

THE HIGH COURT OF TRIPURA
AGARTALA

MAC APP. NO.12 OF 2011

1. Shri Parimal Bhowmik,
2. Shri Shyamal Bhowmik,

Both are sons of Late Sushan Bhowmik,
Resident of Vill. Gamaibari (R.F.),
P.O. Brahmacherra, P.S.-Teliamura,
West Tripura.

Presently living at:-
Vill. Hapania, P.O. Hapania,
PS-Amtali, West Tripura District.

..... **Claimant-Appellants.**

- V e r s u s -

1. Shri Subir Das,
S/O. Shri Surjya Kumar Das,
Resident of Vill. Rajnagar Road No.4,
P.S. & P.O. Teliamura,
West Tripura District.
(Owner of MAXX NO.TR-01-B-2326).
2. The National Insurance Co. Limited,
Divisional Office, 42, Akhaura Road,
Agartala, West Tripura District.
(Insurer of MAXX vehicle No.TR-01-B-2326).

..... **Respondents.**

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellants : Mr. P.S. Roy, Advocate.

For the respondent No.2 : Mr. K. Bhattacharji, Advocate.

Date of hearing and
delivery of judgment
and order. : 03.06.2015.

Whether fit for reporting : **NO.**

JUDGMENT & ORDER (ORAL)

This appeal for enhancement of compensation is directed against the award dated 09-09-2010 passed by the learned Motor Accident Claims Tribunal, Court No.2, West Tripura, Agartala in case No. T.S.(MAC) 465 of 2005 whereby he awarded compensation of Rs.2,24,300/- in favour of the claimants.

2. The two claimants are major sons of Late Shri Sushan Bhowmik. Admittedly, he died in a motor vehicle accident. The claimants filed the claim petition claiming compensation for the death of their father. They claimed that the father was running a vegetable business and had a income of Rs.5,000/- per month. In the claim petition, it was stated that the age of the father was about 60 years when he died. The learned Tribunal assessed the income at Rs.3,000/- per month, applied multiplier of 9 and deducted 1/3rd for the personal expenses of the deceased and awarded the compensation.

3. Mr. P.S. Roy, learned counsel for the appellants, has submitted that the learned Tribunal erred in taking the income at Rs.3,000/- since the deceased was doing business in vegetable and would have earned at least Rs.5,000/- per month. He also submits that the age of the deceased has wrongly been taken as 60 years whereas it was proved on record to be 49 years.

4. I shall first come to the issue of the age of the deceased. The claimants in the claim petition had at various places clearly stated that the deceased was 60 years of age at the time of

accident. In the postmortem report, the age of the deceased is shown to be 70 years. No doubt, a postmortem report may not accurately depict the age of the deceased but medical doctors can assess the age between 5 to 7 years on the basis of their experience. Even if they had erred by 10 years, the age would still be about 60 years which was stated in the petition. The certificate relied upon by the petitioners is alleged to be a transfer certificate stated to have been issued on 07-01-1997. This certificate is not a birth certificate. What is directly admissible in evidence is a certificate which is issued by the Registrar who has the power to issue birth and death certificates. A matriculation certificate can also be taken into consideration but this is a transfer certificate when one person is transferred from one school to another and either the school record should have been produced to prove this certificate or some other cogent evidence should have been led. The claimants who are the sons themselves stated that the father was 60 years and, therefore, I find no error in the order of the learned Tribunal holding the age to be 60 years.

5. Coming to the income of the deceased. There is no cogent proof about the income. There is a bald statement of the claimant that the father was earning Rs.5,000/- per month. Assuming for the sake of argument that the deceased was doing vegetable business, then this business would be inherited by the sons themselves. On the record of the trial Court, I find that the younger son to get some adjournment had produced his treatment certificates in which the age is shown to be 30 and 31 years

whereas in the affidavit filed later, he has shown his age to be 25 years. It is obvious that the sons are not truthful witnesses. The sons would have this Court believe that they were unemployed even at the age of 30 years and their old father aged about 60 years was doing vegetable business. Even if that were so, the sons should have been helping their father in the business. A 30 year old son would not stay at home and let his father carry out the whole work and in case, they were doing so they should not be granted any compensation. The learned Tribunal has already deducted 1/3rd for the personal expenses of the deceased. This is a case where the deceased had not left behind a widow. He had not left behind any minor children. The two sons he had left behind were two able bodied grown up persons who are expected to look after themselves and in such a case the deduction could have even gone upto 50%. Therefore, even if the income was to be increased, the award would still be less than what has been awarded.

6. Hence, I find no merit in the appeal which is accordingly dismissed.

7. Send down the lower court records forthwith.

CHIEF JUSTICE