

**HIGH COURT OF TRIPURA
AGARTALA**

M.A.C. App. No.141 of 2024

Cholamandalam MS General Insurance Company Ltd.,

Represented by its Authorized Signatory,
1st Floor, Above 'W' Showroom
Mantribari Road, Old RMS Chowmuhan,
P.S.-West Agartala,
District-West Tripura.
(Insurer of Vehicle bearing Registration No.
TR-04 B-1748, Bajaj Maxi Cab)

.....Appellant(s)

Versus

- 1. Smt. Sanchita Debbarma (24 years),**
W/o. Lt. Kamal Bikash Debbarma.
- 2. Miss. Jesmin Debbarma (07 years),**
D/O. Late Kamal Bikash Debbarma.
- 3. Sri Shailing Debbarma, (04 years)**
S/O- Late Kamal Bikash Debbarma,
Respondent No.2 and 3 being minor
Represented their mother
Smt. Sanchita Debbarma.

All are presently residing at C/O- Sri Srikanta Das,
Village-Sripur, P.O. Huplongcherra,
P.S.-Dharmanagar, District-North Tripura

- 4. Smt. Nabadi Debbarma (52 years),**
W/O. Sri Ranjan Debbarma,
- 5. Sri Ranjan Debbarma (60 years),**
S/O- Late Kishi Ram Debbarma,
Both (respondent No.4 & 5) are
the resident of Village-South Dhumacherra,
P.O. & P.S.- Dhumacherra,
District- Dhalai, Tripura.

-----Claimant-Respondent(s)

- 6. Sri Bijoy Debbarma,**
S/O- Sri Kartik Debbarma,
Resident of village -South Dhumacherra,
P.O. & P.S.-Dhumacherra,
District-Dhalai, Tripura.
(Driver cum owner of the vehicle bearing
Registration No.TR-04 B-1748, Bajaj Maxi Cab)

.....Owner-Respondent(s)

For Appellant(s) : Mr. Rajib Saha, Adv.
For Respondent(s) : Mr. Debajit Biswas, Adv.

Date of Hearing &
Judgment and Order : 30.10.2025

Date of Delivery
of Judgment : 31.10.2025

Whether fit for
Reporting : **NO**

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order(Oral)

This appeal under Section 173 of M.V. Act, 1988 is preferred challenging the judgment and award dated 19.05.2023 delivered by Learned Member, MACT No.2, North Tripura, Dharmanagar in connection with case No.T.S. (MAC) 25 of 2021. By the said judgment and award Learned Tribunal below has allowed the claim petition filed by the claimant-petitioner and awarded a sum of Rs.34,43,000/- with interest @8% per annum from the date of filing the claim petition i.e. w.e.f. 03.08.2021 to till the date of realization of the amount.

2. Heard Learned Counsel, Mr. Rajib Saha appearing on behalf of the appellant Insurance Company and also heard Learned Counsel, Mr. Debajit Biswas appearing on behalf of the respondent claimant petitioners. But none appeared on behalf of the driver-cum-owner of the vehicle bearing Registration No.TR-04 B-1748, Bajaj Maxi Cab.

3. At the time of hearing, Learned Counsel, Mr. R. Saha appearing for the appellant Insurance Company first of all drawn the attention of this Court that the judgment and award delivered by the Learned Tribunal below suffers from perversity. Before the Learned Tribunal the claimant petitioners could not produce and prove any documentary evidence in support of the income of the deceased and showed the monthly income of the deceased at Rs.30,000/- per month. But in absence of cogent oral/documentary evidence on record, Learned Tribunal below only determined the monthly income of the deceased at Rs.15,000/- per month which needs to be interfered with.

4. Further it was submitted that the rate of interest awarded by Learned Tribunal below is also too high which needs to be reduced because in most of the cases this Court also determined the rate of interest @7% per annum, so only on this two limited points Learned Counsel for the appellant Insurance Company urged for interference and for modification of the judgment.

5. On the other hand, Learned Counsel, Mr. Debajit Biswas appearing on behalf of the respondent claimant petitioners fairly submitted that admittedly in this case the claimant petitioners could not produce and prove any monthly income certificate in respect of income of the deceased. But it is the admitted position that he was doing

fishing business and PW-1 and 2 in course of their examination-in-chief specifically stated that the deceased used to earn Rs.30,000/- per month by doing fishing business. But the present appellant Insurance Company did not raise any cloud to disbelieve the evidence of said PWs-1 and 2 and furthermore no rebuttable evidence on record produced by the appellant Insurance Company to disbelieve the evidence of said PWs-1 and 2. Situated thus, at this stage there is no scope on the part of appellant Insurance Company to dispute the monthly income determined by the Learned Tribunal @Rs.15,000/- per month.

6. Learned Counsel, Mr. D. Biswas further submitted that even in a nature of this case Hon'ble the Apex Court also awards interest @9% per annum. But here in the case at hand, Learned Tribunal below only determined the rate of interest @8% per annum, so there is no infirmity in the judgment delivered by Learned Tribunal below and as such Learned Counsel for the respondent-claimant petitioners urged for dismissal of this appeal.

7. Considered.

8. In this case the respondent-claimant petitioners filed one claim petition before the Learned Tribunal below alleging *inter alia* that on 16.09.2020 at about 3.30 to 4.00 pm one Dibakar Tripura along with his deceased cousin

brother Kamal Bikash Debbarma having some fishes, as they were involved in fishing business, were proceeding towards Chailengta Bazar from Dhumacherra by riding a goods carrying vehicle bearing No.TR-04 B-1748 and when the vehicle reached near Bagan Bari area that time the said vehicle met with an accident due to rash and negligent driving by the driver of the vehicle and as a result of which deceased Kamal Bikash Debbarma sustained injury on his person and he was shifted to Manu CHC where the attending doctor declared him as dead. The matter was reported to O/C Chailengta P.S. over telephone and accordingly Chailengta P.S. Case No.14 of 2020 under Section 279/304 A of IPC was registered. It was further submitted that the deceased was 28 years old at the time of accident and he used to earn Rs.30,000/- per month from fishing business. Hence, the claimant petitioners filed the claim petition before the Learned Tribunal.

9. The claim petition was contested by the owner cum driver of the vehicle by filing written statement denying the entire assertions of the respondent claimant petitioners in the claim petition and it was further submitted that at the time of accident his vehicle bearing No.TR-04 B-1748, Bajaj Maxi Cab was duly insured with the OP No.2 i.e. the present appellant and by the written statement the owner cum driver prayed for dismissal of the claim petition. The present

appellant as Insurance Company also contested the claim petition by filing written statement denying the claimant of the respondent claimant petitioners and the Insurance Company further took the plea that the claim petition was subjected to strict proof by the claimant-petitioners.

10. However, upon the pleadings of the parties the following issues were framed by the Learned Tribunal:-

"(i) Whether the suit is maintainable in its present forms?

(ii) Whether there was an accident occurred on 16.09.2020 at about 3.30/4.00 pm the deceased Kamal Bikash Debbarma along with his cousin brother were proceeding towards Chailengta Bazar from Dhumachera with goods carrying vehicle bearing registration No.TR-04-B-1748 and while they reached at Baganbari area, the vehicle was capsized on Manu-Chailengta road due to the rash and negligent driving by the driver, resulting which said Kamal Bikash Debbarma sustained injury and shifted to Manu CHC, wherein the attending doctor declared him dead.

(iii) Whether, the claimant are entitled to get compensation for and if so, what should be the quantum of compensation and who shall be liable to pay?

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

11. To substantiate the claim petition on behalf of the respondent claimant petitioner two witnesses were produced who were examined as PWs-1 and 2 and the OP cum owner of the offending vehicle was examined as OPW-1. But no oral/documentary evidence is adduced by the present appellant Insurance Company. For the sake of convenience the names of the witnesses and the documentary evidence of the parties are mentioned herein below:-

Claimant' Witness:-

PW.1- Smt. Sanchita Debbarma

PW.2- Sri Dinesh Debbarma

Claimant' Exhibits:-

Ext.1 to 1/3:- Certified copies of FIR along with printed form in total 04 sheets.

Ext.2 to 2/2:- Certified copies of Post Mortem report in total 03 sheets.

Ext.3:- Certified copy of Mechanical Inspection Report dated 17.10.2020 in 1 sheet.

Ext.4 to 4/1:- Certified copy of Seizure list in total 02 sheets.

Ext.5:- The certified copy of the Insurance Policy of the vehicle bearing registration No.TR-04-B-1748 in 01 sheets.

Ext.6 to 6/3:- The certified copies of the accident information report dated 08.01.2021 along with the intimation of Road Accident to the claims Tribunal & Insurance Co. in 4 sheets.

Ext.7 to 7/4:- The certified copy of the charge sheet dated 31.03.2021 in 05 sheets.

Ext.8 to 8/5:- The photo copy of the Aadhar Card of Sanchita, Birth Certificate of Jesmin Debbarma & Shailing Debbarma, Aadhar cards of nabadi Debbarma, Ranjan Debbarma & Kamal Bikash Debbarma in 6 sheets.

Opposite party's witness:-

OPW.1- Sri Bijoy Debbarma

Opposite party's Exhibit:-

Ext.A:- Photo copy of Registration Certificate.

Ext.B:- Photo copy of Driving License.

Ext.C:- Photo copy of Fitness Certificate.

Ext.D:- Photo copy of Insurance Certificate.

12. Finally, on conclusion of enquiry Learned Tribunal below allowed the claim petition filed by the respondent claimant petitioners. The operative portion of the judgment and award dated 19.05.2023 runs as follows:-

Order/Award

"The OP No.2, The Cholamandalam MS GIC Limited is directed to deposit the awarded compensation of Rs.34,43,000/- (Rupees Thirty Four Lakh Forty Three Thousand) only within 30 days from today with interest

thereon at the rate of 8% per annum with effect from date of filing of the claim application i.e., from 03.08.2021 to till realization of the full.

Distribution of Compensation

Claimant No.1 being wife is entitled to 40% of the compensation. Claimant No.2 to 5 being daughter, son, mother and father each are entitled to get 15% of compensation.

Protection Awarded Compensation

Fifty percent (50%) of the amount of compensation of claimant No.1 is to be fixed deposited for five years and the rest amount is to be released in her favour in her bank account. As claimant No.2 and 3 are minor their whole amount are to be deposited for fixed period till they attaining majority. As claimant No.4 and 5 are aged about more than 52 and 60 years respectively, their whole amount is to be released in their favour in their bank accounts.

In case of necessity, the Tribunal can be approached for withdrawal of fixed deposited amount. On maturity of the fixed deposits the Banker shall credit the amounts to the sole SB Accounts of claimants without any further order from the Tribunal.

Furnish a copy of the award to both sides.

The case stands disposed of on contest.

Make necessary entry in the TR and CIS.

Pronounced in the open court."

13. Challenging the judgment and award the Insurance Company as appellant has preferred this present appeal. I have heard both the sides at length and perused the judgment and award delivered by the Learned Tribunal below. It appears that the Learned Tribunal after considering the oral/documentary evidence on record has awarded a sum of Rs.34,43,000/- with 8% interest from the date of filing claim petition to till the date of realization in favour of the claimant petitioners. As already stated, to substantiate the issues from the side of the respondent claimant petitioners two witnesses were examined as PWs-1 and 2 namely Smt.

Sanchita Debbarma and Dinesh Debbarma who in course of their examination specifically stated that the deceased used to earn Rs.30,000/- per month from fishing business. They were cross-examined by the owner cum driver of the vehicle and the appellant. But the opposite parties including the present appellant Insurance Company save and except denial could not raise any circumstances to disbelieve the evidence of said PWs-1 and 2. Even the present appellant Insurance Company to counter the evidence of PWs-1 and 2 also did not adduce any oral/documentary evidence on record as already stated. It is also the admitted position that to substantiate the monthly income, the respondent claimant petitioners could not prove and produce any documentary evidence on record. However, on perusal of the judgment of the Learned Tribunal it appears that, Learned Tribunal at the time of determination of monthly income determined the monthly income of the deceased at Rs.15,000/- but admittedly no specific reasons was given by the Learned Tribunal as to how he assessed the monthly income of the deceased. In a case of this nature it should be kept in mind by the Learned Tribunal that at the time of determination of monthly income specific reasons should be given as to how the Learned Tribunal determined/assessed the monthly income of the deceased which is found to be absent in the judgment.

14. Since it is the admitted position that the deceased was doing fishing business and the alleged accident took place in the year 2020. So, considering the prevailing market conditions of the State it can easily be inferred that during that period a person having fishing business used to earn not less than Rs.15,000/- per month and in this regard there was no contrary evidence on record from the side of the contesting opposite parties including the present appellant to disbelieve the assessment of the monthly income by the Learned Tribunal. As such I do not find any scope to interfere with the judgment and to reduce the monthly income of the deceased as projected by Learned Counsel for appellant Insurance Company. However, it is further found that at the time of delivery of the judgment, Learned Tribunal awarded interest @8% per annum which in my considered view was not proper. However, considering the facts and circumstances of the case in the considered opinion of this Court the rate of interest should be 7% in place of 8% interest awarded. So, only to the extent of rate of interest, the judgment and award of the Learned Tribunal below be interfered with and modified.

15. In the result, the appeal filed by the appellant Insurance Company is hereby partly allowed with the modification that the appellant Insurance Company shall pay compensation to the respondent claimant petitioners of

Rs.34,43,000/- with interest @7% per annum in place of 8% from the date of filing the claim petition i.e. w.e.f. 03.08.2021 to till the date of realization. The amount should be deposited by the appellant Insurance Company to the Learned Tribunal below within a period of 60 days from the date of passing of this judgment. The disbursal of amount be made in accordance with judgment delivered by Learned Tribunal below on 19.05.2023.

With this observation, the present appeal stands disposed of.

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

Supply a copy of this judgment to the Learned Counsel for the appellant Insurance Company for information and compliance.

Also a copy of this judgment be furnished to Learned Counsel for the respondent claimant petitioners.

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

JUDGE

AMRITA DEB Digitally signed by AMRITA DEB
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