.e. the owner contested the same by filing objection denying the assertions of the claimant petitioners. However, it was stated that the OP-owner had valid registration certificate, driving license of the vehicle on the day of the accident and the vehicle was insured with the appellant-Insurance Company on the day of the accident. It was also stated that if any compensation is awarded, that should be borne by the Insurance Company. The OP No. 2 i.e. the Insurance Company, the appellant herein also contested the case by filing written statement denying the entire assertions of the claimant petitioners. It was stated that though the vehicle was insured with them, but there was clear violation of the terms and conditions of the policy. The vehicle was used for carrying passengers for commercial purpose without making payment of any extra premium for carrying such passengers and the driver of the vehicle had no valid driving license and as such, the Insurance Company had no liability to make payment of any compensation to the claimant petitioners.

8. Upon the pleadings of the parties Learned Tribunal below framed the following issues:

(1) Did deceased Sarajit Das die in a road traffic accident occurred on 13.07.2019 at about 1630 hours at Erarpar on Kamalpur Ambassa main road under Kamalpur P.S. out of use of vehicle bearing registration No. TR-04-B-0779 (Honda Xcent) due to rash and negligent driving by the driver of said vehicle?

(2) Are the petitioners entitled to get compensation as prayed for and if so, to what amount and who is liable to pay the same?

(3) To what other reliefs are the parties entitled ?”

9. To substantiate the issues, from the side of the respondent-claimant petitioners, two witnesses were examined as PW-1 and PW-2 and certain documents were marked as Exbt.1 to Exbt.9. The owner of the vehicle was examined as OPW-1 and the documents relied upon were marked as Exbt.A to Exbt.D. But, no oral/documentary evidence was adduced by the appellant-Insurance Company. For the sake of convenience, the exhibits of the parties are mentioned hereinbelow:

“Exhibits of the claimant-petitioners:

Exbt 1: FIR alongwith Complaint petition.

Exbt 2: Final Form

Exbt 3/1, 3/2, 3/3,3/4: Seizure List

Exbt 4: Post Mortem Report

Exbt 5: Family Ration Card

Exbt 6: Aadhar Card of Sarajit Das

Exbt 7: Death Certificate

Exbt 8: Voter's Identity Card

Exbt 9: Certificate of Birth

Exhibits of the owner of the vehicle:

Exbt A: Tax Token of the vehicle

Exbt B: Insurance Policy Certificate

Exbt C: Aadhar Card of Sushanta Debnath

Exbt D: Registration Certificate”

However, the Learned Tribunal below, after conclusion of enquiry, allowed the claim petition filed by the claimant petitioners. The operative portion of the judgment and award runs as follows:

“O=R=D=E-R

It is, therefore, held that the claimant petitioner no.2 is entitled to get compensation of Rs.16,64,600/- (Rupees Sixteen Lakh Sixtyfour Thousand Six Hundred only) with interest @ 7% per annum with effect from 21.12.2019 i.e. the date of filing of the claim petition till the date of actual payment. The opposite party no.2 namely, the Oriental Insurance Company Ltd. will pay the amount of compensation with interest within 30 days from today in terms of Section 168(3) of M.V. Act, 1988.

Out of the awarded amount of compensation inclusive of interest, 50% shall be kept in fixed deposit scheme in the name of the claimant petitioner no.2 in any Nationalized Bank of her locality for a period of five years and the remaining 50% shall be paid to her through her bank account. The claimant petitioner no.2 shall however be at liberty to withdraw monthly interest from her fixed deposit account to meet her day to day expenses. No loan or withdrawal shall be permitted from the fixed deposit certificate without prior permission of this Tribunal.

Supply copy of this award free of cost to the parties.

The claim petition stands disposed of on contest.

Enter the result in the relevant Register as well as in the CIS.”

10. Challenging the said judgment and award, the present appeal is filed by the appellant-Insurance Company and the cross-objection is filed by the respondent-claimant petitioners.

11. I have gone through the record of the Learned Tribunal below, including the oral/documentary evidence on record as well as the judgment and award delivered by the Learned Tribunal below.

12. Admittedly, in this case, there is no dispute on record in respect of the fact of accident on the alleged date and time at Erarpar. Now, here in this appeal and the cross-objection, it is to be seen whether the appellant-Insurance Company is liable to make payment of compensation to the claimant petitioners or not, and whether the claimant petitioners are entitled to get enhanced amount of compensation or not.

13. To substantiate their contentions, both the parties placed their oral arguments as already stated. Learned Tribunal below at the time of delivery of judgment and award in para No.16 came to the observation that in the year 2019, a day labourer could easily earn Rs.350/- per day and thus, the Learned Tribunal below assessed the monthly income of the deceased at Rs. 10,500/- per month (Rs. 350 x 30).

14. At the time of hearing of the argument, Learned Senior Counsel, Mr. Bhattacharya drawn the attention of this court referring notification dated 04.08.2023 of this High Court of Tripura regarding determination of notional income but the said notification is regarding determination of monthly income during Lok Adalat. Here, in the case at hand, it was the plea of the respondent-claimant petitioners that the

deceased was a businessman but in this regard no documentary evidence could be produced and proved by the respondent-claimant petitioners as to what type of business the deceased used to deal in and what was his daily income. Nothing could be explained by the respondent-claimant Petitioners.

Learned Senior Counsel, Mr. Bhattacharya although tried to draw the attention of this court that the appellant-Insurance Company, save and except denial, did not dispute the monthly income of the deceased but this cannot be a ground for accepting that the monthly income of the deceased was at Rs. 25,000/- because each case is to be decided according to its facts and circumstances on merit. The respondent-claimant petitioners before the Learned Tribunal below could not adduce any cogent evidence on record to substantiate that the deceased used to earn a considerable amount of money to support his livelihood.

15. However, Learned Tribunal below treating the deceased as a day labourer, determined his monthly income at Rs. 10,500/- but since the accident took place in the year 2019 so, in my considered opinion, there was no perversity or infirmity in the decision of the Learned Tribunal below regarding determination of monthly income of the deceased at Rs.10,500/- per month. As such, after hearing Learned Senior Counsel for the respondent-claimant petitioners-cum-objector, I am not inclined to enhance the monthly income as determined by Learned Tribunal below.

16. Now, in respect of violation of terms and conditions of the policy as alleged by the appellant-Insurance Company, it appears that at the time of delivery of judgment and award in para No.25, Learned Tribunal below gave the observation that the appellant-Insurance Company, to substantiate their pleading, did not adduce any

oral/documentary evidence on record and failed to prove that the vehicle was used for commercial purpose though it was a private car. Learned Tribunal below did not agree with the plea simply on the basis of submission made in the written statement and oral agreement that the owner of the offending vehicle violated the terms and conditions of the policy.

17. It is the admitted position that since the Insurance Company did not adduce any oral evidence on record to rebut the claim of the claimant petitioners, so, the plea taken by the Insurance Company that the vehicle was used for commercial purpose cannot be taken as a sound argument for accepting the plea taken during the stage of hearing of argument.

18. Learned Counsel, Mr. De, at the time of hearing of argument, relied upon one citation of the Hon'ble Supreme Court of India in **Bajaj Allianz General Insurance Company Limited vs. Mukul Aggarwal & Ors.**, reported in **(2024) 2 SCC 344** wherein in para No. 17, the Hon'ble Apex Court observed as under:

"17. As far as the interpretation of an insurance policy is concerned, in National Insurance Co. Ltd. v. Chief Electoral Officer [National Insurance Co. Ltd. v. Chief Electoral Officer, (2023) 6 SCC 441 : (2023) 3 SCC (Civ) 41] , this Court reiterated that an insured cannot claim anything more than what is covered by the insurance policy. The terms of the contract have to be construed strictly without altering the nature of the contract. Moreover, the clauses of an insurance policy must be read as they are. The terms of the insurance policy, which determine the liability of the insurance company, must be read strictly. This Court also held that the rule of contra proferentem is not applicable to a commercial contract like a contract of insurance. The rule of contra proferentem contemplates that if any clause in the contract is ambiguous, it must be interpreted against the party that introduced it. For the contract of insurance, the applicability of the said concept is ruled out. The reason is that the insurance contract is bilateral and mutually agreed upon, like any other commercial contract."

Relying upon the same, Learned Counsel intended to draw the attention of this court that the principle of law laid down by the Hon'ble Apex Court be taken into consideration in this case.

19. In this regard, at the time of hearing, Learned Senior Counsel for the respondent-claimant petitioners as already stated, drawn the attention of this Court to another judgment dated 20.07.2023 of a co-ordinate Bench of this Court in MAC App. No.82 of 2022 which arose out of the same police case wherein at the time of hearing of argument, no such plea had been taken by the appellant-Insurance Company which is taken by them at this stage before this court. Even, if it is assumed that the insurance policy of the vehicle did not cover the commercial use of the vehicle, still in this case, it was the responsibility and liability of the Insurance Company to rebut the contention by adducing oral/documentary evidence on record.

20. As already stated, there was no dispute on record in respect of the fact of accident on the alleged day and that due to the accident on the alleged day, the alleged driver sustained injury and the other boarders/passengers succumbed to their injuries. But, the Insurance Company, at least by oral evidence on record could not project their defense theory to substantiate that the vehicle was used for commercial purpose. Although, Learned Counsel for the appellant-Insurance Company drawn the attention of this Court referring the cross-examination of OPW-1, i.e., the owner of the vehicle, who in course of his examination stated that his vehicle has registration certificate and the insurance policy was issued as a private car and as per terms of the policy certificate, there was bar to give the vehicle on hire to any person/passengers, but again in the rest part of the cross-examination, he denied the fact of carrying any

passengers by his vehicle on that relevant point of time, violating the terms and conditions of the policy.

21. In this regard, I have also seen the charge-sheet/Final Report submitted by I.O.

It appears that on the alleged day, the vehicle was driven by one Litan Das along with three passengers/travellers namely Sarajit Das, Ashim Debnath and Rabindra Debnath and those three travellers ultimately succumbed to injuries. The driver also got injuries on his person and referred to Dhalai District hospital for better treatment. Due to the accident, Sarajit Das and Ashim Debnath succumbed at the spot and another Rabindra Debnath succumbed while undergoing treatment at Kamalpur Hospital. This has been relied upon by the respondent-claimant petitioners and was exhibited before the Learned Tribunal below as Exbt.2 containing six sheets along with other documents. Until and unless it is proved on record that those passengers/travellers boarded inside the vehicle either by hiring the same or by making payment of fares to the driver, the plea taken by Learned Counsel for the appellant-Insurance Company cannot be taken as a sound and legally accepted ground to substantiate that there was violation of the terms and conditions of the policy by the owner or driver, here the alleged driver. Alternatively, if it is assumed that the vehicle was meant for private use also in that case, there was no bar to claim for compensation in the event of accident by the owner or his family members.

22. Here, in the case at hand, since there is no contrary evidence on record that the vehicle was used by the driver for commercial purpose so, there is very least scope to accept the argument taken by Learned Counsel for the appellant-Insurance Company at this stage since to substantiate their pleading, the Insurance Company did not adduce any

oral/documentary evidence on record. Furthermore, before the co-ordinate Bench as already stated, no such argument was made in this regard on behalf of the appellant-Insurance Company that there was violation of the terms and conditions of policy and that judgment by this time has attained finality also. Situated thus, after hearing both the sides, it appears to this court that there is no merit in the appeal filed by the appellant-Insurance Company. At the same time, there is no merit in the cross-objection filed by the respondent-claimant petitioners i.e. the cross objectors.

23. However, it appears that Learned Tribunal below at the time of determination of delivery of judgment and award determined the rate of interest @ 7% per annum with effect from 21.12.2019 i.e. from the date of filing the claim petition till the date of actual payment which in my considered view, the same should be modified and be enhanced to 7.5% per annum which was also awarded by the co-ordinate Bench of this Court in MAC App. No.82 of 2022.

24. The citations as referred by Learned Senior Counsel for the respondent-claimant petitioners appear to be not relevant for decision of this appeal and accordingly the same is not considered for the decision of this case.

25. In the result, there is no merit in the appeal filed by the appellant-Insurance Company. Accordingly, the same stands dismissed being devoid of merit. At the same time, the cross-objection filed by the respondent-claimant petitioners also bears no merit, save and except that the rate of interest awarded by the Learned Tribunal below at the rate of 7% per annum be enhanced to 7.5% per annum in favour of the respondent-claimant petitioners to be paid by the appellant-Insurance

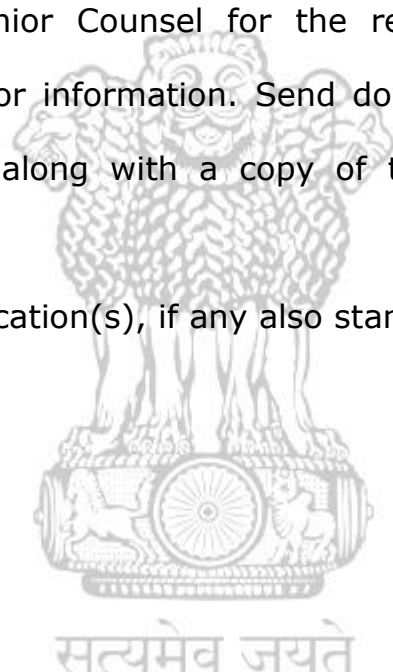
Company w.e.f. 21.12.2019 i.e. from the date of filing the claim petition till the date of actual payment.

26. The appellant-Insurance Company shall deposit the amount of compensation along with interest @ 7.5% per annum as indicated above within a period of 60(sixty) days from the date of judgment passed by this court to the Learned Tribunal below after intimation to the respondent-claimant petitioners.

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 Senior Counsel for the respondent-claimant petitioners free of cost for information. Send down the LCR to the Learned Tribunal below along with a copy of this judgment and order.

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

JUDGE



Snigdha

MOUMITA
A DATTA

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