THE HIGH COURT OF TRIPURA
A G A R T A L A

MAC App. No. 122 of 2011

Claimant-Appellants :

1. Smti. Anita Rani Paul,
Wife of Late Satya Narayan Paul.

2. Smti. Mukul Rani Paul,
W/o. Sri Ruhini Kr. Paul.

3. Smti Susmita Paul,
D/o. Late Satya Narayan Paul.

(Being minor represented by the petitioner No. 1, mother, the natural guardian).

4. Sri Ruhini Kr. Paul,
S/o. Late Payari Mohan Paul.
(All are resident of East Pratapgarh, P.S-East Agartala, Dist- West Tripura.)

By Advocates :

Mr. K. N. Bhattacharji, Sr. Adv.
Mr. P. S. Roy, Adv.

Respondents :

1. Sri Bhola Lodh,
S/o. Chitta Ranjan Lodh,
Village-Kobra Khamar, Durganagar, P.S-Ranirbazar, District-West Tripura.
(Owner of the vehicle No.TR-01A-3139, Commander Jeep)

2. The New India Assurance Co. Ltd.,
Mantribari Road, Agartala, West Tripura.
(Insurer of the vehicle No.TR-01A-3139, Commander Jeep)

By Advocates :

Mr. A. Gon Choudhury, Adv.
Mr. H. Laskar, Adv.

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

Date of hearing &
Judgment & Order : **3rd December, 2015.**

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER (ORAL)

This appeal by the claimants for enhancement of compensation is directed against the award of the learned Motor Accident Claims Tribunal, Court No.2, West Tripura, Agartala dated 08.09.2011 passed in T.S(MAC) No. 491 of 2008 whereby the Tribunal awarded compensation of Rs.6,19,000/- in favour of the claimants.

[2] In this appeal two points have been raised. First point is that the amount of compensation awarded is on the lower side and the second point raised is that the learned Tribunal has wrongly exonerated the insurance company from the liability of paying the compensation.

[3] The undisputed facts are that an unfortunate incident took place on 20th November, 2008 in which Satya Narayan Paul, husband of the claimant-appellant No.1 died. It is not disputed that the accident occurred due to the rash and negligent driving of the driver of the vehicle bearing registration No. TR-01A-3139.

[4] The defence of the insurance company was that the vehicle was being used in violation of the terms of the policy. According to the insurance company the vehicle was only insured as a passenger carrying commercial vehicle. However, at the time of the accident there was a trailer attached to the vehicle and therefore, it was being used for the purpose of carrying goods which was violative of the condition of the policy and hence it was pleaded that the insurance company could not be held liable. The learned Tribunal accepted this plea of the insurance company and exonerated it from the liability of paying the compensation.

[5] Sri K. N. Bhattacharji, learned senior counsel appearing for the appellant-claimants submits that though the insured may have violated the terms of the policy, the insurance company must first pay the amount and then can recover it from the insured. In this behalf he has referred the following judgments of the Apex Court:

> ***(i) National Insurance Co. Ltd. Vrs. Swaran Singh and Others : (2004) 3 SCC 297;***
>
> ***(ii) Manager, National Insurance Company Limited Vrs. Saju P. Paul and Another : (2013) 2 SCC 41;***
>
> ***(iii) S. Iyyapan Vrs. United India Insurance Company limited and Another: (2013) 7 SCC 62.***

It is not necessary to multiply the authorities and reference may be made to the last authority which has discussed the earlier judgments and the Apex Court in this case held as follows:

> ***"17.***** Hence, in our considered opinion, the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy."***

[6] As far as assessment of compensation is concerned the deceased is stated to have a businessman selling vegetables. It is claimed that he was earned Rs.8000/- per month. The widow stepped into the witness box and has stated that her husband was a famous businessman of vegetables in Maharaj Ganj Bazar at Agartala and his monthly income was about Rs.8000/- per month. She has not produced any documents in support of the income. It would be pertinent to mention that in the claim petition against column No.4, occupation of the deceased, it was only mentioned business and the nature of the business was not mentioned.

[7] Reliance has been placed on Exbt. 4, a certificate, issued by Dipak Saha, Secretary of the Khusdra Sabji Byabsayi Samiti in which it is stated that the deceased was working as a dealer in vegetable for 17 years and the monthly income of the deceased was Rs.8,000/-. Dipak Saha was not examined in Court. I fail to understand how the Secretary of an association can give the certificate regarding the income of a particular person. Can the Secretary of the Bar Association give a certificate what is the income of any particular lawyer. Income cannot be proved in this manner. This certificate is not worth the paper it is written on. However, the certificate proved shows that the deceased was a vegetable seller and was dealing in vegetable for about 17(seventeen) years. It is not even clear whether this vegetable seller had a separate shop or was a vegetable vendor. Was he selling vegetable on the road or did he have a proper shop? It is well known that in Agartala all vegetable vendors buy vegetables from the whole-seller in Maharaj Ganj Bazar(Golbazar). Record can always be produced from the whole-seller as to what was the value of the vegetables which the deceased was buying from the whole-seller in the last year or so, from that an estimate can be made about the income. Income has to be proved. It cannot just be conjured from the thin air. It is the duty of the parties and the counsel to lead proper evidence. However, keeping in view the fact that the deceased was a vegetable seller and the accident took place in the year 2008, I am inclined to hold that the deceased must have been earning at least Rs.150/- per day. However, a vegetable seller also have off days. There are times when it is raining or the weather is very bad when such shops may have to be remained closed and therefore, taken into consideration the future prospect I assess the income at Rs.6,000/- per month and deduct 1/3rd for the personal expenses of the deceased. The datum figure comes to Rs.4000/- per month or Rs.48,000/- per year. There is no proof of age except the post mortem report. The age given in a post mortem report is only an approximate age. Therefore, multiplier of 15 is used because he could have been one or two years older and the compensation therefore, works out to Rs.7,20,000/-. In addition thereto the claimants are held entitled to Rs.20,000/- as funeral expenses and the widow is held entitled to Rs.50,000/- as loss of consortium.

[8] The total compensation is, therefore, assessed at Rs. (7,20,000/- + 20,000/- + 50,000/-) = Rs. 7,90,000/-. On this amount the claimant shall be entitled to interest @ 9% per annum from the date of filing of the claim petition till payment/deposit of the awarded amount.

[9] In view of the above and following the law laid down by the Apex Court in ***S. Iyyapan's case*** the insurance company is directed to pay the entire amount of compensation with liberty reserved to it to recover the same from the owner of the vehicle. The insurance company is therefore, directed to deposit the entire amount of compensation along with interest thereupon in the Registry of this Court within 4(four) months from today. It is made clear that the insurance company does not have to file separate proceedings and it can recover the amount from the insured by filing certificate proceedings under the Motor Vehicles Act itself.

[10] The amount of compensation, i.e. Rs.7,90,000/- is apportioned as follows:-

Smti. Anita Rani Paul (widow)	:- Rs.3,00,000/-;
Smti Susmita Paul (minor)	:- Rs.2,90,000/-;
Smti. Mukul Rani Paul (mother)	:- Rs.2,00,000/-;

[11] The amount falling to the share of the minor shall be kept in a fixed deposit till she attain the age of 21 years and thereafter the amount shall be released to her. Liberty is, however, reserved to the widow (mother of the minor) to approach this Court for release of the amount at an earlier stage, in case such amount is needed to meet the educational expenses of the minor. However, the interest payable on the amount deposited in the name of the minor shall be paid on quarterly basis to the mother which money shall be utilized by her to meet the day to day expenses of the minor child.

[12] Out of the amount falling to the share of appellant No.1, widow and appellant No.2, mother of the deceased are concerned, a sum of Rs.1,00,000/- each shall be released in their favour 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 three weeks from today. As far as the balance amount in respect of appellant No.1, widow and the appellant No.2, mother of the deceased are concerned, the same shall be kept in a fixed deposit for a period of five years at the first instance. After five years in addition to interest a sum of Rs.30,000/- shall be paid to the widow every year till the entire amount is paid to her and as far as the mother of the deceased is concerned after five years her entire share along with interest be released to her.

[13] The appeal is disposed of in the aforesaid terms. No costs.

[14] Send down the lower court records forthwith.

<u>CHIEF JUSTICE</u>