

HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A
MAC. App. No.70 of 2022

1. Smti. Sumitra Debbarma age-34, daughter of Surendra Debbarma, un-married young sister of deceased Babul Debbarma.
2. Smti. Usha Rani Debbarma age-52, wife of Surendra Debbarma.
3. Sri Surendra Debbarma age-58, son of late Sachindra Debbarma.

All are residents of Village North Charilam, P.S. Bishalgarh, District: Sepahijala Tripura, at present residing at Old Jail Road, C/o Sri Abhiram Debbarma, Banamalipur, P.S. East Agartala, District: West Tripura.

.....Claimant petitioners-appellants

-VERSUS-

1. Sri Sushanta Debbarma, son of Biswanath Debbarma, village Madhabbari, Majlishpur, P.S. Ranirbazar, District: West Tripura.
[Owner of TR-01-Y-9767, Scooty]
2. The Divisional Manager, National Insurance Company Ltd., Akhaura Road, P.S. West Agartala, District: West Tripura.
[Insurer of TR-01W-0439 Maruti]

.....-Respondents

B_E_F_O_R_E
HON'BLE MR. JUSTICE T. AMARNATH GOUD

For Appellant(s)	:	Mr. D. Deb, Advocate.
For Respondent(s)	:	Mr. S. Lodh, Advocate.
		Ms. A. Saha, Advocate.
Whether fit for reporting	:	<i>YES/NO</i>

Judgment and order dated 2nd May, 2023

JUDGMENT & ORDER [ORAL]

Heard Mr. D. Deb, learned counsel appearing for the appellants.
Also heard Mr. S. Lodh, learned counsel assisted by Ms. A. Saha, learned counsel appearing for the respondents.

[2] This appeal has been filed under Section-173 of the Motor Vehicles Act, 1988 against the judgment and award dated 25.05.2022 passed by the learned Member, Motor Accident Claims Tribunal, Court No.2, West Tripura, Agartala in connection with Case No. T.S. (MAC) 170 of 2019 for enhancing the awarded amount from Rs.58,64,688/- to Rs.1,05,84,000/-.

[3] Brief facts, leading to this case is that on 12.08.2019 at about 3 p.m. deceased went along with one Sushanta Debbarma at Khumlung by riding a Scooty (herein-after called the offending vehicle) for attending a food festival and at night they were proceeding from Khumlung towards Agartala by the said scooty and the same was ridden by said Sushanta Debbarma and deceased was boarding on it as a pillion rider and when the said vehicle reached at Mohanpur, Acharja Tilla on A.A.Road near petrol pump at that time a vehicle was coming from opposite direction with a focus light without shed and the said light reflected heavily on the eyes of Sushanta Debbarma, as a result their vehicle fell on a hole and both of them sustained injuries and deceased received injuries on his back side of his head. Local people shifted them to Jirania Hospital but considering the seriousness of injury deceased Babul Debbarma was referred to GBP Hospital where he succumbed to his injuries on the next day morning. Post Mortem examination was also done over the body of deceased. In this connection Ranirbazar PS Case No. 86 of 2019 u/s 279/304(A) of IPC was also registered. Claimant petitioners further stated in their claim petition that the accident occurred due to rash and negligent driving on the part of the rider of the offending vehicle.

[4] After lodging the claim petition, it was registered vide case No. T.S (MAC) 170 of 2019 and notices had been served upon the opposite parties of the case. The OP No.1 owner of the offending vehicle has contested the suit by filing written statement and denied all the allegations of the claimants and also stated that on the date and time of accident the involved vehicle was duly insured with the opposite party No.2.

[5] The learned Tribunal after hearing the parties and on perusal of the material evidence on record has observed as under:

“In the result, claim is awarded in following terms:-

(i) Claimant petitioners are entitled to get the award of Rs.58,64,688/- (rupees fifty-eight lacs sixty-four thousand six hundred eighty-eight) only along with 9% simple interest per annum from the date of registration of claim i.e, w.e.f. 30.08.2019 till the date of realization thereof.

The claimant petitioner Nos.1, 2 and 3 shall have equal share on the amount.

50% of the share of the claimant petitioner Nos.1, 2 and 3 in the award be invested by purchasing separate Fixed Deposit certificate from any Nationalized Bank at least for the next 5 years and no loan or advance or pre-mature withdrawal shall be allowed without prior sanction of this Tribunal.

Remaining amount of shares of the claimant petitioner Nos. 1, 2 and 3 shall be credited directly to their individual bank account.

The OP No.2, i.e., the National Insurance Company Limited shall deposit the awarded amount along with interest thereon within one month to this Tribunal.”

[6] Being aggrieved by and dissatisfied with the judgment and award passed by the learned Member, Motor Accident Claims Tribunal, Court No.2, West Tripura, Agartala in connection with Case No. T.S. (MAC) 170 of 2019, the claimant-petitioners, the appellants herein has preferred the present appeal.

[7] Mr. D. Deb, learned counsel appearing for the appellants has submitted that the learned tribunal has failed to appreciate the evidence on record and arrived at a erroneous decision granting compensation in the lower side. As per principle laid down by the Apex Court that, if the opposite parties did not deny any of the evidences of the claimant petitioners, specifically by adducing evidence in its support, then, the claim of the claimant petitioners has to be considered in this respect. The Hon'ble Apex Court observed that in a claim proceeding claimants are nearly to established their case on the touch stone of preponderance of probability and standard of proof beyond reasonable consideration and the tribunal while dealing with Motor Accident Claims cases should consider the claim, but unfortunately, the learned Tribunal failed to appreciate the above observation and deducted 50% of the total earning of the

deceased as personal and living expenses of the deceased, which is against the principle of law.

[8] The learned tribunal without any reason deducted 50% monthly earning of the deceased as his personal expenses though the deceased at the time of his death left behind his unmarried dependent sister and his parents. The deceased during his life time was maintaining educational cost of his sister and for the sudden accidental death of the deceased, claimant petitioner No.1 was compelled to stop her studies and she became shelter-less. The parents of the deceased in their middle age lost their hope of future because they were dependent upon the deceased. The learned tribunal ignoring all these circumstances failed to provide just compensation in favour of the claimants.

[9] He has further averred that the learned tribunal very illegally found that as Babul Debbarma i.e. deceased was a bachelor at the time of death so deduction towards personal and living expenses would be 50% which has no basis. In the family of the deceased Babul Debbarma there were 4 members so deduction would be 25% for his personal expenses. The learned tribunal ought to have considered that the appellants are the legal representative of the deceased person and they were totally depended upon the income of the deceased. Not only these in the claim petition, it was clearly stated that the deceased was providing Rs.40,000/- to his mother per month for maintaining their family. Out of his total income of Rs.50,000/- per month. From the evidence it is clear that the deceased during his life time used 20% of his income for his personal expenses, but, the learned tribunal failed to appreciate the evidence on record.

[10] In view of above, let us discuss the core issue once again. There is no dispute between the parties as to the death of deceased. According to the claimant petitioners on the relevant date and time deceased was returning from Khumlung by riding the offending vehicle as a pillion rider and at Mohanpur it met with an accident as a result deceased succumbed to his injuries in the GBP Hospital on the next day morning. The Post Mortem Report [Ext.1(vi)] suggests the death of deceased was caused by the impact of hard and blunt force. It has

been established beyond any shadow of doubt that the death of deceased was caused due to rash and negligent driving of the driver of offending vehicle. Therefore, the claimant petitioners being the mother, sister and father of the deceased are entitled to have the compensation under the beneficial legislation, namely the M.V. Act.

[11] In the light of the above, this Court is of the view that the learned Court below has assessed the compensation in a reasonable and justifiable way. But towards the head of love and affection, the finding of the learned Court below was silent, which needs to be interfered with. Since, Hon'ble Apex Court has settled this issue by quantifying compensation under the head of loss of care and dui-dance/loss of love and affection under the head of loss of consortium but, in the present case the learned tribunal has awarded nothing of this sort as compensation for the parents under the head of love and affection. As such, the parents of the deceased would be entitled Rs.40,000/- each under the head of loss of love and affection which comes to Rs. 80,000/- altogether.

[12] Accordingly, only under the heads of love and affection the amount of Rs.80,000/- for the parents would be added to the total compensation as assessed by the learned tribunal and rest of the award shall remain unchanged. In view of above discussion and observation, the present appeal stands allowed and disposed of to the extent as indicated above. The insurance company shall deposit the awarded amount within one month from the date of receipt of the copy of this order and on such deposit; the claimants are at liberty to withdraw the same unconditionally. As a sequel, miscellaneous applications pending, if any, shall stand closed. Draw the decree accordingly and thereafter, send down the LCRs.

JUDGE

A.Ghash