

THE HIGH COURT OF TRIPURA
AGARTALA

RSA No.46 of 2010

1. Sri Dhirendra Kumar Sarkar,
son of late Ishan Chandra Sarkar
2. Sri Kamalesh Sarkar,
son of Sri Dhirendra Kumar Sarkar
3. Sri Gautam Sarkar,
son of Sri Dhirendra Kumar Sarkar
4. Sri Biswajit Sarkar,
son of Sri Dhirendra Kumar Sarkar
5. Smti. Manashi Sarkar (Sil)
wife of Sri Swapan Sil,

all are the residents of Sub-Division, P.O. and P.S.
Sabroom, District – South Tripura

.....Plaintiff-Cross-objector-Appellants

- Vs -

1. The State of Tripura,
through the Secretary to the
Government of Tripura,
Department of Home,
P.O. Agartala,
Civil Secretariat, Agartala, West Tripura
2. The Sub-Divisional Magistrate,
P.O. Sabroom,
Sabroom, District – South Tripura
3. The Sub-Divisional Police Officer,
P.O. Sabroom, P.S. Sabroom,
District – South Tripura
4. The Officer-in-Charge,
Sabroom Police Station,
Sabroom, South Tripura
5. The Superintendent of Police,
South Tripura District, P.O. Udaipur,
Udaipur, South Tripura
6. Sri Dilip Roy,
the then S.D.P.O., Sabroom,
South Tripura
Presently posted as Deputy Commandant,
District Armed Reserve, P.O. A.D. Nagar,
P.S. West Agartala, District – West Tripura

.....Respondents

7. Nagar Panchayat, Sabroom,
to be represented by the Chairman,
Sabroom Nagar Panchayat,
P.O. Sabroom, District-South Tripura.

.....**Pro-Respondent**

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the appellants : Mr. S. M. Chakraborty, Sr. Advocate
Mr. S. Bhattacharjee, Advocate

For the respondent Nos.1-6 : Mr. N. Majumder, Advocate

For the respondent No.7 : None

Date of hearing and : **31.03.2015**
delivery of judgment & order

Whether fit for reporting : **NO**

JUDGMENT & ORDER (ORAL)

Heard Mr. S. M. Chakraborty, learned senior counsel,
assisted by Mr. S. Bhattacharjee, learned counsel appearing for the
appellants as well as Mr. N. Majumder, learned counsel appearing
for the respondent Nos.1 to 6. None appears for the respondent
No.7, despite notice from this court.

02. This is an appeal under Section 100 of the CPC
questioning the finding as to the assessment of the quantum of
the compensation returned by the judgment dated 11.08.2010
in Cross appeal No.23 of 2009 arising from the Title Appeal No.
(Fatal) No.11 of 2009 by the District Judge, South Tripura,
Udaipur.

03. At the time of admitting the appeal by the order
dated 04.03.2011 the following substantial question of law has
been formulated for hearing the appeal.

"Whether the claim for compensation in the account of mental agony and sufferings of all the appellants and compensation for loss of consortium by the appellant No.1 on account of accidental death of the wife of the appellant No.1 and mother of the other appellants was justified and lawful?"

Liberty has been granted to the appellants for raising any other substantial questions of law. Mr. Chakraborty, learned senior counsel has however not insisted any additional substantial question of law in the course of his submission or previous thereto.

04. The essential fact that would be required for appreciating the substantial question of law as formulated may be noted briefly.

For collapse of the boundary wall constructed by the respondents, Binapani Sarkar, wife of the appellant No.1 and mother of the remaining appellants died instantaneously. The respondents demonstrated sheer negligence in maintaining the safety of the boundary wall. When the said unsafe wall collapsed, it caused death of Binapani Sarkar, hereinafter referred to as the deceased, on 27.05.2006. The appellants raised claim under Section 1A of the Fatal Accident Act for compensation. The respondents herein as the defendants in the suit being TS (FA) No.13 of 2007 stated that that was an 'Act of God' and as such they shall not be saddled with any liability whatsoever.

05. The trial court, the Civil Judge, Sr. Divn., South Tripura, Udaipur after recording the evidence within the

relevancy of the issue, as framed for adjudication of the suit, has returned the finding that it is for negligence and rashness of the respondents, the said wall could collapse as there was no alert in the safety and the upkeep of the said wall. Therefore, the tortuous liability in the form of compensation has been determined at Rs.1,22,000/- payable within 3 months with interest @ 5% w.e.f. 03.09.2007 i.e. the date of institution of the suit till the date of realisation. It was further directed that the defendants shall bear the cost of the suit. The appellants claimed a sum of Rs.10,00,000/- as compensation for the death of the deceased.

06. Having appreciated the evidence, the trial court arrived at the categorical finding that the deceased was 60 years of age and that finding has been affirmed by the appellate court by the impugned judgment. Having regard to that age and on considering her income notionally as she was not a working woman at Rs.15,000/-, multiplier 8 was applied and a sum of Rs.1,20,000/- was assessed as the loss of income. However, no deduction was made on considering that she was a non-earning person. Rs.2,000/- was given as funeral expenses and thus the total compensation was assessed as Rs.1,22,000/- as stated.

07. By the impugned judgment the appellate court has observed as under:

"The amount of compensation awarded by the Learned Court below is just and adequate. It is well settled that the Appellate Court should not interfere with the assessment of damage made by the Court of first instance, unless a wrong principal of law

has been applied by it or it has left out some relevant factors in making the estimate."

08. Mr. Chakraborty, learned senior counsel has submitted that the first appellate court while passing the impugned judgment did not consider the various components that would constitute the just compensation. He has even stated that the loss of income of a house wife cannot always be made notionally following the schedule appended to the Motor Vehicles Act, 1988. In this regard he has referred a decision of the apex court in ***Arun Kumar Agrawal and Anr. vs. National Insurance Company and Ors.*** reported in ***(2010)9 SCC 219*** where the apex court has stated that the principle of notional income for the non-earning person does not apply in all the cases. That principle is to be followed when the claim has been raised under Section 163-A of the Motor Vehicle Act else the forum shall make necessary inquiry to determine the loss of income considering all relevant aspects. It has been held that:

"In our view, it is highly unfair, unjust and inappropriate to compute the compensation payable to the dependents of a deceased wife/mother, who does not have regular income, by comparing her services with that of a housekeeper or a servant or an employee, who works for a fixed period. The gratuitous services rendered by wife/mother to the husband and children cannot be equated with the services of an employee and no evidence or data can possibly be produced for estimating the value of such services. It is virtually impossible to measure in terms of money the loss of personal care and attention suffered by the husband and children on the demise of the housewife. In its wisdom, the legislature had, as early as in 1994, fixed the notional income of a non-earning person at Rs. 15,000/- per annum and in case of a spouse, 1/3rd income of the earning/surviving spouse for the purpose of computing the compensation."

09. He has further submitted that no amount has been added to the compensation for pain and suffering of the appellants in general and for loss of consortium for the appellant No.1. So far the loss of income as assessed by the trial court and affirmed by the first appellate court, this Court will not interfere even on consideration of the view in ***Arun Kumar Agrawal and Anr. vs. National Insurance Company and Ors.*** inasmuch as a very liberal approach has been taken by the trial court by not deducting any sum from the assessed notional income while determining the compensation. But Mr. Chakraborty, learned senior counsel is entirely justified on account of the other components, the trial court as well as the first appellate court have committed serious error of law which warrants interference from this Court.

10. The appellant No.1 is entitled to a sum of Rs.25,000/- for loss of consortium. For pain and sufferings, all the appellants are collectively entitled to another sum of Rs.25,000/-. The funeral expenses as awarded by the trial court is far too low, it should be Rs.10,000/-. Thus, the total compensation comes to Rs.1,80,000/- which will be payable with interest @ 5% from the date of the institution i.e. 03.09.2007 till realisation. It is to be noted that out of that compensation Rs.25,000/- shall exclusively be paid, in addition to his share, to the appellant No.1. The remaining part of the compensation on deducting Rs.25,000/- be equally shared by all the appellants.

11. With the modification in the quantum, this appeal stands allowed to the extent as indicated above. The respondent Nos.1 and 5 are directed to deposit the modified quantum of compensation along with cost within a period of two months from today in the Court of the Civil Judge, Sr. Divn., Gomati Judicial District, Udaipur. On such deposit the plaintiffs will be entitled to withdraw the amount in terms of this order.

Send down the LCRs forthwith.

It is to be noted that if any amount by this time has been paid by the respondents that amount shall be deducted from the remainder of the award.

JUDGE

MB