THE HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

MAC APP. NO.91 of 2009

1. **Sri Tapan chakraborty,**
   S/o Lt. Sachindra Chakraborty
   Resident of Surayamaninagar,
   P.O. University, P.S. Amtali,
   Dist. West Tripura.
2. **Smti Sindhu Chakraborty,**
   W/o Sri Tapan Chakraborty,
   Resident of Surayamaninagar,
   P.O. University, P.S. Amtali,
   Dist. West Tripura.

…………… *Appellants.*

- Vs –

1. **Shri Prasenjit Bhattacharjee,**
   S/o Lt. Naresh Ch. Bhattacharjee,
   Resident of Ramnagar Road No.6,
   P.S. West Agartala, Dist. West Tripura
   (Owner of the vehicle bearing Registration No.TR-01-K-0583
   Maruti Omni).
2. **Branch Manager,**
   The National Insurance Company Ltd.
   42 Akhura Road, Agartala, Dist. West Tripura,
   (Insurer of the vehicle bearing Registration
   No.TR-01-K-0583 Maruti Omni).

……………… *Respondents.*

_B_E_F_O_R_E_
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellants	:	Ms. S Deb Gupta, Advocate.
For the respondents	:	Mr. A Lodh, Advocate.
Date of hearing and delivery of judgment	:	19.01.2015.
Whether fit for reporting	:	Yes/No.

JUDGMENT & ORDER(ORAL)

Ms. S Deb Gupta states that appellant Tapan Chakraborty has expired and his name may be deleted from the array of parties. The claim petition was filed by Tapan Chakraborty and his wife Smti Sindhu Chakraborty in respect of the death of their son Akash Chakraborty and therefore, it is only the mother who would be entitled to the awarded amount.

2. It was alleged that the deceased was a *'Security Guard'* earning Rs.7,500/- per month. The learned Tribunal assessed the income of the deceased at Rs.5,000/- per month only on the basis of presumption without there being any proof of the income. Where the deceased is stated to be an employee of any agency then the claimants must lead some evidence from the employer to prove the income of the deceased. This has not been done in the present case. Therefore, I shall have to assess the income by way of surmises and conjectures only.

3. The learned Tribunal deducted 50% for the personal expenses of the deceased, applied a multiplier of *'13'* by taking into consideration the age of the mother and father and making an average of the two. In a case where the parents are the claimants it is the mother alone who is the Class-I heir and her age is relevant for the purpose of determining the compensation.

4. In the present case, there is another shocking aspect. The age of the deceased is stated to be 24 years. The mother did not step into the witness box. The father filed his affidavit and in the said affidavit it is stated that he was 58 years but also stated that he had retired from government service. Since he was a pensioner he could not be dependent on the son. Even the mother would have been dependent mainly on the husband and not on the son alone. In the affidavit of the father the age of the mother is not stated and I fail to understand how the learned Tribunal could have taken the age of the mother as 37 years because that would mean that she had given birth to the deceased son when she was only 13 years old which would further mean that she would be only 12 years old when she got married. This is totally unbelievable and against basic common sense.

5. The husband had retired when he appeared in the witness box in the year 2009. The accident took place in 2008. Therefore, the father would have been approximately 57 to 58 years old at the time when the accident took place. It is indeed shocking that in cases where the parents are educated and even the deceased is educated no effort is made to prove the age by leading cogent evidence like the matriculation certificate or school certificate or the birth certificate. As far as the present case is concerned, I am of the considered view that the income assessed is in fact slightly on the higher side but taking into consideration the future prospects of the deceased I accept the income of the deceased at Rs.5,000/- per month.

6. This Court follows two methods while assessing compensation. In cases where the claimants are the parents we follow two methods. In those cases where the claimants are parents and the deceased was unmarried, 50% is deducted for the personal expenses of the deceased and in such eventuality the multiplier is applied by taking into consideration the age of the deceased. In case, the multiplier is to be applied by taking into consideration the age of the claimants, then only one third should be deducted for the personal expenses of the deceased.

7. If 50% is deducted for the personal expenses of the deceased then the multiplier would have to be applied by keeping into consideration the age of the deceased which is not disputed and therefore, the multiplier is *'18'* and if we multiply Rs.2500 × 12 × 18 it works out to Rs.5,40,000/-.

8. In addition thereto the claimant mother is entitled to Rs.10,000/- as funeral expenses and Rs.50,000/- for the loss of her son. The total compensation is, therefore, assessed at Rs.(5,40,000 + 10,000 + 50,000) = ***Rs.6,00,000/-(Rupees six lakhs)***. The entire amount is payable to the widow.

9. In view of the above discussion, the appeal is allowed. The award of the learned Tribunal is modified and the compensation is enhanced from Rs.3,92,000/- to Rs.6,00,000/- i.e. by Rs.2,08,000/- The claimant shall also be entitled to interest on the enhanced sum of

Rs.2,08,000/-@ 9% per annum from the date of filing of the claim petition till payment/deposit of the awarded amount. It appears that the insurance company has already satisfied the awarded amount and, therefore, the insurance company is directed to deposit the enhanced amount of compensation along with proportionate interest thereupon in the Registry of this Court within 8(eight) weeks from today.

10. On such deposit being made a sum of Rs.1,00,000/- will be released in favour of the widow by remitting it to her Bank account details whereof along with photocopy of the first page of the passbook be filed in the Registry of this Court. Balance amount shall be kept in a fixed deposit for five years at the first instance and the interest accruing thereupon shall be paid to the claimant on quarterly basis. Thereafter, out of the remaining amount at the end of 5 years Rs.2,00,000/- may be released and the balance will be kept for another 5 years in a fixed deposit and at the end of that 5 years the entire amount shall be paid to her.

The appeal is disposed of. Send down the LCRs forthwith.

CHIEF JUSTICE

Sukhendu