

**HIGH COURT OF TRIPURA
AGARTALA**

MAC App. No.12 of 2024

1. Smt. Menaka Reang, aged about 55 years,
W/o Late Debabrata Reang,

2. Sri Deblin Reang, aged about 25 years,
S/o Late Debabrata Reang
Both of Madhya Kathalia,
Sub-Division-Santirbazar, Bokafa Madhya,
Kathalia, South Tripura,
Pin: 799144 (Permanent address)

Presently residing at
Sri Deblin Reang,
S/o Late Debabrata Reang,
C/o Sri Anupam Reang
Of Advisor Chowmuhani,
Krishnanagar, P.O. Agartala,
District: West Tripura (present address)

-----Claimant petitioners-Appellant(s)

Versus

1. Sri Swapan Kumar Paul,
S/o: Late K.B. Paul,
Of A.D. Nagar Road No.6,
P.S.: A.D. Nagar, West Tripura, Agartala.
(Owner of the vehicle TR-02-D-1840 Truck)

2. The Divisional Manager,
United Insurance Company Ltd.
Old R.M.S. Chowmuhani, Agartala,
Dist. West Tripura.
(Insurer of TR-02D-1840 Truck)

3. Mr. Tharfu Mog,
S/o Kandia Mog,
Aloychara, Manpathar, Shantirbazar,
Pin-799114, South Tripura
(owner of the used vehicle bearing No.TR-03E-6595)

4. The Divisional Manager
Oriental Insurance Co. Ltd.
HGB Road near Sarkar Nursing Home,
P.S.: West Agartala, P.O.: Agartala
District-West Tripura
(Insurer of the used vehicle bearing No.TR-03E-6595)

-----Respondent(s)

For Appellant(s)	:	Mr. Diptanu Debnath, Adv.
For Respondent(s)	:	Mr. Pradyumna Gautam, Adv. Mr. Subham Majumder, Adv.
Date of hearing and delivery of Judgment & Order	:	07.02.2026
Whether fit for reporting	:	NO

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order (Oral)

This appeal under Section 173 of the Motor Vehicles Act, 1988 is preferred by the appellant-claimant petitioners challenging the judgment and award dated 20.09.2023 delivered by Learned Member, Motor Accident Claims Tribunal, Court No. 5, West Tripura, Agartala in connection with case No.T.S. (MAC) 39 of 2019. By the said judgment and award, Learned Tribunal below has awarded a sum of Rs.43,96,815/- with interest at the rate of 7.5% per annum w.e.f. 19.02.2019 and fastened the liability of payment of compensation upon the respondent-United Insurance Company Ltd.

2. Heard Learned Counsel, Mr. Diptanu Debnath appearing on behalf of the appellant-claimant petitioners. Also heard Learned Counsel, Mr. Pradyumna Gautam appearing on behalf of the respondent-United Insurance Company Ltd. and Learned Counsel, Mr. Subham Majumder appearing on behalf of the respondent No.1-owner of the offending vehicle. None appeared on behalf of the other respondents in spite of service of notice.

3. At the time of hearing, Learned Counsel for the appellant-claimant petitioners drawn the attention of this court that though the Learned Tribunal below determined the amount of compensation at

Rs.73,28,024/-, but at the time of delivery of the award, Learned Tribunal below deducted 40% from the said amount towards contributory negligence of the deceased, for which the present appeal has been preferred by the appellant-claimant petitioners before this Court. It was further submitted by Learned Counsel for the appellant-claimant petitioners that from the evidence on record, it is transpired that there was no contributory negligence on the part of the deceased at the time of accident. Rather, due to the negligence of the driver of the offending Truck bearing No.TR-02D-1840 the accident took place. Learned Counsel for the appellant-claimant petitioners further submitted that the Learned Tribunal below, misinterpreting the evidence on record, has wrongly deducted 40% from the amount of compensation towards contributory negligence, which compelled the appellant-claimant petitioners to file the present appeal. So, Learned Counsel urged for interference of this Court to enhance the award of compensation determined by the Learned Tribunal below removing deduction of 40% of the amount.

4. Learned Counsel appearing on behalf of the respondent No.1 i.e. the owner of the Truck only submitted that his vehicle was duly insured on the day of alleged occurrence of offence and as such, he will abide by the direction of this Court.

5. Learned Counsel, Mr. Pradyumna Gautam appearing on behalf of the respondent-United Insurance Company Ltd. submitted that he had also appeared before the Learned Tribunal below and the Insurance Company took all endeavour to substantiate the defence and the Officer of the Insurance Company had also appeared before the Learned Tribunal below. Learned Counsel, Mr. Gautam further

submitted that the Learned Tribunal below rightly decided the issues and delivered the judgment and award and there is no scope to interfere with the same.

6. The present appellant-claimant petitioners filed the claim petition before the Learned Tribunal below with the assertions that on 06.12.2018, Sri Debabrata Reang (since dead) was returning back his home, riding a bike bearing registration No.TR-03E-6595 (Pulsar) through National Highway with a pillion rider, Sri Sukhari Reang, Headmaster of school. The deceased was riding the bike at moderate speed through National Highway and when they reached at Noraifung Monaikha Para, that time a Truck bearing No.TR-02D-1840 was negligently parked on NH-08, resulting which the deceased could not keep control over the bike and dashed against the Truck. Both the deceased and the pillion rider received severe bleeding injuries and was shifted to Santirbazar District Hospital when the attending Medical Officer declared Sri Debabrata Reang as dead and the pillion rider, Sukhari Reang was referred to GBP Hospital. Later on, he also expired.

7. Before the Learned Tribunal below, the owner of the Truck i.e. the respondent No.1 contested the case by filing written statement and producing certain documents. Similarly, on behalf of the Insurance Company, one Manoj Kumar Sharma appeared who was examined as OPW-2.

8. To substantiate the case, certain issues were framed by the Learned Tribunal below. On the basis of the issues framed and evidence on record, Learned Tribunal below determined total amount of compensation amounting to Rs.73,28,024/-. Thereafter, Learned Tribunal below deducted 40% of the said amount towards contributory

negligence on the part of the deceased and awarded Rs.43,96,815/- in favor of the present appellant-claimant petitioners.

9. I have heard both the sides at length and perused the judgment and award delivered by Learned Tribunal below. I have also perused the record of the Learned Tribunal below.

10. Admittedly, it was the case of the appellant-claimant petitioners that on the alleged day of accident when the deceased along with another was proceeding through the National Highway, at that time, due to negligence of the driver of the offending Truck the accident occurred. In addition to that, during recording evidence also, PW-2 who was the eyewitness stated that the driver of the Truck all on a sudden stopped the vehicle on the middle of the road and got down from the vehicle for having tea at a nearby tea-stall when the deceased came riding the motorbike and dashed against the Truck. The Police investigation report also opined the same.

Now, if there is evidence on record that the accident occurred due to wrong parking of the Truck, in that case there is no scope to presume that there was contributory negligence on the part of the deceased i.e. the rider of the bike. But, if there is evidence on record that even if the driver of the Truck stopped the vehicle illegally on the middle of the road and there was scope on the part of the deceased to avoid the Truck and to escape the accident, however, without doing so, he dashed directly against the Truck, then it can be assumed that there was contributory negligence on the part of the rider of the motorbike i.e. the deceased.

11. Further, it is on record that at that time of accident the road was almost dark due to foggy weather and there was no light at the

place where the accident took place. As such, it is natural that if the Truck was stationed on the middle of the road by the driver, in that case there was no scope on the part of the deceased to escape the Truck and to save himself from the alleged accident. However, the appellant-claimant petitioners ought to have adduced more specific evidences in this regard to substantiate that there was no contributory negligence on the part of the deceased at the time of the accident, which they failed to do.

12. Again, even if it is assumed that there was negligence on the part of the deceased at the time of accident, in that case also, it was the duty of Learned Tribunal below to fasten the liability of payment of compensation upon both the Insurance Companies as because both the vehicles were duly insured. But, without doing the same, Learned Tribunal below determined and fastened the liability of payment of compensation upon the respondent-United Insurance Company Ltd. Situated thus, it appears to this court that the judgment and award delivered by Learned Tribunal below suffers from infirmity, which needs to be interfered with.

13. Further, Hon'ble the Supreme Court of India in **Sushma vs. Nitin Ganapati Rangole & Ors**, reported in **2024 SCC OnLine SC 2584**, at para No.35 observed as under:

"35. The Courts below erred in concluding that it is a case of contributory negligence, because in order to establish contributory negligence, some act or omission which materially contributed to the accident or damage should be attributed to the person against whom it is alleged."

From the aforesaid observation, it appears that to establish contributory negligence there should be some act or omission on the part of the victim/deceased which materially contributed to the

accident or damage. However, here in the case at hand, no such evidence could be adduced by the contesting respondents for which 40% of compensation was deducted by the Learned Tribunal below.

14. So, considering the above facts and circumstances, it appears to this Court that Learned Tribunal below committed error in delivering the judgment and award. Thus, Learned Tribunal below shall record the evidence afresh and shall decide the following issues in addition to the issues framed earlier for determination of just compensation of this case:

- 1. Whether the driver of the Truck stopped/parked the vehicle on the middle of the road?*
- 2. Whether there was any scope on the part of the deceased to avoid the Truck while passing through the road on that relevant point of time to avoid contributory negligence?*
- 3. Whether there was sufficient light at the alleged place of occurrence to ascertain that the accident occurred due to contributory negligence on the part of the deceased on the alleged date and time of accident?*

Liberty shall be given by the Learned Tribunal below to both the parties to adduce sufficient evidence on record to substantiate their respective claims and counterclaims for just decision of the claim petition.

After considering the fresh oral/documentary evidence on record, the Learned Tribunal below shall deliver a fresh judgment determining the compensation and shall also decide by whom the payment of compensation is to be made.

15. In the result, the appeal filed by the appellant-claimant petitioners is hereby allowed. The judgment and award dated 20.09.2023 delivered by Learned Member, Motor Accident Claims

Tribunal, Court No. 5, West Tripura, Agartala in connection with case No.T.S. (MAC) 39 of 2019 is hereby set aside. The matter is remanded back to the Learned Tribunal below with a direction to record evidence of both the parties afresh and thereafter, to deliver a fresh judgment in accordance with law within a period of 6(six) months from the date of receipt of a copy of this judgment and order.

Both the parties are directed to appear before the Learned Tribunal below on 25.02.2026.

Send down the records to the Learned Tribunal below along with a copy of this judgment and order for disposal of the case in accordance with law.

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

JUDGE



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