

**HIGH COURT OF TRIPURA
AGARTALA
MAC App. No.85 of 2024**

Smt. Kalpana Debbarma, aged about 57 years,
wife of Sri Tilak Bashi Debbarma, resident of
Anandapur, P.O.-Mohanbhog, P.S.-Melaghar,
District-Sepahijala, Tripura, at present residing at-
C/o Sri Jadumani Debbarma, village-Krishna Mohan Kobra Para,
P.O.-Lembucherra, P.S.-Lefunga, District-West Tripura.

----Appellant(s)

Versus

- 1. Sri Krishnendu Dey**,
son of Sri Lal Mohan Dey,
resident of village & P.O.-Mag Puskurini,
P.S.-Kakraban, District-Gomati, Tripura
(Owner of the offending vehicle bearing registration No.TR-03-F-
1516 (Bolero Maxx).
- 2. Chief Grievance Redressal Officer**,
MAGMA HDI General Insurance Co. Ltd.
Office No.516 & 517, 5th Floor, Neelkanth Corporate Park,
Plot No.240, 240/1-8, Kirol Road, Vidya Bihar (West),
Mumbai, Maharashtra-400086
(Insurer of the offending vehicle bearing registration No.TR-03-F-
1516 (Bolero Maxx)

---- Respondent(s)

**Along with
MAC App. No.127 of 2024**

Magma HDI, General Insurance Company Ltd.,
Represented by its General Manager,
Magma House, 24 Park Street,
Kolkata-700016, West Bengal.
Local office at Netaji Chowmuhani,
within the building of HDFC Bank,
P.O. Agartala, P.S. West Agartala,
District: West Tripura, PIN-799001.
(Insurer of Bolero Maxx bearing No.TR-03-B-1805)

----Appellant(s)

Versus

- 1. Smt. Kalpana Debbarma**,
W/o Sri Tilak Bashi Debbarma,
Resident of Anandapur, P.O-Mohanbhog,
P.S. Melaghar, District-Sepahijala, Tripura.
At present residing at
C/o Sri Jadumani Debbarma,

Village-Krishna Mohan Kobra Para,
P.O. Lembucherra, P.S. Lefunga,
District-West Tripura.

----Claimant Respondent(s)

2. Sri Krishnendu Dey,

Son of Sri Lal Mohan Dey,
village & P.O.-Mag Puskurini,
P.S.-Kakraban, District-Gomati, Tripura
(Owner of the vehicle bearing registration No.TR-03-F- 1516
(Bolero Maxx).

---- Respondent(s)

In MAC App. No.85 of 2024

For Appellant(s) : Mr. Biplab Debnath, Adv.
For Respondent(s) : Mr. Anjan Kanti Pal, Adv.
Mr. Rajib Saha, Adv.

In MAC App. No.127 of 2024

For Appellant(s) : Mr. Rajib Saha, Adv.
For Respondent(s) : Mr. Biplab Debnath, Adv.
Mr. Anjan Kanti Pal, Adv.

Date of hearing : 17.04.2025

Date of delivery of
Judgment & Order : 23.04.2025

Whether fit for
reporting : **NO**

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

Both the appeals are taken up together for hearing and disposal since both the appeals have arisen out of a common judgment and award dated 26.06.2024. The MAC App. No.85 of 2024 is preferred by the appellant-claimant petitioner for enhancement of the award made by the Learned Tribunal below vide judgment and award dated 26.06.2024 and the MAC App. No.127 of 2024 is preferred by the respondent-Insurance

Company as appellant challenging the said judgment and award dated 26.06.2024 delivered by Learned Member, MACT, Tribunal No.1, West Tripura, Agartala in connection with T.S. (MAC) No.173 of 2020 for modification of the award.

2. Heard Learned Counsel, Mr. Biplab Debnath appearing on behalf of the appellant-claimant petitioner in MAC App. No.85 of 2024 and on behalf of the respondent-claimant petitioner in MAC App. No.127 of 2024. Also heard Learned Counsel, Mr. Rajib Saha appearing on behalf of the respondent-Insurance Company in MAC App. No.85 of 2024 and appellant in MAC App. No.127 of 2024 and Learned Counsel, Mr. Anjan Kanti Pal appearing on behalf of the respondent-owner of the vehicle in both MAC App.No.85 of 2024 and MAC App. No.127 of 2024.

3. At the time of hearing of argument, Learned Counsel, Mr. Debnath appearing on behalf of the appellant-claimant petitioner drawn the attention of this Court that by the said judgment and award, Learned Tribunal below awarded a sum of Rs.15,96,000/- along with 9% interest per annum w.e.f. 03.12.2020 i.e. from the date of filing of claim petition till the date of actual payment. Learned Counsel, Mr. Debnath further submitted that the amount awarded by Learned Tribunal below was too less as the appellant-claimant petitioner claimed higher amount in her claim petition. It was further submitted that the Learned Tribunal below at the time of determination of the award assessed the monthly income of the deceased at the rate of Rs.10,000/- per month whereas his monthly income was

Rs.18,000/- because being a rubber tapper he used to earn Rs.600/- per day as wages and for 30 working days he used to earn Rs.18,000/-. But, as the Learned Tribunal below determined/assessed the monthly income of the deceased at Rs.10,000/- per month, the amount of compensation has been reduced. The appellant-claimant petitioner was supposed to get the enhanced rate of monthly income. Moreso, the employer of the deceased was produced by the appellant-claimant petitioner to support her claim but the Learned Tribunal below, ignoring the evidence on record has wrongly assessed the monthly income of the deceased at Rs.10,000/- per month. So, Learned Counsel for the appellant-claimant petitioner finally urged this Court for enhancement of the amount of compensation awarded by Learned Tribunal below.

4. On the other hand, Learned Counsel, Mr. Saha appearing on behalf of the respondent-Insurance Company first of all drawn the attention of this Court that before the Learned Tribunal below, the appellant-claimant petitioner could not adduce any documentary evidence on record showing monthly income of the deceased. Furthermore, the evidence of the employer also seems to be contradictory. So, Learned Tribunal below rightly assessed the monthly income of the deceased at Rs.10,000/- per month and there was no illegality or infirmity in the said determination of the amount by the Learned Tribunal below. It was further submitted that

the Learned Tribunal below at the time of delivery of award also imposed rate of interest @ 9% which was contrary to the principle of law laid down by the Hon'ble Apex Court in various cases. Learned Counsel, Mr. Saha finally urged this Court for fixing the rate of interest @ 7% per annum and urged for modification of the award delivered by Learned Tribunal below.

5. Considered.

6. In the case at hand, the appellant-claimant petitioner filed one claim petition before the Learned Tribunal below stating that on 23.09.2020 at about 1:30 p.m., her son namely, Sanjoy Debbarma(since dead) was waiting for a vehicle keeping extreme left side in front of Microsa Para Primary Health Centre near Microsapara Bazar under Jatrapur PS to return home at Mohanbhog under Melaghar PS after attending an invitation in the house of his brother-in-law namely, Akashmani Tripura. That time suddenly a vehicle bearing registration No.TR-03-F-1516(Bolera Maxx) proceeding through the wrong side of the road suddenly dashed Sanjoy Debbarma as a result of which he sustained injuries on his head, back, legs, hands and other parts of his body and fell down on the road. Immediately, he was brought to Microsapara Health Centre but as the condition of the injured was critical, the attending doctor referred him to Gomati District Hospital, Udaipur and from there the injured was further referred to GBP Hospital, Agartala. But on arrival at GBP Hospital, the attending

doctor declared him as dead. On the following day the body of the deceased was handed over to his family members after holding post-mortem examination. It was also asserted by the appellant-claimant petitioner that the accident occurred due to rash and negligent driving by the driver of the offending vehicle bearing registration No.TR-03-F-1516. It was also asserted in the claim petition that the deceased was a tapper in rubber plantation and at the relevant period of accident, he was working in the rubber plantation of one Bipul Jamatia at Shilghati under Kakraban PS and from his engagement he used to earn Rs.18,000/- per month. On this issue a police case was also registered with the Jatrapur PS bearing case No.33 of 2020 under Section 279/304(A) of IPC. The OP-owner of the vehicle contested the claim petition by filing written statement denying the assertions made by the appellant-claimant petitioner in the claim petition and further took the plea that he is the registered owner of the vehicle bearing registration No.TR-03-F-1516 (Bolero Maxx) and on the day of alleged accident, one Hannan Miah, S/o Unuch Miah of Mohanbhog under Melaghar PS was the driver of the said offending vehicle and he had valid driving license to drive the vehicle. It was also submitted that at the time of accident the vehicle was duly insured with the respondent-Insurance Company. The respondent-Insurance Company also contested the case by filing written statement denying the assertions made by the appellant-claimant petitioner in the claim petition and further submitted that the

claim petition was subjected to strict proof by the claimant petitioner. Upon the pleadings of the parties, Learned Tribunal below framed the following issues:-

“(1) Did deceased Sanjoy Debbarma die in a road traffic accident occurred on 23.09.2020 at about 1.30 p.m. in front of Microsapara Hospital near Microsapara Bazar under Jatrapur Police Station out of use of vehicle bearing registration No.TR-03-F-1516 (Maxx Bolero) due to rash and negligent driving of said Maxx Bolero vehicle?

(2) Is the petitioner 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 the parties are entitled?”

7. To substantiate the issues, the appellant-claimant petitioner examined herself as PW-1 and adduced 3(three) more other witnesses and also relied upon some documentary evidences which were marked as exhibits in the case.

Name of the witnesses of the appellant-claimant petitioner:

- 1)PW-1: Smt. Kalpana Debbarma**
- 2)PW-2: Shri Ganesh Debbarma**
- 3)PW-3: Shri Narayan Debbarma**
- 4)PW-4: Shri Bipul Jamatia**

Exhibits of the claimant petitioner:

- 1)Exbt.1 series – Forwarding letter of Bidya Debbarma, SI of police;
- Seizure list;**
- 2)Exbt.2 – Post-mortem report;**

8. On the other hand, the OP-Owner of the vehicle, Krishnendu Dey examined himself as OPW-1 and he also relied upon some documents which were marked as Exbt.-A to Exbt.-D.

Witness of the OP-owner:

1) OPW-1: Sri Krishnendu Dey

Exhibits of the OP-owner:

- 1) Ext.A – Driving licence of Hannan Miah;
- 2) Ext.B – Registration certificate of vehicle vide No. TR-03-F-1516;
- 3) Ext.C – Insurance Policy certificate of the vehicle;
- 4) Ext.D – Copy of fitness certificate issued by the DTO, Gomati against the vehicle TR-03-F-1516.

No oral/documentary evidence was adduced by the respondent-Insurance Company.

9. Finally, on conclusion of the proceeding, Learned Tribunal below allowed the claim petition and awarded a sum of Rs.15,96,000/-with 9% interest.

10. For the sake of convenience, I would like to narrate hereinbelow the operative portion of the judgment and award of the Learned Tribunal below:

ORDER

"It is therefore, held that the claimant petitioner is entitled to get compensation of Rs.15,96,000/- (Rupees Fifteen Lakh Ninety Six Thousand only) with interest @ 9% per annum from 03.12.2020 i.e. from the date of filing of the claim petition till the date of actual payment. The Noticee MAGMA HDI General Insurance Company Ltd. being the insurer of the offending vehicle is directed to make payment of compensation with interest within 30 days from today in terms of Section 168(3) of M.V. Act, 1988.

Out of the total awarded amount of compensation inclusive of interest, 75 % shall be kept in a fixed deposit scheme in the name of the petitioner, Smt. Kalpana Debbarma in any Nationalized Bank of her locality for a period of five years and the rest 25% shall be paid to her through her Bank Account. However, liberty is given to the claimant petitioner to receive monthly interest therefrom for her day to day expenses. No loan or premature withdrawal shall be permitted from the fixed deposit account 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.

Make necessary entry in the T.R. and in CIS."

11. Challenging the said judgment and award, the appellant-claimant petitioner has filed this appeal for enhancement of the amount of compensation and at the same time the respondent-Insurance Company as appellant also filed another appeal bearing MAC App. No.127 of 2024 for setting aside/modification of the award delivered by Learned Tribunal below as stated above.

12. I have heard detailed argument of both the sides and perused the record of the Learned Tribunal below including the judgment and award delivered by Learned Tribunal.

13. On perusal of the said judgment and award, it appears to this Court that the Learned Tribunal below at the time of determination of compensation after perusal of the oral/documentary evidence on record assessed the monthly income of the deceased at Rs.10,000/- per month and with that amount Learned Tribunal below applying the principle of law laid down in **National Insurance Co. Ltd. v. Pranay Sethi & Ors., (Spl. Leave petition (civil) no.25590 of 2014)** added 40% as future income. Finally, as per Judgment of the Hon'ble Supreme Court of India in **Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr.** reported in **(2009) 6 SCC 121**, and after deducting 50% of monthly income towards personal expenditure applying the ratio of multiplier as 18, the Learned Tribunal below determined the loss of dependency to Rs.15,12,000/-.

Learned Tribunal below further relying upon the judgment of **Pranay Sethi (supra)** awarded Rs.48,000/- towards loss of consortium, Rs.18,000/- towards loss of estate and another Rs.18,000/- towards loss of funeral expenses after adding 20% increase in every 3(three) years at the enhanced rate of 10 %. Since the judgment of **Pranay Sethi (supra)** was passed on 31.10.2017 and after adding 20% increase towards loss of consortium for a gap of 6(six) years determined the amount of compensation towards loss of consortium at Rs.48,000/-. In total, the Learned Tribunal below determined the amount of compensation at Rs.15,96,000/-.

14. Admittedly, Learned Tribunal below at the time of determination of compensation assessed the monthly income of the deceased at Rs.10,000/- per month. Learned Counsel for the appellant-claimant petitioner in course of hearing only stressed upon this point stating *inter alia* that the said amount does not commensurate with the monthly income used to earn by the deceased prior to accident as a rubber tapper which needs to be enhanced and modified.

As already stated, to substantiate the issues the appellant-claimant petitioner examined herself as PW-1 and she also adduced more 3(three) other witnesses in support of her case. PW-4, Bipul Jamatia was the employer of the deceased where the deceased used to perform his job as a rubber tapper.

15. Now, let us discuss his evidence on record. Said Bipul Jamatia i.e. the PW-4, submitted examination-in-chief in affidavit before the Court. In his examination-in-chief in affidavit he stated that he has got one rubber plantation since 2015 about 15 kanis of ancestral land which is situated at Shilghati under Kakraban PS. He further stated that he was unable to manage the affairs of said rubber plantation alone, so he had to keep one staff namely, Sanjoy Debbarma for doing whole work for which he used to pay Rs. 18,000/- per month to him i.e. Rs.600/- per day and no leave was allowed to him as it was a day to day work except illness. Sanjoy Debbarma used to perform his work from 8.00 a.m. to 2.00 p.m. He further stated that being a member of ST community, he is not required to pay any income tax, so, he did not maintain Income Tax Return file or pay slip to his employee, Sri Sanjoy Debbarma who died in a road traffic accident on 23.09.2020 near Microsa Para Primary Health Centre at Microsapara Bazar. He further stated that he paid Rs.18,000/- per month i.e. Rs.600/- per day salary to Sanjoy Debbarma as he was an able bodied energetic man and very much efficient for doing his work. During cross-examination, PW-4 stated that his homestead is situated at a distance of 1 km from the house of the deceased Sanjoy Debbarma. He has not submitted any document to substantiate the fact that he has got one rubber plantation over 15 kanis of land at Shilghati under Kakraban PS. He further stated that he did not submit any paper showing that the deceased Sanjoy Debbarma was his staff and he used to pay Rs.18,000/- per

month to Sanjoy Debbarma. Again, he stated that the deceased Sanjoy Debbarma used to collect rubber latex on day to day basis and he did never maintain any register regarding payment of wages to his staff including Sanjoy Debbarma.

16. Learned Counsel for the respondent-Insurance Company in course of hearing of argument referred the cross-examination part of the said witness PW-4 and submitted that since the said witness failed to submit any relevant documentary evidence showing his ownership over more than 15 kanis of rubber plantation and also regarding payment of wages to the deceased, no reliance could be placed upon his evidence. However, Learned Tribunal below misappreciating the evidence on record assessed the interest @ 9% which requires to be modified.

17. From the judgment and award of the Learned Tribunal below it appears to this Court that at the time of determination of compensation, Learned Tribunal below based upon the notification dated 04.08.2023 issued by the Registrar General, High Court of Tripura and determined the monthly income of the unskilled workers at Rs.10,000/- per month involving the accident which had taken place prior to 31.12.2015. But since in the instant case, the accident took place on 23.09.2020 so in absence of any documentary evidence Learned Tribunal below assessed the monthly income of the deceased at Rs.10,000/- without narrating any specific grounds as to why the said income was assessed.

Admittedly, the deceased was a rubber tapper who served under PW-4 but before the Learned Tribunal below the appellant-claimant petitioner could not produce any documentary evidence in respect of income of the deceased save and except the evidence of PW-4. PW-4 also could not submit any documentary evidence showing his ownership over the rubber plantation nor could he produce any register showing payment of wages to the deceased. But, it is on record that the deceased used to work under him for collecting rubber latex almost everyday in a month.

However, considering 30 days in a month it can be said that the deceased used to work under the said PW-4 for at least 25 days in a month because sometimes due to some unforeseen reasons, in the considered opinion of this Court, it could not have been possible for the deceased to work for 30 days under said PW-4. Furthermore, since the deceased used to collect rubber latex which also requires some skill because for a normal labourer/worker it may not be possible to easily collect latex from rubber plants. So, considering the location of PW-4, it can be assessed that the deceased being a skilled worker at least used to receive Rs.500/- per day from his employer i.e. PW-4 at least for 25 days in a month. So, in such a situation, the monthly income of the deceased could be assessed at Rs.12,500/- per month (Rs.500/- × 25 days). Learned Tribunal below did not assess the monthly income of the deceased in such a manner for which in the considered opinion of this Court, the amount assessed/awarded by the Learned Tribunal below

needs to be modified and it would be proper if the monthly income of the deceased is assessed to Rs.12,000/- per month in place of Rs.12,500/-. So, considering the facts and circumstances of the case, we can assess that the deceased used to earn Rs.12,000/- per month as a rubber tapper from his employer i.e. PW-4 and with that amount as per law laid down by the Hon'ble Supreme Court of India in **Pranay Sethi (supra)**, 40% of income be added as future income. Thus, on calculation the monthly income of the deceased comes to Rs.12,000/- plus 40% thereof which comes to Rs.16,800/- (Rs.12,000/- + Rs.4,800/-). Hence, loss of dependency would be as follows i.e. Rs.16,800/× 12 i.e. Rs.2,01,600/- per annum. Since, the deceased was a bachelor at the time of dead, so as per law laid down by the Hon'ble Supreme Court of India in **Sarla Verma (supra)**, 50% therefrom be deducted on account of personal expenditure of the deceased and thus, the amount comes to Rs.1,00,800/-. Thus, the loss of dependency would come to Rs.1,00,800/-× 18 i.e. Rs.18,14,400/-(after applying multiplier as per **Sarla Verma's** case). Since, the appellant-claimant petitioner did not raise any other point at the time of hearing of argument, so as per law laid down by the Hon'ble Supreme of India in **Pranay Sethi (supra)** Rs.18,000/- be added as loss of estate, further Rs.18,000/- would be added as loss of funeral expenses and Rs.48,000/- would be added as loss of consortium. Thus, the total amount of compensation would come to Rs.18,98,400/- and the appellant-claimant

petitioner would be entitled to get Rs.18,98,400/- as compensation.

18. Now, regarding rate of interest, Learned Counsel for the respondent-Insurance Company drawn the attention of this Court that in this case rate of interest has been calculated at the rate of 9% per annum by the Learned Tribunal below w.e.f. 03.12.2020 till the date of realization of actual payment. It is an admitted position that in many cases even this High court also awarded rate of interest at the rate of 9% and in some cases the rate of interest has been shown as 7.5% by the Hon'ble Supreme Court of India. Learned Tribunal below at the time of delivery of judgment and award did not assign any reason as to why the said rate of interest was imposed without referring any citations. However, considering this situation, I think it would be proper if the rate of interest is reduced to 8% in place of 9%.

19. In the result, accordingly, the MAC App. No.85 of 2024 filed by the appellant-claimant petitioner is partly allowed with modification that the appellant-claimant petitioner would be entitled to get Rs.18,98,400/- along with 8% interest in place of 9% interest from the date of filing of the claim petition i.e. w.e.f. 03.12.2020 till the date of actual payment. The cross appeal filed by the respondent-Insurance Company being MAC App. No.127 of 2024 is also partly allowed with modification that the aforesaid amount determined by this Court today be given to the appellant-claimant petitioner with 8% interest in place of 9% interest awarded by the Learned Tribunal below

vide the said judgment and award dated 26.06.2024 from the date of filing of the claim petition till the date of actual payment.

Since necessary order is already been passed by the Learned Tribunal below regarding disbursal of amount to the appellant-claimant petitioner, so, the same is not interfered with and the amount of compensation would be disbursed in accordance with the judgment and award delivered by Learned Tribunal below on 26.06.2024 in T.S. (MAC) No.173 of 2020.

20. The respondent-Insurance Company i.e. the appellant in MAC App. No.127 of 2024 be asked to deposit the aforesaid amount of compensation to the Registry of the High Court within a period of 6(six) weeks from the date of passing of this judgment/award.

Supply a copy of this judgment to the Learned Counsel for the appellant-claimant petitioner in connection with Mac App. No.85 of 2024. Also supply a copy of this judgment to the Learned Counsel for the appellant in connection with MAC App. No.127 of 2024 free of costs.

Send down the LCR along with a copy of this judgment.

With this observation, both the appeals are disposed of.

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

JUDGE

Snigdha