

THE HIGH COURT OF TRIPURA
AGARTALA

MAC APP. NO.126 OF 2013

The United India Insurance Company Ltd.,
Represented by its Divisional Manager,
Agartala Division, Old RMS Chowmuhani,
P.O. Agartala, P.S. West Agartala,
District-West Tripura.
(Insurer of the vehicle No.
TR-01-3316 Commander Jeep).

..... **Appellant.**

- V e r s u s -

1. Smti. Kalpana Sarkar (Deb),
W/O. Late Sadhan Chandra Deb.
2. Sri Sankar Chandra Deb,
S/O. Late Sadhan Chandra Deb.
3. Sri Radha Kanta Deb,
S/O. Late Sadhan Chandra Deb.
4. Kumari Laxmi Rani Deb,
D/O. Late Sadhan Chandra Deb.

All are residing at-
Vill-Veluarchar,
P.O. Boxanagar,
P.S. Kalamchowra,
District-Sepahjala, Tripura.

..... **Claimant Respondents.**

5. Sri Haradhan Saha,
S/O. Late Raj Mohan Saha,
Resident of Vill-Veluarchar,
Boxanagar, P.O. Boxanagar,
P.S. Kalamchowra,
District-Sepahijala, Tripura.
(Owner of vehicle bearing
No.TR-01-3316 Commander Jeep).

..... **Owner Respondent.**

6. Sri Raghunath Debnath,
S/O. Late Suresh Chandra Debnath,
Resident of Vill-Boxanagar,
P.O. Boxanagar, P.S. Kalamchowra,
District-Sepahijala, Tripura.
(Driver of the vehicle bearing
No.TR-01-3316 Commander Jeep).

..... **Driver Respondent.**

**BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA**

For the appellant : Mr. P. Gautam, Advocate.

For the respondents 1 to 4 : Mr. K.K. Pal, Advocate.

For the respondents 5 & 6 : Ms. M. Roy, Advocate.

Date of hearing and
delivery of judgment
and order. : 02.07.2015.

Whether fit for reporting : **NO.**

JUDGMENT & ORDER (ORAL)

By consent of the parties, the appeal is taken up for hearing today.

2. The Insurance Company has filed this appeal in which the only challenge is to the quantum of compensation.

3. The undisputed facts are that on 18.07.2012 the deceased, husband of petitioner No.1 and father of petitioners No.2 to 4, died in a motor vehicle accident. The finding of negligence is not disputed. The learned Tribunal came to the conclusion that the deceased was 65 years old and also held that the deceased was earning Rs.5,000/- per month from business. As far as these findings are concerned, there can be no quarrel with the same.

4. However, where the learned Tribunal has gone totally wrong is in adding 30% to the income for future prospects. The Apex Court in **Sarla Verma** and other judgments has clearly held that 30% of the income is to be added only in those cases where the deceased is aged less than 50 years of age. Where the deceased is more than 50 years nothing is to be added for future prospects. Therefore, I take the income of the deceased at

Rs.5,000/- per month or Rs.60,000/- per year. Even with regard to deduction, the learned Tribunal gravely erred in deducting 1/4th for the personal expenses of the deceased. The deceased was more than 65 years of age. In the application filed by the widow for release of the amount she has stated that she is an old person. All the sons and daughters were major. They are able bodied persons and could not be dependent on the deceased. Therefore, 1/3rd is deducted for the personal expenses and the dependency figure comes to Rs.3,330/- per month or Rs.39,960/- per year which is rounded off to Rs.40,000/-. Multiplier of 5 is applied keeping in view the fact that the deceased was aged more than 65 years and his loss of income comes to Rs.2,00,000/-.

5. In addition thereto, the claimant-mother is held entitled to loss of consortium of Rs.50,000/- and another sum of Rs.20,000/- is awarded for funeral expenses. Therefore, the total compensation works out to Rs.2,70,000/- (rupees two lakhs seventy thousand).

6. In view of the above discussion, the appeal of the Insurance Company is partly allowed and the compensation is reduced from Rs.3,19,610/- to Rs.2,70,000/-, i.e. by Rs.49,610/-. This shall be inclusive of the amount, if any, paid under section 140 of the Motor Vehicles Act. On the amount of compensation so awarded, the Insurance Company shall be liable to pay interest @ 9% per annum from the date of filing of the claim petition till payment/deposit of the awarded amount. The Insurance Company has not satisfied the award of the learned Tribunal and, therefore, it is directed to deposit the entire modified amount of

compensation along with interest in the Registry of this Court within four months from today after deducting/adjusting the amount, if any, already paid/deposited by them along with proof of such earlier deposit.

7. Coming to the apportionment of the award, I am clearly of the view that the major children have no right to claim anything more than a nominal amount as compensation. So, each of the major children is awarded a sum of Rs.20,000/- out of the awarded amount and the mother is awarded Rs.2,10,000/-. The share of the major children shall be released to them by remitting it to their personal bank accounts, details whereof along with photocopy of the first page of the passbook be filed in the Registry of this Court within four weeks from today. As far as the widow is concerned, Rs.60,000/- shall be released to her immediately and the balance amount shall be kept in a fixed deposit for a period of five years and thereafter the balance amount shall also be released. The interest accruing thereupon shall be paid to her every month for meeting her day to day expenses by remitting it to her personal bank account, details whereof along with photocopy of the first page of the passbook be filed in the Registry of this Court within four weeks from today.

8. The appeal is disposed of in the aforesaid terms.

9. Send down the lower court records forthwith.

CHIEF JUSTICE