

Tripura High Court

The General Manager vs Sri Abhishek Debbarma Son Of Sri ... on 4 May, 2022

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HIGH COURT OF TRIPURA  
AGARTALA

MAC App. No.22 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-01-X-1775  
(Tata ACE))

-----Petitioner(s)

Versus

1.Sri Abhishek Debbarma son of Sri Shanti Debbarma  
Resident of village - Ram Krishna Para P.O.  
Bodhjurnagar, PS - Lefunga, District - West Tripura

2.Sri Nani Gopal Das, son of Lt. Atul Chandra Das  
Resident of Badharghat, near Kalimata Sangha PS -  
Amtali, District -West Tripura, (Owner of TR-01-  
X1775(Tata ACE))

3.Smti Radha Rani Debbarma, wife of Sri Shanti  
Debbarma, Resident of village - Ram Krishna Para Near  
Ram Krishna Para J.B. School P.O. Bodhjurnagar, PS -  
Lefunga, District - West Tripura.

4.The Branch Manager, Reliance General Insurance  
Company Limited, Anil Plaza, 5th Floor, beside IDBI  
Building, G.S. Road, ABC, Guwahati, Assam (Insurer of  
Scotty bearing registration No. TR-01-X-6286-Honda  
Scotty).

5.The Branch Manager, The Reliance Insurance  
Company Limited, Netaji Choumuhani, Agartala, Opposite  
Big Bazar, PS- West Agartala, P.O. Agartala, District - West  
Tripura, Pin- 799001(Insurer of Scotty bearing registration  
No. TR.01-X-6286- Honda Scotty).

-----Respondent(s)

BEFORE HON'BLE MR. JUSTICE S.G.CHATTOPADHYAY For the Petitioner(s) : Mr. P.K.Ghosh,  
Adv. For the Respondent(s) : Mr. G.S.Das, Adv.

Date of Hearing : 27.04.2021  
Date of Judgment : 04.05.2022

Whether fit for reporting : Yes/No  
JUDGMENT&ORDER

[1] This is an appeal under Section 173(1) of

the Motor Vehicles Act, 1988 (the MV Act, hereunder) by the Insurance company against the award dated 03.02.2022 passed by the Motor Accidents Claims Tribunal (Court no.5), West Tripura, Agartala in T.S MAC 141 of 2018 whereby the learned Tribunal has awarded a sum of Rs.21,45,360/-(Rupees Twenty-one Lakh Forty-five thousand Three hundred and sixty) along with 8% annual interest thereon to claimant Abhishek Debbarma (Respondent No.1 herein) who has sustained permanent disability to the extent of 80% from the road traffic accident which occurred on MAC App.22 / 2022 25.08.2015 at Durga Chowdhury para under Bodhjung Nagar Police Station.

[2] The factual context of the case is as under:

Claimant petitioner Abhishek Debbarma (Respondent No.1) was going to Banikya Chowmuhani from Agartala at about 3.30 PM on 25.08.2015 on the 'Scooty' bearing registration No. TR-01-X-6286, which was being driven by his friend Manab Debbarma. Claimant was the pillion rider on the said vehicle along with Sahil Debbarma, brother of Manab Debbarma who was driving the 'Scooty'. When they reached Durga chowdhury para on the way to Banikya Chowmuhani, the offending vehicle bearing registration no.TR-01-X-1775(TATA ACE) hit their 'Scooty' from the opposite direction at an excessive speed. As a result, the claimant and another pillion rider Sahil Debbarma received multiple fractures. Manab Debbarma died at the spot and other two MAC App.22 / 2022 injured including the claimant were taken to AGMC and GBP hospital in a fire service vehicle. [3] At around 9.35 P.M on the same day Sahil Debbarma, an eye witness, lodged a written FIR with the Officer in charge of Bodhjung nagar P.S. alleging, inter alia, that while overtaking a school bus ahead of it, the offending vehicle hit the 'Scooty' face to face in which informant Sahil Debbarma was travelling as a pillion rider along with the claimant. The informant categorically stated in his FIR that the accident occurred as a result of rash and negligent driving of the offending vehicle.

[4] Based on the FIR, Bodhjungnagar P.S. case No.2015 BJN 023 under Sections 279,338,304A IPC and Sections 184 and 177 MV Act was registered and the case was taken up for investigation. On completion of investigation, the Investigating Officer submitted charge-sheet against accused Nanigopal Das, driver of MAC App.22 / 2022 the offending vehicle for commission of offence punishable under Sections 379,338 and 304A IPC. The investigation revealed that at the material time first informant Sahil Debbarma was travelling from Circuit House, Agartala to Banikya Chowmuhani on the 'Scooty' of his younger brother Manab Debbarma. Claimant was the friend of his brother Manab Debbarma. His brother Manab Debbarma was driving the 'Scooty' on which he and claimant Abhishek Debbarma were pillion riders. On the way the offending vehicle overtook the school bus of DONBOSCO school in a turning point and hit the 'Scooty'. As a result, Manab Debbarma who was driving the 'Scooty' died at the spot. Sahil Debbarma and claimant Abhishek Debbarma who were pillion riders received fatal injuries in different parts of their body. The driver of the DONBOSCO school bus identified the offending vehicle. Local people informed

Bodhjungnagar Fire Service station and the injured as MAC App.22 / 2022 well as the deceased driver of the 'Scooty' were immediately shifted to AGMC and GBP hospital in a Fire-Service vehicle. During investigation, charges for offence punishable under Sections 379, 338 and 304A IPC read with Section 184, 187 and 177 MV Act were proved against the owner driver of the offending vehicle for which charge-sheet was laid against him. [5] Abhishek Debbarma claimed compensation of a sum of Rs.26,80,000/- (Rupees Twenty-Six Lakh Eighty Thousand) by filing a petition under Section 166 of the MV Act at the MACT(Court No.5), West Tripura Agartala. He claimed that as a result of the accident he sustained permanent disability and became unable to carry out his occupation as a day labourer. Besides, he incurred a huge expenditure for treatment. In his petition the claimant impleaded the accused owner driver of the offending vehicle and the insurer of the offending vehicle as respondents. MAC App.22 / 2022 [6] After notice was served on the respondents, accused driver of the offending vehicle submitted a separate written statement claiming that he never drove his vehicle carelessly. Though he admitted the accident, he denied his liability in the said accident. [7] The SBI General Insurance company (the Appellant, herein) also filed a separate written statement contending that liability of the insurance company in paying compensation would arise only if the claimant succeeds in proving that the accident occurred due to rash and negligent driving of the offending vehicle and the said vehicle had valid documents and there was no breach of the policy of the insurance on the part of the owner of the offending vehicle. The appellant insurance company also pleaded at the Tribunal that claim of the petitioner was exorbitant and against the settled principles of law. MAC App.22 / 2022 [8] Smt. Radharani Debbarma, registered owner of the 'Scooty' in which the claimant was travelling also filed a separate written statement claiming that her 'Scooty' was duly registered with Reliance General Insurance Company Ltd. She claimed that the insurance policy was in operation on the date of the occurrence and liability of compensation, if any, would be borne by the insurer.

[9] In the written statement filed by the Reliance General Insurance Company (Respondent No.4) it was asserted in paragraph 12 of the written statement as under:

"12. That, with regard to the contention made by the claimant petitioner in Column no.22 the answering OP No.4 the Insurance Company want to state that the accident occurred solely due to the negligence of TATA Ace vehicle bearing Registration No.TR-01-X-1775, which came with high speed and dashed the Scooty. Hence, the insurer of vehicle No.TR-01-X-1775 is totally responsible to pay the compensation if any awarded and OP NO.4 is not at all responsible."

MAC App.22 / 2022 [10] During trial the tribunal framed the following issues:

- (i) Whether the claim petition is maintainable in its present form and nature
- (ii) Whether the claimant sustained injuries due to rash and negligent driving of the offending vehicle bearing registration No.TR-01-X-1775 and if so, whether he was entitled to compensation as prayed for.

(iii) Who shall be held liable to pay such compensation.

[11] In order to establish his claim, claimant examined himself as PW-1 and Dr. Dipti Bikash Roy who issued the disability certificate in favour of the claimant as PW-2. Apart from adducing the ocular testimony of these two witnesses, claimant produced his discharge certificate from hospital, USG report, CT Scan report, medical prescriptions and other medical documents, the disability certificate issued by the District Disability Medical Board, his voter ID card, the MAC App.22 / 2022 FIR, injury report and charge-sheet which were taken into evidence and marked as Exhibit 1-Exhibit 9. [12] On the side of the respondents accused driver was examined as OPW-1 and Dr. Dipti Bikash Roy as OPW-2. This apart, the insurance certificate of the offending vehicle, driving license of its driver and other documents of the vehicle were taken into evidence and marked as Exhibit A - Exhibit E. [13] On appreciation of evidence the Tribunal decided the first issue with regard to the maintainability of the petition in favour of the claimant. While dwelling on issue No.2 with regard to the entitlement of the claimant to compensation, Tribunal held that the accident occurred as a result of rash and negligent driving of the offending vehicle and the claimant sustained 80% permanent disability from the said accident and as such he was entitled to compensation.

MAC App.22 / 2022 [14] On the basis of the evidence adduced by the claimant, Tribunal held that the claimant was 15 years old at the time of occurrence and the Tribunal worked out his monthly income at Rs.6,400/-. Having appreciated the disability certificate dated 29.08.2018 [Exbt.7] issued by the District Disability Medical Board and the evidence adduced by Dr. Dipti Bikash Roy, one of the members of the said Board, Tribunal came to the conclusion that 80% Locomotor disability certified by the District Disability Medical Board actually amounted to 100% functional disability for a day labourer because the claimant suffered from stiffness of his right knee joint and ankle joint with shortening of his right leg to the extent of 4 inches with wasting of muscle and PW Dr. Dipti Bikash Roy apprised the court in his evidence that a person with such disability cannot perform any work as a day labourer and therefore, the functional disability in such case would be 100%.

MAC App.22 / 2022 [15] Since the claimant was below 40 years of age, and he was a self employed person Tribunal made an addition of 40% of the said monthly income of the claimant towards his future prospect and the total monthly income of the claimant was worked out to be  $6,400 + 2,560 = \text{Rs.}8,960/-$ . In view of his age, Tribunal applied multiplier 18 in terms of the judgment of the Apex Court in SARLA VERMA (SMT) AND OTHERS Versus DELHI TRANSPORT CORPORATION AND ANOTHER reported in (2009) 6 SCC 121 and his annual income was worked out to be  $8,960 \times 12 \times 18 = \text{Rs.}19,35,360/-$ . With this amount Tribunal added 20,000 for actual medical expenses incurred by the claimant. The claimant was further awarded Rs.50,000/- for pain and sufferings, Rs.50,000/- for future medical treatment and another sum of Rs.50,000/- for loss of expectation of life. Claimant was also awarded a further sum of Rs.40,000/- for loss of amenities and the Tribunal thus MAC App.22 / 2022 worked out the total compensation under various pecuniary and non pecuniary heads as under:

Sl. No.	Head	Amount
01	For loss of income	=Rs.19,35,360/-

02	For actual medical expenses	=Rs.20,000/-
03	For pain and sufferings	=Rs.50,000/-
04	For future medical treatment	=Rs.50,000/-
05	For loss of expectation of life	=Rs.50,000/-
06	For loss of amenities	=Rs.40,000/-
	Total amount of compensation	=Rs.21,45,360/-

8% annual interest was awarded on this amount.

[16] Tribunal also decided the 3rd issue in favour of the claimant and held that the appellant insurance company was liable to pay the compensation because the insurance policy of the offending vehicle was in operation on the date of the occurrence. Tribunal therefore, directed the appellant insurance company to pay the whole amount of compensation within 30 days along with 8% annual interest thereon. MAC App.22 / 2022 [17] Aggrieved with the award passed by the Tribunal, the insurance company has challenged the said award mainly on the following grounds:

(i) The claimant has failed to establish that the accident occurred due to rash and negligent driving of the offending vehicle

(ii) Tribunal reached an erroneous conclusion that the accident occurred due to rash and negligent driving of the offending vehicle merely on the basis of charge sheet submitted by the Investigating agency.

(iii) Tribunal has worked out and awarded an exorbitant amount of compensation against the settled principles.

(iv) The Tribunal did not take into consideration the fact that the offending vehicle did not have valid documents on the date of the accident.

(v) Tribunal erred in holding that claimant used to earn money only at the age of 15.

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(vi) Tribunal failed to appreciate the fact that the charge of rash and negligent driving could not be established in the course of the criminal trial against the accused driver as a result of which he was acquitted of the criminal case.

(vii) Tribunal failed to appreciate that deceased driver of the 'Scooty' had taken 02 pillion riders on his 'Scooty' including the claimant and his brother Sahil Debbarma which amounted to violation of

the policy condition of the 'Scooty' and the accident occurred due to such negligence of the driver of the 'Scooty' who died at the spot in the said accident.

(viii) The District Disability Medical Board did not assess the disability of the claimant properly. [18] Appearing for the appellant insurance company, Mr. P.K.Ghosh, learned counsel has vehemently argued that the Tribunal has awarded an exorbitant amount of compensation without taking into MAC App.22 / 2022 consideration the settled parameters for assessment of compensation in such cases. The Counsel has argued that no compensation can be awarded in a case under Section 166 MV Act unless rash and negligent driving is proved against the driver of the offending vehicle. According to Mr. Ghosh, learned counsel, in the criminal trial held against the driver of the offending vehicle [Respondent No.2 herein] the driver was exonerated from the charges of rash and negligent driving and therefore, the Tribunal has erroneously held that the said accident occurred due to rash and negligent driving. Counsel has further argued that Tribunal should not have assessed the monthly income of the claimant at Rs.6,400/- because at the time of the accident he was only 15 years of age and therefore, he did not have any earning capacity at this tender age of him. Counsel has also argued that the 'Scooty' had 02 pillion riders in violation of the Act and the policy condition of the 'Scooty' and present MAC App.22 / 2022 claimant being one of those pillion riders of the vehicle is not entitled to any compensation on the grounds aforesaid. Mr.Ghosh, learned counsel of the insurance company has urged this court for allowing the appeal. [19] Learned counsel appearing for the respondent claimant on the other hand has argued that the standard of proof required in a criminal case is different from the standard of proof required in deciding a claim petition. Counsel has argued that the claimant has adduced the evidence of eye witness to prove that the accident occurred when the offending vehicle was overtaking the school bus at a turning point of the road which clearly proves that careless driving of the offending vehicle was responsible for the accident.

[20] With regard to the income of the claimant, learned counsel has argued that claimant had taken up the occupation of a day labourer under duress at a MAC App.22 / 2022 very tender age of him to maintain his family consisting of his parents and younger brother and sister. Counsel contended that the Tribunal rightly assessed his monthly income at Rs.6,400/- and granted a reasonable sum of compensation in terms of settled principles. Counsel therefore, urged the court to uphold the award of the Tribunal by setting aside the appeal.

[21] Admittedly the accident occurred on 25.08.2015 in which the claimant received fatal injuries. Undisputedly, Manab Debbarma was driving the 'Scooty' in which the claimant was travelling as a pillion rider. Sahil Debbarma, brother of said Manab Debbarma lodged the FIR on the very day of the accident and the investigation of the case was also taken up instantly. During investigation the involvement of the offending vehicle was discovered and evidence collected by the investigating agency supported the charge of rash and negligent driving MAC App.22 / 2022 against the accused driver of the offending vehicle. The insurance policy of the offending vehicle was produced during trial of the case at the Tribunal which was taken into evidence and marked as Exhibit-A1. The said insurance policy would indicate that the offending vehicle bearing registration No. TR-01-X- 1775 was registered with the appellant insurance company and the policy was in operation from 30.08.2014 to 29.08.2015. As stated, the accident occurred on 25.08.2015. Therefore, the policy was

in operation on the date of the accident. Claimant was no doubt a 3rd party and under the said policy, legal liability to 3rd party was covered.

[22] As per the eye witness the offending vehicle hit the 'Scooty' when the vehicle was overtaking a school bus on the way. As a result of which the driver of the offending vehicle lost control and dashed against the 'Scooty' which caused the death of Manab Debbarma, driver of the 'Scooty' and injuries to the MAC App.22 / 2022 claimant and the other pillion rider. In view of such evidence Tribunal rightly held that the accident occurred due to rash and negligent driving of the offending vehicle.

[23] The disability certificate dated 29.08.2018 [Exbt.-7] supported by the oral evidence of Dr.Dipti Bikash Roy,PW-2 has clearly established that the claimant suffered from 80% disability which amounted to 100% functional disability. Dr. Dipti Bikash Roy [PW-2] categorically stated that it would be impossible for a person to carry out occupation of a day labourer with such kind of disability. His evidence could not be impeached in cross examination. Therefore, there is no reason to interfere with the findings of the Tribunal on this issue.

[24] The argument of the counsel of the insurance company that the claimant being 15 years of age was unable to earn is totally untenable. The Tribunal rightly assessed his monthly income and by MAC App.22 / 2022 application of appropriate multiplier worked out his loss of annual income.

[25] However, this court is of the view that the rate of interest awarded by the Tribunal should be reduced from 8% to 7% and instead of awarding Rs.1,40,000/- separately for pain, sufferings, trauma, loss of amenities and for loss of expectation of life, it would be appropriate to award a sum of Rs.1,00,000/- for pain and sufferings and loss of amenities. Accordingly, the award made by the Tribunal is reassessed by this court as under:

Sl.No.	Head	Amount
01	For loss of annual income	=Rs.19,35,360/-
02	For medical expenses	=Rs.20,000/-
03	For future medical expenses	=Rs.50,000/-
04	For pain, sufferings and loss of amenities	=Rs.1,00,000/-
	Total amount of compensation	=Rs.21,05,360/-

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[26] The claimant shall be entitled to annual

interest @ 7% on this amount of compensation from the date of filing of the claim petition at the Tribunal till disbursement of compensation.

[27] The appellant insurance company is directed to deposit the whole amount of compensation along with interest thereon within 06 weeks from today. The amount already paid by the insurance company including the statutory deposit shall be adjusted to the said amount of compensation. On deposit of the compensation by the insurance company, 70% of the amount shall be invested in a term deposit in the name of the claimant in a nationalized bank for a period of 5 years and rest 30% of the amount shall be disbursed in his favour. Monthly interest generated from the term deposit shall be released in favour of the claimant by transferring the same to his individual savings bank account.

MAC App.22 / 2022 [28] 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.22 / 2022