

HIGH COURT OF TRIPURA

_A_G_A_R_T_A_L_A_

MAC.App. No.94 of 2025

1. ICICI Lombard General Insurance Company Limited, GRS Tower, Old RMS Chowmuhani, P.S. West Agartala, West Tripura, PIN-799001.
[Insurer of vehicle bearing registration No. TR-03G-7444 (TVS Apache)]

.....Appellant

_V_E_R_S_U_S_

1. Shri Bhashan Ghosh, C/o: Manmohan Ghosh, resident of Barabhaiya, P.S. R. K. Pur, District: Gomati Tripura.

.....Claimant-respondent

For Appellant(s)	:	Mr. R. Saha, Advocate.
For Respondent(s)	:	Ms. R. Mahajan, Advocate
		Mr. H. Banik, Advocate.
		Mr. P. Sahu, Advocate.

HON'BLE JUSTICE DR. T. AMARNATH GOUD

_F_I_N_A_L_O_R_D_E_R_

05.01.2026

Heard.

[2] The present appeal has been filed under Section-173 of the Motor Vehicles Act, 1988 read with Section-168 of the Act, by the appellant-insurance company challenging the judgment and award dated 19.01.2024, passed by the learned Motor Accident Claims Tribunal, Gomati Judicial District, Udaipur, Tripura, in connection with Case No. T.S. (MAC) 19 of 2023.

[3] The facts in brief are that on 30.06.2018 at about 13:30 hours the son of claimant-petitioner, the respondent herein, namely Nakul Ghosh was going to Udaipur railway station from Matarbari by riding his motorbike bearing registration No. TR-03G-7444 (TVS Apache), on way he met with an accident as one calf suddenly came in front of such motorbike. Then and there the son of claimant-petitioner was shifted to Gomati District Hospital by Fire Service vehicle but he was referred to GBP Hospital Agartala. On way to GBP Hospital, the son of claimant-petitioner has succumbed to his injuries. The doctors of Tripura Sundari District Hospital as well as GBP & AGMC Hospital examined the son of claimant-petitioner and declared him dead. Thereafter autopsy was conducted over the dead body and handed over to the relatives of deceased. The present appellant insurance company after full-fledged trial of the suit and hearing the arguments advanced by all the parties, the learned Court below passed the award dated 19.01.2024 whereby

and whereunder a sum of Rs.12,79,600/- has been awarded as compensation to the claimant-respondent, for the death of Nakul Ghosh in the aforesaid road traffic accident.

[4] Having heard the learned counsel appearing for the parties and after also perusal of the material evidence on record, the learned Court below has observed as under:

“12. In the result, it is hereby ordered that the claimant-petitioner is entitled to get compensation of ₹24,19,200/-12,79,600/- (Rupees twelve lacs seventy nine thousand six hundred) only. The OP i.e. ICICI Lombard General Insurance Co. Ltd., the insurer of the motorbike bearing No. TR-03G-7444 (TVS Apache) is directed to make the payment of compensation to the claimantpetitioner within 30 (thirty) days from today along with interest thereon @ 6% per annum from the date of filing of claim petition, i.e. 19.04.2023 till payment/realization of the same.

13. Out of the said amount the claimant-petitioner be paid 4,00,000/- and the rest amount of 8,79,600/- should be kept in fixed deposit in his account lying with any Nationalized Bank for the period of 5(five) years. In the case in which investment in long term in the nature of fixed deposit is made on condition that the Bank will not permit any loan or advance on the Fixed Deposit and monthly interest on the amount invested shall paid directly to the claimant or his legal heir, as the case may be. Further the claimant-petitioner is also granted liberty to apply for withdrawal in case of an emergency. To facilitate the payment of amount of the claimant-petitioner and the fixed deposit amount on maturity, the claimant-petitioner at the appropriate time shall file photo copy of his Bank Pass Book in his name containing photograph, account number, IFSC number and the RTGS number duly certified by the Banker and a copy of Passport Size photograph before making payment so as to enable this Tribunal to transfer the amounts directly to his Bank Account.”

[5] Hence, the present appeal has been preferred by the appellant-insurance company before this Court for redress.

[6] Learned counsel appearing for the appellant has submitted that the learned Court below has miserably failed to consider the fact while in granting compensation to the claimant-respondent, the legal heir of the deceased Nakul Ghosh. The materials on record clearly establish that the deceased himself was riding his own motorcycle when the accident occurred and, as per the claimants' version, he collided with a "calf." In such circumstances, the deceased cannot be treated as a third party within the meaning of the Motor Vehicles Act, 1988.

[7] The settled legal position, as held by the Hon'ble Apex Court in *Oriental Insurance Co. Ltd. v. Rajni Devi & Ors.*, (2008) 5 SCC 736, and reiterated in *Ramkhiladi v. United India Insurance Co. Ltd.*, (2020) 2 SCC 550, is

that the owner of the vehicle or a person riding his own vehicle cannot be treated as a third party for the purpose of claiming compensation under a third-party insurance policy. In such cases, the risk of the owner/driver himself is not covered under the statutory third-party liability, unless there is a specific personal accident coverage purchased under the policy.

[8] Therefore, the legal heirs of the deceased, who was the owner-cum-rider of the vehicle, cannot claim compensation under Section-163(A) of the MV Act against the insurer, as the deceased himself was not a third party but the insured person. The learned Court below has misdirected itself in law by treating the claim as maintainable and fastening liability upon the insurer, which is unsustainable and prayed to allow the present appeal by dismissing the findings of the learned Court below.

[9] The learned Court below most arbitrarily and erroneously granted the award amounting to Rs.12, 79,600/-, which is absolutely not tenable in the eye of law as such the impugned judgment and award deserves to be interfered with. The quantum of award of Rs.12,79,600/- along with an interest of 6% p.a. from the date of filing till the date of realization and shifted the liability to pay the total awarded compensation upon the present appellant insurance company without applying judicial mind properly since it is absolutely inconsistent with the catena decisions passed by the Hon'ble Apex court.

[10] having heard the learned counsel appearing for the appellant-insurance company and on perusal of the observation made by the learned Court below this Court is of the view that the appellant-insurance company did not appear before the learned Court below in spite of repeated notices served upon them, as such by order dated 19.07.2023 this case has been proceeded ex-parte against the appellant and the matter was fixed for ex-parte hearing on 22.08.2023, 19.09.2023 and 18.11.2023.

[11] PW.1 Shri Bhashan Ghosh deposed in his examination-in-chief by affidavit that on 30.06.2018 at about 13:30 hours his son namely Nakul Ghosh was going to Udaipur railway station from Matarbari by riding his motorbike bearing registration No. TR-03G-7444 (TVS Apache), on way his said son met with an accident as one calf suddenly came in front of such motorbike. Then and there the son of PW.1 was shifted to Gomati District Hospital by Fire Service vehicle but

referred to GBP Hospital Agartala. PW.1 also deposed that on way to GBP Hospital, his son has succumbed to his injuries. The doctors of Tripura Sundari District Hospital as well as GBP & AGMC Hospital examined the son of PW.1 and declared him dead. Thereafter autopsy was conducted over the dead body and handed over to them. PW.1 further deposed that due to such RTA a written complaint was lodged with the O/C of R.K. Pur PS which was registered vide R.K. Pur PS U/D Case No. 40 of 2018 under Section 174 of the CrPC. PW.1 also deposed that at the time of accident his son was aged about 23rd years old and had monthly income of 10,000/- as a rice seller and member of a band party.

[12] It was established that the motorbike bearing No. TR-03G-7444 (TVS Apache) was owned by the deceased, which was insured with the appellant, i.e. ICICI Lombard General Insurance Company Limited, Central Road, Agartala covering the period from 21.03.2018 to 20.03.2019. The alleged accident was occurred on 30.06.2018 i.e., at the time of accident the motorbike bearing No. TR-03G-7444 (TVS Apache) was under insurance coverage and on that day such motorbike was ridden by the deceased having valid driving licence, so the liability for payment of compensation is fixed upon the appellant i.e. ICICI Lombard General Insurance Co. Ltd., the insurer of the motorbike bearing No. TR-03G-7444 (TVS Apache). Accordingly this Court finds that the findings as arrived at by the learned Court below are just and proper and needs no interference.

[13] The grounds raised before this Court were not argued before the learned Court below and the officers of the insurance company have not chosen to cross examine PW-1 and adduced any evidence in support of their case. Since the grounds are made for the first time before this Court to set aside the order of the learned Court below, this Court is not inclined to appreciate the manner in which the insurance company has ignored to proceed with the matter before the learned Court below. As such, at this stage the same cannot be accepted.

[14] In view of overall analysis made by the learned Court below and after going through the material evidence in its entirety, this Court is of the view that the assessment of compensation as awarded by the learned Court below is just and proper and needs no interference thus, the findings as arrived at by the learned Court below stands affirmed. Consequently, the present appeal stands dismissed.

[15] As a sequel, miscellaneous applications pending, if any, shall stand closed. Registry is directed to do the needful as per procedure and thereafter, send down the LCRs forthwith.

DR.T. AMARNATH GOUD, J

A. Ghosh

ANJAN GHOSH Digitally signed by ANJAN GHOSH
Date: 2025.07.08 17:43:06 +05'30'

