

**HIGH COURT OF TRIPURA
AGARTALA**

MAC App No. 03/2020

1. Smt. Suruchi Bhattacharjee.

Mother of late Prajoy Bhattacharjee, resident of Tuichindrai, P.O. - Hawaibari, P.S.- Teliamura, District-Khowai, Tripura.

2. Smt. Rama Bhattacharjee,

wife of late Prajoy Bhattacharjee, resident of Tuichindrai, P.O. Hawaibari, P.S.- Teliamura, District - Khowai Tripura.

3. Smt. Susmita Bhattacharjee (minor),

daughter of late Prajoy Bhattacharjee, resident of Tuichindrai, P.O.- Hawaibari, P.S.- Teliamura, District-Khowai Tripura

4. Sri. Prakash Bhattacharjee (minor),

son of late Prajoy Bhattacharjee, resident of Tuichindrai, P.O.- Hawaibari, P.S.- Teliamura, District-Khowai Tripura, (Claimant petitioners no. 3 and 4 being minors are represented by their mother i.e. claimant petitioner no. 2)

..... **Appellant.**

Versus

1. Smt. Tripti Paul.

wife of Sri Bipad Paul, resident of Gokulpur, Udaipur, P.S. -R.K.Pur, District- Gomati Tripura, (earlier owner of the offending vehicle bearing registration no. TR-03-C-0569, Maruti Van)

2. M/S General Insurance Company Limited,

Agartala Branch, located at 2nd Floor, Teensanghi Akhaura Road, Krishnanagar, P.S.- West Agartala, District -West Tripura (insurer of the offending vehicle bearing registration no. TR-03-C-0569- Maruti Van vide policy no. 3362/00621714/000/00, valid upto 04.05.2012)

3. Sri Maran Chandra Das,

son of late Jagadish Chandra Das, resident Of East Gokulpur, Udaipur, P.S.- R.K,Pur, District -Gomati Tripura, (present owner of the vehicle bearing registration no. TR-03-C-0569- Maruti Van)

..... **Respondent(s).**

BEFORE

THE HON'BLE MR. JUSTICE S. G. CHATTOPADHYAY

For Appellant(s) : Mr. A. Nandi, Advocate.
For Respondent(s) : Mr. Mr. P. K. Ghosh, Advocate.
Mr. R. G. Chakraborty, Advocate.
Mr. S.K. Patari, Advocate.
Date of hearing : 15th September, 2021.
Date of Judgment & Order : **24th November, 2021.**
Whether fit for reporting : NO.

JUDGMENT AND ORDER

This appeal under Section 173(1) of the Motor Vehicles Act, 1988, is directed against the judgment and award dated 3.5.2019 passed by the learned Member, Motor Accident Claims Tribunal No.3, West Tripura Judicial District, Agartala in TS (MAC) No. 260 of 2012.

[2] The case, in brief is that, on 06.02.2012 at about 7 'O' clock in the evening, the deceased who is the son of appellant No.1, husband of appellant No.2 and father of appellants No. 3 and 4 was walking along the Assam Agartala road at a place called Howaibari within the jurisdiction of Teliamura police station. At that time the offending Maruti Van bearing registration No.TR-03-C-0569 came in a rash and negligent manner and knocked him down from behind. As a result of the accident, the deceased sustained grievous injuries and he was hospitalized. He was admitted in A.G.M.C and G.B.P Hospital at Agartala where he was confined to bed for about three months from 06.02.2012 to 04.05.2012. During the period, he had undergone multiple surgeries. After his discharge from hospital, the District Disability Medical Board certified that he suffered from 85%

permanent locomotor disability. He filed a claim petition at the Tribunal claiming compensation of a sum of Rs.10,00,000/- under Section 166 M.V. Act. During the pendency of his claim petition, he succumbed to his injuries on 12.06.2014. As a result of the death of the claimant, his mother, wife and his minor daughter and son were impleaded as claimants.

[3] After the accident, wife of the deceased lodged FIR with the Officer-in-Charge of Teliamura Police Station on 04.05.2012 which was registered as Teliamura P.S Case No.50 of 2021 under Sections 279 and 338 IPC and the case was investigated by the police. Before the injured died, police submitted final report for want of evidence. Concluding part of the final report of the investigating officer is as under:

"Hence I do not think wise to drag the matter pending for more. Hence I do hereby submit Final Report, vide TLM PS FR No.17/12 dtd.31-08-12 u/s 279/338 IPC. The fact is true but wanting evidence in C/w the case. With a view to the case may be re-opened if the evidence comes in near future and thus obliged.

[4] While contesting the claim at the Tribunal the insurance company (respondent No.2) took up usual defence stating that the claim was exorbitant and the onus of proving the claim was strictly put on the claimants.

[5] Respondent No.3, owner of the offending vehicle, also claimed that the claim of compensation was exorbitant which was not even supported by any document. The respondent also pleaded that actual owner of the vehicle on the date of occurrence was Smti. Tripti MAC App. No.03/2020.

Paul (respondent No.1) because he purchased the vehicle from Smt. Tripti Paul on 20.3.2012 and on 06.02.2012 when the accident occurred Tripti Paul (respondent No.1) was the owner of the vehicle. The respondent therefore, denied his liability.

[6] Said Smt. Tripti Paul who was impleaded as respondent No.1 at the Tribunal. Notice of the case was issued to her but she did not file any written response. In this regard, the tribunal had made the following observation in paragraph-4 of its award.

"4. Initially the OP NO. 1 Smt Tripti Paul appeared before this Tribunal by executing one Vokatnama in favour of Mr.Pramod Sahu, learned Advocate and by filing petition prayed for time to present her written statement but ultimately, the OP NO. 1 did not cooperate with her engaged learned counsel for which on 02.06.2015 Mr. P. Sahu, learned Advocate filed one petition expressing his intention to retire from this case and ultimately the said petition was accepted by this Tribunal vide order dated 13.07.2015. Thereafter, the claimant petitioners were directed to take necessary steps to issue fresh notice to the OP NO. 1 Smt Tripti Paul but in spite of several opportunities the claimant petitioners did not file any requisite for issuance of notice to the OP NO. 1. Accordingly, this Tribunal by passing an order on 11.09.2017 closed the case against the OP NO. 1."

[7] On the basis of the pleadings of the parties, the learned Tribunal had framed the following issues:

"(i) Whether claimant Prajoy Bhattacharjee sustained bodily injury in a vehicular accident which occurred on 06.02.2012 at Howaibari due to rash and negligent driving of the

offending vehicle bearing registration No.TR-03-C-0569.

(ii) Whether the claimant was entitled to compensation as prayed for. If so, up to what extent and who would be held liable to pay the compensation.”

[8] After the injured claimant died of injuries during pendency of the claim petition, the Tribunal did not recast the issues.

[9] During the trial claimants examined Smt. Rama Bhattachajree, wife of the deceased as PW-1 and Dr. Dipti Bikash Roy, a locomotor specialist of the District Disability Medical Board of West Tripura as PW-2 and produced various documents including the death certificate of the deceased, his disability certificate which was issued by the District Disability Medical Board before his death, survival certificate of the claimants etc. No evidence, oral or documentary was produced on behalf of the respondents. They however, cross-examined the witnesses of the claimants.

[10] Having appreciated the facts and circumstances of the case and the evidence on record Tribunal held that the accident occurred due to rash and negligent driving of the vehicle and Prajoy Bhattacharjee, died of the injuries sustained by him in the said accident. The tribunal had assessed monthly income of the deceased at Rs.5000/- and since the deceased was stated to be 47 years of age at the time of his death, multiplier 13 was applied in terms of the judgment of the Apex Court in MAC App. No.03/2020.

the case of **Sarla Verma(Smt.) and others Vrs. Delhi Transport Corporation and Another:** reported in **(2009) 6 SCC 121** and loss of dependency was thus worked out at Rs.5000 X 12 X13 = Rs.7,80,000/- . Since the deceased was married and he had dependent family members, $\frac{1}{3}$ rd of the said amount i.e., Rs.2,60,000/- was deducted towards personal and living expenses of the deceased and, as such, the actual loss of dependency was worked out at Rs.7,80,000 - 2,60,000 = Rs.5,20,000/- . With the said amount Tribunal added Rs.40,000/- as loss of consortium to the wife, Rs.25,000/- for funeral expenses and Rs.10,000/- for loss of estate and the total compensation was computed as under:

Sl. No.	Heads	Amount
1.	Loss of dependency	Rs.5,20,000/-
2.	Loss of consortium to wife	Rs. 40,000/-
3.	For funeral expenses	Rs. 25,000/-
4.	Loss of estate	Rs. 10,000/-
	Total:	Rs.5,95,000/-

Tribunal also awarded 6% annual interest on the said amount from the date of presentation of the claim petition till disbursement.

[11] Challenging the said award, Mr. A. Nandi, learned counsel appearing for the claimants has vehemently argued that Tribunal did not follow the settled principle in determining the compensation. Counsel submits that Tribunal did not also give any compensation towards future prospect of the deceased. Moreover, the Tribunal assessed the monthly income of the deceased at a meagre sum of Rs.5000/- which was quite

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unjust and unreasonable because even the monthly income of an unskilled day labourer was more than that amount. Counsel therefore, urges the Court to award a just and appropriate amount of compensation to the claimants.

[12] Mr. P. K. Ghosh, learned counsel appearing for the respondent insurance company on the other hand argues that the present petition was filed by the deceased himself for compensation for personal injury suffered by him. Since he died natural death during pendency of the case, the case stood abated after his death and the claimant appellants were not entitled to any compensation arising out of such death. In support of his contention, counsel has relied on the decision of Gauhati High Court in ***Sipra Bhowmik & another Vrs. Soumendra Ch. Saha & others***: reported in **2012 (2)GLT 766**. Mr. Ghosh, learned counsel also submits that even otherwise the Tribunal awarded compensation more than the claimant deserved and there is no reason to interfere with the award of the Tribunal.

[13] In so far as the first contention of the counsel of the respondent insurance company is concerned, the contention is not acceptable because it is clearly held by the Tribunal after appreciation of evidence that Prajoy Bhattacharjee died of the injuries received from the accident. In the aforesaid decision of Gauhati High Court which has been relied on by the counsel of the respondent insurance company, the only question which arose before the Court was whether in a case where the claimant petitioner who claimed compensation under the M.V. Act for

personal injury suffered by him, died during pendency of the claim, not in consequence the injury suffered by him due to motor vehicle accident, but for some other cause, his successors/legal representatives continue with the claim case for compensation. This court decided the issue in the negative and held that in such cases the suit would stand abetted and the appellant would have no right to proceed. In the given case there is no challenge to the decision of the Tribunal that deceased who brought the claim at the Tribunal under Section 166 M.V. Act for personal injury suffered by him died in consequence of the injuries suffered by him in the accident. In these circumstances, the respondent insurer cannot derive any benefit from the said judgment of this High Court.

[14] We may now proceed to examine as to whether the compensation awarded by the Tribunal is just and appropriate. A duty is cast on every Tribunal to award a just and reasonable compensation in such cases by adopting equitable principles and reasonable approach for determination of compensation. In this regard, in case of **Yadava Kumar Vs. Divisional Manager, National Insurance Company Ltd. & Anr.** reported in **(2010) 10 SCC 341**, the Hon'ble Apex Court has held as under:

"15. It goes without saying that in matters of determination of compensation both the tribunal and the court are statutorily charged with a responsibility of fixing a "just compensation". It is obviously true that determination of a just compensation cannot be equated to a bonanza. At the same time the concept of "just compensation" obviously suggests application of fair and equitable principles and a reasonable approach on the part of the tribunals and courts. This reasonableness on the part of the tribunal and the court must be on a large peripheral field. Both the courts and the tribunals in the matter of this

exercise should be guided by principles of good conscience so that the ultimate result becomes just and equitable (see Helen C. Rebello Vs. Maharashtra SRTC AIR 1998 SC 3191)”

[15] At the time of his death, the appellant was a Tea stall owner and a Tribunal held that monthly income of a Tea stall owner would not be less than Rs.5,000/- when the deceased died. Tribunal therefore, assessed his annual income at Rs.60,000/- at the rate of Rs.5,000/- per month and by applying multiplier 13 Tribunal worked out the loss of dependency at Rs.7,80,000/-. From which $\frac{1}{3}$ rd was deducted for his personal and living expenses and the actual loss of dependency was worked out to be Rs.5,20,000/-. Approach of the Tribunal is not correct because, the mother, wife and two school going children were his dependant family members and none of them had any income. The whole family depended on the income of the deceased since they had no other source of income. Therefore, it was quite unlikely that the deceased would be able to run his family consisting of five members with a monthly income of Rs.5000/- only. Moreover, presumably, the monthly income of a person having a Tea stall at the road side would not be less than Rs.9000/-. Therefore, the Tribunal should have assessed the monthly income of the deceased at least Rs.9000/- in absence of any document adduced on behalf of the claimants with regard to the income of the deceased. Since the deceased was a self employed person and he was between the age of 40 to 50 years, an addition of 25% of his monthly income would be made towards future prospect in terms of the decision of the Apex Court in the case of ***National Insurance Company Limited Vrs. Pranay Sethi and others;*** reported in ***(2017) 16 SCC 680*** and MAC App. No.03/2020.

thus his monthly income is worked out at Rs.9000 X 25% = 9000 + 2250 = 11250/-. Since the deceased was 47 years old at the time of his death arising out of the accident, multiplier 13 would apply in terms of the decision of the Apex Court in case of **Sarla Verma**(Supra). Applying the multiplier 13, loss of dependency is worked out at Rs.11250 X 12 X 13 = Rs.17,55,000/-. $\frac{1}{4}$ th of the said amount i.e. Rs.4,38,750/-would be deducted towards personal and living expenses of the deceased in terms of the decision of the Apex Court in the case of **Sarla Verma**(Supra) because the number of dependent family members of the deceased was four. After such deduction the actual loss of dependency comes to Rs.17,55,000 - 4,38,750 = Rs.13,16,250/-.

[16] The Tribunal erroneously awarded compensation for loss of consortium only to the wife. Old mother of the deceased and his two minor children are also entitled to consortium at the rate of Rs.40,000/- per head. Therefore, the claimants would be entitled to consortium of an amount of Rs.40,000 X 4 = Rs.1,60,000/-. With this amount Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate would be added and the total compensation payable to the claimants would be as under:

Sl. No.	Heads	Amount
1.	Loss of dependency	Rs.13,16,250/-
2.	Loss of consortium	Rs. 1,60,000/-
3.	For funeral expenses	Rs. 15,000/-
4.	Loss of estate	Rs. 15,000/-
	Total :	Rs.15,06,250/-

[17] The said amount would carry 7% annual interest from the date of presentation of the claim till disbursement. The insurance company is directed to deposit the whole amount of compensation with the interest accrued thereon with the Registry of this Court within a period of 8 weeks from today. The claimants will be entitled to equal share of this compensation. The whole share of the two minor children of the deceased would be invested in a term deposit in a nationalised bank for a period until they attain majority. Monthly income generated from the said deposit would be spent for education and other needs of the children. The share of the mother of the deceased would also be invested in term deposit for a period of five years and the monthly income generated from such investment would be deposited in the individual bank account of the said claimant for her personal and living expenses. 50% of the share of the claimant wife would be released in her favour and rest 50% of the amount would be invested in a term deposit for five years in her name in any nationalised bank having the provision of monthly income. The monthly income generated from such investment would be transferred to her individual savings bank account. The amount already deposited by the insurance company shall be adjusted.

[18] In terms of the above, the appeal is disposed of. Pending application(s), if any, shall also stand disposed of.

Send down the L.C record.

JUDGE