THE HIGH COURT OF TRIPURA
AGARTALA

MAC APP. NO.74 OF 2011

New India Assurance Company Ltd.
Agartala Branch, represented by its
Branch Manager.

…….. Appellant O.P.

VERSUS

1. Sri Jiban Krishna Baidya
   S/o Late Harendra Kumar Baidya.

2. Smt Sabitri Mitra (Baidya)
   W/o Sri Jiban Krishna Baidya
   Both are of Ballamukha,
   P.O.- Bankar,
   P.S.- Belonia, South Tripura.

……… Claimant Respondents.

3. Sri Sudip Biswas
   S/o Late Rakhal Chandra Biswas
   Of Village-Laxmipur,
   P.O- Barpathari,
   P.S-Belonia, South Tripura (Owner of the
   Vehicle No. TR 01 Q-0288, Maruti)

4. Sri Keshab Majumder
   S/o Late Sudhir Majumder
   Of Ballamukha (Subhash Nagar)
   P.O- Bankar, P.S-Belonia,
   South Tripura, (Owner of the Vehicle No.
   TR 03-2849, Auto Rickshaw).

.... Owner Respondents.

5. National Insurance Company Ltd.
   Udaipur Branch, P.O- Udaipur,
   South Tripura.

........Respondent-Insurer of TR03-2849.

CO (FA) 08 of 2011

1. Shri Jiban Krishna Baidya,
   S/o. Late Harendra Kumar Baidya.

2. Smti. Sabitri Mitra (Baidya),
W/O. Shri Jiban Krishna Baidya,
Both are resident of:
Vill: Ballamukh, P.O: Banker,
P.S: Belonia, Dist: South Tripura.

… Claimant-Respondent-Cross Objectors.

VERSUS

1. The New India Assurance Company Ltd.
Agartala Branch, represented by its Branch Manager,
4, Mantribari Road, P.O: Agartala-799001,
Tripura (West).

….Appellant-Respondent.

2. Sri Sudip Biswas,
S/o. Late Rakhal Ch. Biswas,
Vill: Laxipur, PS- Belonia,
District: South Tripura.
(Owner of TR-01-Q-0288)(Maruti Alto Car)

OPs-Respondents.

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

In Mac App. 74 of 2011

For the appellant : Mr. A. Gon Choudhury, Advocate.
For the respondents : Mr. P.K. Pal, Advocate.

In CO (FA) 08 of 2011

For the cross objectors : Mr. P.K. Pal, Advocate.
For the respondent : Mr. A. Gon Choudhury, Advocate.

Date of hearing and delivery of judgment : **22.7.2015.**

Whether fit for reporting : **NO.**

JUDGMENT AND ORDER (ORAL)

This is another case where it is apparent that the Presiding Officer of the learned Motor Accident Claims Tribunal, South Tripura, Udaipur did not even try to understand the basic provisions of the Motor Vehicles Act, 1988.

2. The undisputed facts are that the claimants, who are the parents of the deceased Papai Baidya filed a petition under Section 163A of the Motor Vehicles Act, 1988 (*for short, "the Act"*) claiming compensation on account of the death of their deceased son.

3. In the claim petition, it was alleged that the deceased was studying B. Pharma in Regional Institute of Pharmaceutical Science and Technology at Abhoynagar, Agartala and that he was also engaged in doing tuitions. It was alleged that he along with some other students had boarded an 'Auto Rickshaw' bearing Registration No.TR03-2849 which had a collision with a 'Maruti Car' bearing Registration No.TR01-Q-0288 and as a result of the collision he sustained injuries and died.

4. The first error which the learned Tribunal committed was in framing an issue as to which of the drivers of the vehicles was responsible for the accident. The Tribunal totally forgot that this was a petition under Section 163A of the Act based on *'no fault liability'* and once the accident was proved both the drivers, owners and insurance companies had to be held liable to pay the compensation.

5. The learned Tribunal held that the deceased was not earning any amount and assessed his income at Rs.15,000/- per annum and, accordingly, applying multiplier of 16 and deducting 1/3rd for his personal expenses came to the conclusion that the

pecuniary loss suffered was Rs.1,60,000/- but while making the award the amount of Rs.1,60,000/- has become Rs.1,80,000/- without even mentioning a word as to how the amount of Rs.20,000/- has been added. In addition thereto, the Tribunal has awarded Rs.2,00,000/- for non-pecuniary damages. I fail to understand how the Tribunal could have awarded another sum when the petition was filed under Section 163A of the Act. In a petition filed under Section 163A, the compensation has to be assessed strictly in accordance with the Second Schedule and no other amount can be awarded. Not a penny less not a penny more than what is payable under the Second Schedule is to be awarded.

6. Having held so, I am clearly of the view that the learned Tribunal gravely erred in holding that the income of the deceased was only Rs.15,000/- per annum. The father had stepped into the witness box and stated that the deceased was a bright student. He had obtained first division in Madhyamik. He was studying in Pharmacy course and he had a bright future. However, unfortunately that cannot be taken into consideration under Section 163A. The statement of the father also is that his deceased son used to earn his livelihood by imparting tuitions to his students and he used to meet his day to day expenses by imparting tuitions. It was alleged that his monthly income was between Rs.3,300–3,500/- per month. I take the income to be Rs.3,000/- per month and applying the Second Schedule of the Act the total compensation works out to Rs.5,76,000/- out of which Rs.1,92,000/- has to be deducted for the personal expenses of the

deceased. Therefore, the claimants are entitled to Rs.3,84,000/-in this regard. The claimants are also entitled to Rs.2,000/- for funeral expenses and Rs.2,500/- for loss of estate and, therefore, the total compensation works out to Rs.3,88,500/-.

7. There is evidence on record that before his death, the deceased was taken to the Hospital at Kolkata and medical tickets were purchased and, therefore, though the expenses proved are more than Rs.15,000/- the claimants are awarded Rs.15,000/-, which is the maximum permissible under the Second Schedule under this head. Therefore, the total compensation works out to Rs.(3,84,000+2,000+2,500+15,000/-)=Rs.4,03,500/-(Rupees four lakhs three thousand five hundred) only.

8. In view of the above discussion, the appeal filed by the New India Assurance Company is partly allowed and the cross-objection filed by the claimants is dismissed. The award of the learned Tribunal is modified and the compensation is reduced from Rs.4,34,015/- to Rs.4,03,500/-. On this amount the claimants shall also be entitled to interest @9% per annum from the date of filing of the claim petition till payment/deposit of the same. Both the insurance companies (New India Assurance Company Ltd. & National Insurance Company Ltd.) shall be equally liable to pay this compensation since this is a case of '*no fault liability*'. The amount be deposited in the Registry of this Court within 4(four) months from today after deducting the amount, if any, already paid/deposited by the Insurance Company(ies).

9. The appeal and cross objection are disposed of in the aforesaid terms.

10. Send down the LCRs forthwith.

CHIEF JUSTICE

Satabdi/Sukhendu