THE HIGH COURT OF TRIPURA

A G A R T A L A

MAC App. No. 60 of 2009

Appellants:

1. Smti. Dhulu Rani Roy.
W/o. Lt. Gouranga Kr. Roy,
Resident of Bardowali Madhya Para,
P.S. West Agartala, Dist. West Tripura.

2. Sri Utpal Kr. Roy,
S/o. Lt. Gouranga Kr. Roy,
Resident of Bardowali Madhya Para,
P.S. West Agartala, Dist. West Tripura.

By Advocate :

Mr. P. Roy Barman, Adv.

Respondents :

1. Sri Arun Kr. Dey,
S/o. Late Biraj Mohan Dey,
Resident of A. D. Nagar, P.S-West Agartala,
Dist.- West Tripura.
(Owner of the vehicle bearing Registration No.TR-01-L-0426, Maruti Van)

2. The Branch Manager,
The New India Assurance Co. LTd.,
Agartala Branch, 4, Mantri Bari Road, Agartala, West Tripura.

By Advocates :

Mr. S. Bhattacharji, Adv.
Mr. P. Gautam, Adv.

CO (FA) No. 08 of 2009

Cross Objector-Respondent :

1. The New India Assurance Co. Ltd.
Represented by the Branch Manager, Agartala Branch, Mantri Bari Road, P.O. Agartala, P.S-West Agartala, West Tripura District.

By Advocate :

Mr. P. Gautam, Adv.

Claimant-Appellant-Respondent :

1. Smti. Dhulu Rani Roy.
W/o. Lt. Gouranga Kr. Roy,

AND

2. **Sri Utpal Kr. Roy,**
S/o. Lt. Gouranga Kr. Roy,

Both are residents of Bordowali, Madhya Para, P.S-West Agartala, P.O. Bordowali (Agartala), West Tripura Dist.

Respondent :

3. **Sri Arun Kr. Dey,**
S/o. Late Biraj Mohan Dey,
Resident of A. D. Nagar, P.S-West Agartala,
Drop Gate, P.O-A. D. Nagar (Agartala)
West Tripura Dist.
(Owner of Maruti Vehicle No.TR-01-L-0426)

By Advocate :

None.

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

Date of hearing &
Judgment & Order : **18th March, 2015.**

Whether fit for reporting :

Yes	No

JUDGMENT & ORDER (ORAL)

Both the appeal and the cross objection are being disposed of by a common judgment since the both arise out of the award of the learned Motor Accident Claims Tribunal, Agartala, West Tripura dated 11.06.2009 in Case No. T.S(MAC) 442 of 2007 whereby the learned Tribunal awarded compensation of Rs.1,88,200/- in favour of the claimants.

[2] The claimant-mother filed the claim petition alleging that on 01.05.2007 her son Uttam Kumar Roy was travelling on a motor cycle bearing No. TR-01G-6737, at Madhupur Bazar, Jamtali, Maruti Van TR-01L-0426 came at a high speed from the opposite direction and dashed against the motor cycle, as a result Uttam Kumar Roy sustained injuries. He was rushed to the G. B. P. Hospital Agartala but unfortunately died there about 7 hours later at 11.30 pm. According to the claimant the deceased was employed with M/s. Dharampal Premchand Limited at a salary of Rs.5,800/- per month and accordingly the compensation was awarded.

[3] The learned Tribunal came to the conclusion that there was a head on collision between two vehicles and held that the deceased himself was also partly responsible for the accident and, therefore, awarded only 50% of the compensation assessed. The learned Tribunal assessed the income of the deceased at Rs.3,600/- per month deducted 1/3rd for his personal expenses and applied multiplier of 13 by taking into consideration the age of the claimant-mother.

[4] First coming to the issue of negligence. As far as the claim petition is concerned, in the claim petition it was alleged that the accident occurred totally due to the negligence of the driver of the Maruti van. The owner filed written statement denying that any accident had taken place. The stand of the insurance company was also same. The claimant-mother stepped into the witness box and stated that her son met with an accident. She is admittedly not an eye witness to the accident but she has placed on record the copy of the FIR No.142 of 2007 registered with police station Bishalgarh. Along with the FIR there is a complaint and in the said complaint it is mentioned that on 03.05.2007 itself written information was given to the police station with regard to the said accident. The claimant was cross examined and the suggestion put to her in cross-examination was that her son did not die due to rash and negligent driving of the driver of the maruti van. No suggestion was put to her that no accident had taken place. The insurance company only examined the Branch Manager and according to him the police did not carry out proper investigation after inquiry to find out the truth. He further stated that the insurance company had appointed an Investigator and this Investigator found that the vehicle was on contract with Prasar Bharati and the Senior Administrative Officer of the Doordarshan Kendra had intimated the Investigator that on the date of the alleged accident the vehicle did not move on the Madhupur-Kamala Sagar road. He has been cross-examined and he states that in Exbt. D the number of the vehicle has been corrected and there is no mention as to when the vehicle was engaged by the Doordarshan Kendra. These facts are on material.

[5] Even in proceedings under the M. V. Act, the parties have to lead some evidence. In case the insurance company wanted to deny the accident it could have easily summoned the driver of the vehicle in question. It could have summoned the log book of the vehicle from the Doordarshan Kendra. The insurance company could have taken steps to summon the police officials to find out what is stated in the record of the police. Nothing was done. The learned Tribunal therefore, came to a finding of fact that since there was a head on collision between the vehicle both the drivers must be responsible and accordingly fixed the liability at 50%. I so no reason to differ with this decision.

[6] Therefore, I find no merit in the cross objection of the insurance company which is accordingly dismissed.

[7] As far as the appeal filed by the claimant-mother is concerned, even assuming that the income at the relevant time was

Rs.3600/- per month, since the deceased was only about 29 years of age his future prospect have to be taken into consideration. If his future prospects are taken into consideration that his income for the purposes of, would can easily be assessed at Rs.5000/- per month.

[8] As far as this Court is concerned, this Court has been following two methods while assessing compensation when the deceased is a bachelor and the claimants are parents. Either 50% deduction is made for the personal expenses of the deceased in which case the multiplier is applied by taking into consideration the age of the deceased. The other method is that only $^{1}/_{3rd}$ is deducted for the personal expenses of the deceased in which event the multiplier is applied by taking into consideration the age of the parents. Whatever method is applied the compensation works out approximately to be the same.

[9] In this case I deduct 50% i.e. Rs.2500/- for the personal expenses of the deceased which leads the dependency of the mother at Rs.2500/- per month or Rs.30,000/- per year. Since the deceased was about 30 years and the claimant-mother was aged about 50 years I apply a multiplier of 16 and the compensation works out to Rs.4,80,000/-. In addition thereto, the claimant-mother is held entitled to Rs.30,000/- for loss of her son and Rs.10,000/- is awarded for funeral expenses. Thus, the total compensation works out to Rs.5,20,000/-. Since the deceased himself has contributed to the accident, the claimants shall only be entitled to 50% of this amount i.e. Rs.2,60,000/-.

[10] In view of the above discussions, the appeal is allowed and the award is enhanced from Rs.1,88,200/- to Rs.2,60,000/-. On this amount the claimants are also entitled to interest @ 7.5% per annum from the date of filing of the claim petition till deposit of the amount. It is made clear that no penal rate of interest shall be payable by the insurance company. The insurance company is directed to pay/deposit the amount of compensation i.e. Rs.2,60,000/- along with interest as aforesaid in the registry of this Court after adjusting/deducting the amounts, if any, deposited by it within four months from today.

Send down the LCRs forthwith.

CHIEF JUSTICE