THE HIGH COURT OF TRIPURA
<u>A G A R T A L A</u>
<u>MAC App. No. 15 of 2010</u>

Appellants :

1. Smt. Kalyani Debnath,
W/o. Late Kashi mohan Debnath.

2. Shri Kalipada Debnath,
S/o. Late Kashi mohan Debnath.

3. Shri Bishnupada Debnath,
S/o. Late Kashi mohan Debnath.

4. Shri Kapil Moni Debnath,
S/o. Late Kashi mohan Debnath.

As per Hon'ble Court's Order dated 20.12.2012 passed in C. M. Appl. 536 of 2012 in MAC Appl. 15 of 2010 the above persons are being substituted in place of deceased appellant- Kashi Mohan Debnath.

By Advocate :

Mr. D.K. Biswas, Adv.

Opposite Party-Respondents :

1. Sri Subir Chandra Saha,
S/o. Sri Sekhar Chandra Saha, Kanchan Nagar, S.D Missan Road, A. D Nagar, P. S- West Agartala.
(Owner of Motor Cycle No. TR-01F-7485)

2. Sri Bidyut Kanti Roy,
S/o. Late Kshirode Lal Roy,
B. K. Road, P.O- Agartala, P.S- West Agartala,
(Owner of Motor Cycle TR-01D-6440)

3. Sri Biplab Dey,
S/o. Kshetra mohan Dey,
Gajaria (Camper Bazar), (Near Netaji Yuba Shakti Club) P.S- West Agartala. (Driver of TR-01F-7485)

4. As per Hon'ble Court's order dated 30.11.2010, the name the respondent (Sri Bijoy Kumar Jha) is struck off from the cause title.

5. The Branch Manager,
The Oriental Insurance Company Ltd., Rajbari, P.S-Dharmanagar, North Tripura. (Insurer of the Motor Cycle TR-01F-7485)

By Advocates :

Mr. T. D. Majumder, Adv.
Mr. K. Bhattacharjee, Adv.

B E F O R E
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

Date of hearing &
Judgment & Order : **20th March, 2015.**

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER(Oral)

This appeal by the claimant is directed against the judgment and award dated 08.12.2009 passed by the learned Motor Accident Claims Tribunal, Dharmanagar, Tripura North in T.S(MAC) No.50 of 2008 whereby the learned Tribunal awarded a compensation of Rs.62,000/- only in favour of the claimant.

[2] The claimant is the father of Late Karnamani Debnath who died in a motor vehicle accident involving two motor cycles on 30th July, 2006 which took place at Agartala.

[3] The case set up by the claimant was that on 30th July, 2006 at about 8.30 p.m the deceased Karnamani Debnath was proceeding to the Circuit House, Agartala along with O.P No.3, Biplab Dey. It is alleged that they were both travelling on motor cycle bearing registration No.TR-01F-7485. When they had reached near the circuit house another motor cycle bearing registration no. TR-01D-6440 came from the opposite side. It was been driven by O.P No.4, Sri Bijoy Kumar Jha. There was a head on collision between the two motorcycles. The drivers and pillion riders of both the motor cycles suffered injuries. They were taken to the G. B. P. Hospital where unfortunately Karnamani Debnath succumbed to his injuries. According to the claimant the incident took place due to the rash and negligent driving of drivers of both the motor cycles.

[4] Motorcycle No.TR-01F-7485 on which deceased was travelling as pillion rider was owned by O.P No.1, Sri Subir Chandra Saha and insured with the Oriental insurance Company Ltd. Motorcycle No. TR-01D-6440 was allegedly being driven by respondent No.2, Bidyuit Kanti Roy, the owner of the same and insured with the National Insurance Co. Ltd.

[5] The respondents filed their written statement. The stand of the owner of motorcycle No.TR-01D-6440 was that the accident took place due to the rash and negligent driving of driver of motorcycle No.TR-01F-7485. The respondent No.4 denied that he was driving motorcycle No.TR-01D-6440.The learned Tribunal held that the accident occurred due to rash and negligent of both the motorcycles and assessed the compensation at Rs.62,000/- and further held that the insurance companies were not liable to pay the compensation and therefore, held that respondents 1 to 4 were liable to pay the compensation in equal shares.

[6] None of the owners or drivers have filed any appeal against the said award and this is an appeal only by the claimant for enhancement of compensation. As far as the amount of compensation is concerned, I am clearly of the view that the approach of the learned Tribunal, to say the least was totally against the settled principles with regard to assessment of compensation.

[7] The deceased was aged about 24 years of age. He was studying in B.Sc and at that time he got a chance to join nursing course and he had joined the same and when the accident took place he was a final year student of nursing. Even if the claim petition had been filed under Section 163A of the M. V. Act, the minimum compensation payable would be Rs.1,84,500/- even if the income of the deceased had been taken at only Rs.15,000/- per year I fail to understand how the Tribunal could have awarded in a case where the negligence has been proved an amount less than what was payable under no fault liability under Section 163A of the Act.

[8] As far as the present case is concerned, the claimant-father has also died in the meantime and the appeal is prosecuted by the other legal heirs of the claimant-father.

[9] In view of the above, the appeal is allowed and the claimants are awarded Rs.1,84,500/- as compensation in all. The award is accordingly enhanced from Rs.62,000/- to Rs.1,84,500/- i.e. by Rs.1,22,500/-. The claimants shall also be entitled to interest on the enhanced sum of Rs.1,22,500/- @ 9% per annum from the date of filing of the claim petition till deposit of the amount.

[10] This compensation shall be paid by respondents 1 to 4 only. They are jointly and severally liable to pay the compensation and the appellants can recover the compensation from any one of them but if any one of them pays the compensation, he can file proceedings to recover the access share from the other. Obviously, the respondent(s) shall be entitled to adjust the amount(s), if any, which he has already paid or deposited.

[11] The insurance companies in this case cannot be held liable to pay compensation because as far as one insurance company i.e. respondent no.6 is concerned the policy of insurance had expired much before the accident took place. As far as the second insurance policy is concerned it is act policy only and there is no coverage to pillion rider and following the judgment delivered by the Apex Court ***in General Manager, United Insurance Co. Ltd. Vrs. M. Laxmi & Ors : AIR 2009 SC 626*** the insurance company cannot be liable.

[12] The appeal is disposed of in the aforesaid terms. No order as to costs.

Send down the lower Court records forthwith.

CHIEF JUSTICE