

Tripura High Court

The General Manager vs Smt. Sabirani Debbarma on 4 May, 2022

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HIGH COURT OF TRIPURA

AGARTALA

MAC App. No.23 of 2022

The General Manager, SBI General Insurance Company  
Ltd., 2nd Floor, Laxmi Darshan Building, Ulubari (Opposite  
Bora Services) G.S. Road, Guwahati - 781007, (insurer of  
offending vehicle bearing registration No.TR-06-A-0612  
(Maruti))

-----Petitioner(s)

Versus

1.Smt. Sabirani Debbarma, son of Late Sukumar  
Debbarma.

2.Smti Annalakshi Debbarma, wife of Late Diba  
Chandra Debbarma,

3.Smti Sumee Debbarma D/o, Late Sukumar Debbarma,

4.Smti Purnimala Debbarma, D/o, Late Sukumar  
Debbarma,

5.Smti Asha Rani Debbarma, D/o, Late Sukumar  
Debbarma, (Petitioner No.3, 4 and 5 being minor are  
represented by their mother Petitioner No.1) All are village  
-Chakmaghat, P.O. and PS -Mungiakami, District - Khowai,  
Tripura.

6.Sri Rifruchai Mog, Son of Sri Cheillao Mog Resident of  
village - Laxmipur, Teliamura P.O. PS - Teliamura, District-  
Khowai, Tripura (Owner of offending vehicle bearing  
registration No.TR-06-A-0612 (Maruti))

-----Respondent(s)

MAC App 23/2022 BEFORE HON'BLE MR. JUSTICE S.G.CHATTOPADHYAY For the Petitioner(s)  
: Mr. P.K.Ghosh, Adv. For the Respondent(s) : Mr. P.S.Roy, Adv.

Date of Hearing : 27.04.2021

Date of Judgment : 04.05.2022

Whether fit for reporting : Yes/No

JUDGMENT&ORDER

[1] The present appeal pertains to the claim

petition preferred on account of the death of Sukumar Debbarma who died in a road traffic accident on 03.03.2018. The appellant insurance company has challenged the award dated 29.01.2022 passed by the Motor Accidents Claims Tribunal (Court no.4), West Tripura, Agartala in T.S (MAC) 82 of 2018 whereby the learned Tribunal has awarded a sum of Rs.22,78,000/- (Rupees Twenty-two Lakh Seventy-Eight thousand) along with 9% annual interest thereon to claimant petitioners (Respondents, herein) who are the wife, mother and daughters of the deceased. MAC App 23/2022 [2] The brief facts, necessary for the adjudication of this appeal, are as follows:

At around 4.30 PM on 03.03.2018 Sukumar Debbarma [deceased] was going to 39 Mile bazaar from his home along the Assam Agartala road. He was at that time walking along his left side of the road. All on a sudden, the speeding vehicle bearing registration No. TR-06-A-0612 hit him from his back as a result of which he was thrown off the road and he sustained fatal injuries. He was immediately taken to hospital by the local people where he succumbed to his injuries at the night.

[3]	On	13.03.2018	Smt.	Sandhya	Rani
Debbarma,	wife	of	Kamal	Charan	Debbarma
					of

Mungiakami lodged a written FIR with the Officer in charge of Mungiakami Police Station alleging inter alia that on 03.03.2018 her husband along with some other relatives of her were going to Teliamura in the offending vehicle. On the way the vehicle hit Sukumar MAC App 23/2022 Debbarma and Prbir Kumar Jamatia and after hitting them the vehicle capsized on the road and fell into a ditch. As a result of the accident, husband of the informant and all other passengers of the vehicle as well as Sukumar Debbarma and Prabir Kumar Jamatia sustained injuries. The injured were immediately taken to Teliamura hospital where Prabir Kumar Jamatia was declared dead. Injured Sukumar Debbarma died in AGMC and GBP hospital at Agartala at the night. The informant alleged that the accident occurred due to rash and negligent driving of the offending vehicle. The FIR was registered as Mungiakami P.S. case No.6 of 2018 under Sectionns279, 338 and 304A IPC. [4] The post mortem examination of the deceased was done in AGMC and GBP hospital at Agartala on 04.03.2018 between the period from 12.45 noon and 13.55 P.M and the autopsy surgeon opined that the cause of death was hemorrhagic shock resulting from injuries to organs of abdomen caused MAC App 23/2022 by the impact of hard and blunt object. All the injuries were anti mortem in nature and were fresh in duration of age at the time of death.

[5] The claimants instituted a claim petition before the MACT under Section 166 of the MV Act 1988 for grant of compensation for the death of said Sukumar Debbarma which was registered as case No. T.S.(MAC) 82 of 2018..

[6] The claimants impleaded Sri Rifruchai Mog, owner of the offending vehicle as Respondent No.1 and the SBI General Insurance Company Ltd, the insurer of the offending vehicle as Respondent No.2. [7] In his written statement, the owner of the offending vehicle admitted the accident and asserted that after the accident was reported to police Mungiakami P.S. case No.6 of 2018 under

Section 279, 338 and 304A IPC was registered. He claimed that Ratan Mog who was driving the vehicle at the MAC App 23/2022 time of the accident possessed a valid driving license and the vehicle was insured with SBI General Insurance Company Ltd and the insurance policy was operative on the date of the accident. He, however, asserted that the amount of compensation claimed by the survivors of deceased Sukumar Debbarma was exorbitant and unreasonable.

[8] By filing separate written statement the insurer [Respondent No.2] asserted that the claimants filed the petition for compensation by misrepresenting the facts. The insurer in written statement wanted the Tribunal to call for the record of Mungiakami P.S case No.6 of 2018 for proper adjudication of the case. It was, however, pleaded by the insurance company that liability of the insurer to pay compensation would arise only if the owner of the offending vehicle succeeds in proving that the insurance policy was in force on the date of the accident and there was no breach of the terms of the insurance policy.

MAC App 23/2022 [9] On the basis of the pleadings of the parties the Tribunal framed the following issues:

- (i) Whether the claim petition is maintainable.
- (ii) Whether Sukumar Debbarma died in a road traffic accident on 03.03.2018 at 39 Miles under the jurisdiction of Mungiakami police station.
- (iii) Whether the accident occurred due to rash and negligent driving of the vehicle bearing registration No.TR-06-A-0612.
- (iv) Whether the claimant petitioners were entitled to compensation and if so, what would be the just and reasonable amount of compensation.
- (v) Whether claimants were entitled to any other relief.

[10] In order to establish their claim, the claimant petitioners examined the wife of deceased MAC App 23/2022 Sukumar Debbarma as PW-1 and Sri Nibaran Jamatia as PW-2. Besides adducing their ocular evidence, claimants produced certified copy of the FIR in 3 sheets which were taken into evidence and marked as Exhibit-1 (series). Certified copy of the post mortem examination report was taken into evidence and marked as Exhibit -2(series) and the certified copy of the seizure list was taken into evidence and marked as Exhibit-3(series).

[11] On behalf of the respondents, owner of the offending vehicle was examined as OPW-1 and the Registration certificate of the offending vehicle was taken into evidence and marked as Exhibit A. The driving license of Ratan Mog was taken into evidence and marked as Exhibit B and the insurance certificate was taken into evidence and marked as Exhibit C. [12] On appreciation of the evidence and arguments advanced by the counsel of the parties, the Tribunal answered issue No.1 in

favour of the MAC App 23/2022 claimants. The Tribunal had taken up issues 2 & 3 together and held that the accident occurred due to rash and negligent driving of the offending vehicle in which Sukumar Debbarma lost his life. It was therefore, held that the claimants being his wife, mother and daughters were entitled to compensation. Tribunal had taken up issues 4 & 5 together and worked out the total amount of compensation at Rs.22,78,000/- and held that the insurance company [Respondent No.2] was liable to pay the compensation with 9% annual interest there on from the date of filing of the claim petition till disbursement. [13] While assessing the compensation payable to the claimant, Tribunal held that deceased Sukumar Debbarma was a mason by occupation. Tribunal guessed his daily income at Rs.400/- Therefore, his monthly income came to be Rs.12,000/-. Since the deceased was proved to be 40 years of age at the time of accident and he was self employed, the Tribunal MAC App 23/2022 made an addition of 25% to his income towards future prospect in terms of para 59.4 of the Judgment of the Hon'ble Apex Court in the case of NATIONAL INSURANCE COMPANY LIMITED VERSUS PRANAY SETHI AND OTHERS reported in (2017) 16 SCC 680 and the Tribunal thus assessed his monthly income at  $12,000 + 3,000(25\% \text{ of } 12,000) = \text{Rs.}15,000/-$ . Since the number of dependent family members of the deceased was 05(five), Tribunal deducted 1/4th of the said income on account of personal and living expenses of the deceased in terms of the dictum of the Hon'ble Supreme Court in the case of SARLA VERMA (SMT) AND OTHERS Versus DELHI TRANSPORT CORPORATION AND ANOTHER reported in (2009) 6 SCC 121 and after such deduction the annual income came to be  $\text{Rs.}15,000 - 3750(1/4\text{th of } 15,000) = \text{Rs.}11,250/-$ . Keeping in view the law laid down by the apex court in the case of SARLA VERMA(supra), the Tribunal by applying multiplier 15 assessed the compensation for loss of income at MAC App 23/2022  $\text{Rs.}11,250 \times 12 \times 15 = \text{Rs.}20,25,000/-$ . With this amount Tribunal added 15,000/- for loss of estate and 15,000/- for funeral expenses. Following the law laid down by the apex court in Magma General Insurance Co. Ltd. versus Nanu Ram Alias Chuhru Ram and Others reported in (2018) 18 SCC 130 the Tribunal added consortium to each of claimants @ Rs.40,000/-. Thereafter, following the law laid down by the apex court in the case of Pranay Sethi (supra), Tribunal enhanced the amount of compensation for funeral expenses, loss of estate and consortium by 10% and assessed the total amount of compensation payable to the claimants as under:

Sl. No.	Head	Amount
01	For loss of income	=Rs.20,25,360/-
02	Funeral expenses : Rs.15,000/- increased by 10%	=Rs.16,500/-
03	Loss of estate : Rs.15,000/- increased by 10%	=Rs.16,500/-
04	Loss of consortium to wife, mother and three daughters : Rs.40,000/- increased by 10%	=Rs.2,20,000/-

Total amount of compensation =Rs.22,78,000/-

On this amount, Tribunal awarded 9% annual interest from the date of filing till disbursement [14] Aggrieved by and dissatisfied with the said award passed by the Tribunal, the insurance company has filed this appeal mainly on the following grounds:

- (i) Claimants could not prove that accident occurred due to rash and negligent driving of the vehicle.
- (ii) Charge sheet was not produced and taken into evidence to establish the involvement of the offending vehicle.
- (iii) Tribunal assessed the income of the deceased without any proof of income.
- (iv) The documents of the offending vehicle were not proved during trial of the case.
- (v) Tribunal awarded an unreasonable and exorbitant sum of compensation.

[15] Mr.P.K.Ghosh, learned counsel appearing for the appellant insurance company has argued that the MAC App 23/2022 claimants could not prove rash and negligent driving of the offending vehicle which is a sine qua non for successfully establishing the claim for compensation in road traffic accidents. Counsel has argued that except producing the FIR, the claimants could not produce any other documents to prove that police investigation was carried out in the case and the involvement of the offending vehicle was established. Counsel has further argued that in such circumstances, Tribunal should have discarded the claim for compensation. Learned counsel has also argued that Tribunal awarded an exorbitant amount of compensation without adequate proof of income of the deceased and more over Tribunal awarded interest @9% on the amount of compensation which is contrary to the settled principles of law. Learned Counsel has therefore, urged the court to reduce the amount of compensation to a reasonable sum.

MAC App 23/2022 [16] Mr.P.S.Roy, learned counsel appearing for the claimants has vehemently opposed the contention of the counsel of the appellant. According to Mr. Roy, learned counsel, even though negligence is the foundation of liability under Section 166 MV Act, the satisfaction of the court about the existence of negligence is enough in a motor accident claim case. It is submitted by learned counsel that on the basis of the FIR lodged by the wife of one of the injured, specific case was registered by police. Moreover, the evidence of an eye witness [PW-2] who was adduced, categorically stated that he witnessed the accident. Counsel has stated that the witness categorically deposed before the trial court that the accident occurred as a result of rash and negligent driving of

the vehicle and at the time of the accident Sukumar Debbarma was walking along the road. PW-2 also stated at the Tribunal that he had identified the offending vehicle. Counsel contends that the said PW MAC App 23/2022 was cross examined at length by the insurance company and his evidence could not be impeached to any extent.

[17] Mr.P.S.Roy, learned counsel also contends that the owner of the offending vehicle also appeared in the witness box as OPW-1 before the Tribunal who admitted the accident and claimed that his vehicle was insured with SBI General Insurance company Ltd and all other documents of the vehicle were in order on the date of accident. Counsel contends that on the date of examination of the owner of the offending vehicle as OPW-1, respondent insurance company remained unrepresented at the Tribunal. Therefore, cross examination of OPW-1 for respondent insurance company was kept reserved by the Tribunal. Thereafter, even on the adjourned date, the respondent insurance company did not cross examine the owner of the offending vehicle. Counsel submits that now they cannot raise the plea that the accident MAC App 23/2022 did not occur and the offending vehicle was not involved in the accident. Counsel contends that the claimants discharged their liability in proving negligence on the part of the offending vehicle by producing cogent evidence including the evidence of the eye witness. The appellant could not prove the contrary at the Tribunal. Now the appellant cannot raise the plea that case was not proved at the Tribunal. To nourish his contention, counsel has relied on the decision of the High Court of Kerala at Ernakulam in New India Assurance Co. Ltd. vs. Pazhaniammal and others reported in 2012 ACJ 1370 wherein the Kerala High Court has held that quality of evidence to prove negligence and existence of negligence in a motor accident claim case is different from culpable negligence punishable under the criminal law. Counsel has emphasized on paragraph 10 of the said judgment which reads as under:

"10. Notwithstanding Sections 140 and 163-A of the Motor Vehicles Act even now in a claim under Section MAC App 23/2022 166 of the Motor Vehicles Act negligence has to be established. But the quality of evidence to prove negligence and the extent of negligence to be established is certainly different from culpable negligence punishable under the criminal law. Tribunals cannot look at the question as an umpire in an adversarial litigation between parties. Even in the absence of specific pleadings and evidence, if the totality of the circumstances convince the Tribunal that there has been negligence, the Tribunal will certainly be justified in passing an award under Section 166 of the Motor Vehicles Act. Tribunals called upon to discharge the legislative mandate of ensuring just and reasonable compensation to the victims cannot function merely as umpires in an adversarial litigative process. The Tribunals should play the dynamic role expected of them under a welfare legislation in a socialist republic to effectively and expeditiously translate the compassion of the legislature into tangible benefits to the victims. The primary mandate to and the very purpose of constitution of the Tribunal under the provisions of the Motor Vehicles Act is to ensure just and reasonable compensation to the victims and Tribunal should not and can never afford to ignore that basic tenet. In that view of the matter we are satisfied that the materials available sufficiently justify the impugned award."

[18] With regard to the claim of the appellant that exorbitant rate of interest has been awarded @9% per annum, counsel has argued that such rate of interest has also been approved by a decision dated 07.05.2021 passed by the Hon'ble apex court in the case of Rahul Sharma & Anr. versus National

Insurance Company Ltd. & Ors. in Civil Appeal No. MAC App 23/2022 1769 of 2021 arising out of SLP(C) No. 719 of 2018. In reply, the counsel representing the appellant has contended that in the case of Rahul Sharma and Anr(supra) accident occurred in 2010 and the Tribunal awarded rate of interest @9% which was accepted by the Hon'ble apex court under the particular facts and circumstances of the case. Counsel of the appellant has contended that the factual context of the present case being completely distinguishable this court may reduce the rate of interest to a reasonable extent. [19] Perused the record. Considered the submissions of the counsel representing the parties. The appellant could not bring forth any ground to disbelieve the case of the claimants. By producing evidence, claimants seem to have proved negligence in driving the offending vehicle. The FIR Exbt.1(series) has revealed that two lives were lost in the devastating accident and a good number of persons including the passengers of the offending vehicle and MAC App 23/2022 pedestrians received serious injuries from the said accident. It is no case of the appellant Insurance Company that reasonable opportunity was denied to it to cross-examine the witnesses. The appellant cross examined both the witnesses of the claimants at the Tribunal but could not embellish their evidence to any extent. In so far as the cross-examination of OPW-1 is concerned, insurance company was given adequate opportunity to cross-examine the witness. The following order dated 29.11.2021 of the Tribunal would demonstrate that OPW-1 also turned up on 29.11.2021 for the second time only for the purpose of his cross-examination by the insurance company. Though their engaged counsel filed his memo of appearance at the Tribunal, the witness was not cross examined. The said order dated 29.11.2021 of the Tribunal reads as under:

"29.11.2021 Ld. Counsel Mr. P.S.Roy is present on behalf of the claimant petitioner and filed hazira.

MAC App 23/2022 Ld. Counsel Mr.S.Ikbal is present on behalf of OP owner along with witness Rifruchi Mog Perusal of record shows that on 04.09.2019 the above mentioned witness has appeared and he was examined and cross-examined on behalf of claimant as OPW-1 and as there was no step on behalf of OP insurance company on that day the cross examination of witness on behalf of OP insurance company was kept reserved for today.

A hazira executed by Ld. Counsel K.Dey on behalf of OP no.2 is found to be placed with the Bench Clerk of this Tribunal.

But none appeared in-spite of several calls since morning till 3 pm. It seems that OP no.2 is not interested to cross examine the witness namely Rifruchi Mog. Hence, the witness is discharged Fix 13.12.2021 for arguments."

[20] As discussed, Tribunal has awarded compensation to the claimants following the settled principles of law and there is no ground to interfere with such award. In the result, the appeal stands dismissed.

[21] The appellant insurance company is directed to deposit the entire amount of award along with interest accrued thereon within a period of 8 weeks MAC App 23/2022 from today with the registry of this court. Amount already paid, if any, including the statutory deposit shall be adjusted towards

the amount awarded. The claimants shall be entitled to equal share of the compensation. 70% of the share of the mother of the deceased shall be invested in a term deposit for a period of 5 years in any nationalized bank and 30% of her share shall be released in her favour by transferring the same to her individual bank account. Monthly interest generated from her investment shall be disbursed in her favour by transferring the same to her individual bank account. Similarly 70% of the share of compensation of the wife of the deceased shall be invested in a term deposit for 05 years and 30% would be released in her favour and the monthly interest generated from her term deposit shall also be released in her favour by transferring the same to her individual bank account. The entire share of compensation of the 3 daughters of the deceased, who MAC App 23/2022 are minors, shall be invested in term deposit in their individual name in any nationalized bank until they attain majority and the monthly interest generated from their term deposit shall be transferred to the bank account of their mother for meeting their educational and other expenses.

[22] In terms of the above the appeal stands disposed of.

Pending application(s), if any, shall also stand disposed of.

Send down the LC Record.

JUDGE Saikat Sarma, PS-II MAC App 23/2022