

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

**MAC App. No. 73 of 2007**

**Appellants:**

- 1. Smt. Arati Das,**  
W/o. Late Nripendra Kumar Das.
- 2. Smt. Ruma Mitra (Das)**  
W/o. Late Mihir Tilak Das.
- 3. Shri Susanta Das (minor)**  
S/o. Late Mihir Tilak Das.  
All are resident of Naraifung, P.O- Bagafa,  
H.Q, P.S- Santir Bazar, District- South Tripura.  
Appellant No. 3 being a minor is being  
represented by the Appellant No. 2, mother  
and natural guardian, next friend.

**By Advocate :**

Mr. M. K. Roy, Adv.

**Respondents :**

- 1. Smt. Sabita Rani Bagchi,**  
W/o. Shri Ramatosh Bagchi of Santirbazar,  
Near Fire Service, P.S- Santirbazar, District-  
South Tripura. (owner of the vehicle No. TRL  
1732, Truck)
- 2. The Branch Manager,**  
The New India Assurance Co. Ltd., Mantri Bari  
Road, Agartala, P.S-West Agartala, District-  
West Tripura. (Insurer of TRL-1732, Truck)

**By Advocate :**

Mr. A.G. Choudhury, Adv.

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

Date of hearing &  
Judgment & Order : **29<sup>th</sup> November, 2013.**

Whether fit for reporting :

Yes	No
	✓

### **JUDGMENT & ORDER (ORAL)**

This appeal by the claimants is directed against the award dated 17.04.2007 passed by the learned Motor Accident Claims Tribunal, South Tripura, Udaipur in case No. T.S(MAC) 180 of 2006 whereby the Tribunal awarded compensation of Rs.4,87,000/- in favour of the claimants.

**[2]** The only issue raised in the appeal is that the learned Tribunal erred in assessing the income of the deceased at only Rs.4000/- per month.

**[3]** It is argued on behalf of the claimants that the deceased was running a grocery shop, working as a sub-contractor and also tilling his agriculture land and his income was Rs.10,500/- per month. It has also been urged that the second witness i.e. the brother of the deceased was never cross-examined.

**[4]** On going through the record, I find that though two affidavits in examination-in-chief were filed there is no material on record to show that other than the claimant Smt. Arati Das, the second witness was ever present in Court. There is nothing on record to show that the second witness was tendered for cross-examination. Therefore, even his examination-in-chief cannot be read in evidence. The claimants led no cogent evidence whatsoever to prove the income of the deceased or to prove what was his actual occupation. He could not have been running a grocery shop, working as a sub-contractor and tilling agriculture land on at the same time. This is humanly impossible. Even otherwise I find that there are no details as to with whom the deceased was working as a sub-contractor, no details of the works

done by him as sub-contractor. No document has been filed by the claimants to show what was the land owned by him.

**[5]** It is true that in motor accident claim cases the strict rules of evidence may not apply, but even so a duty is cast upon the claimant to lead some reliable evidence to prove what was the income of the deceased. The mere *ipse dixit* of the claimants cannot be accepted at its face value.

**[6]** Having held so, keeping in view the fact that the deceased was a graduate and appears to have been running a grocery shop, I am of the considered view that his income should have been assessed at Rs.5000/- per month and not Rs.4000/- per month. If the income is assessed at Rs.5000/- per month it amounts to Rs.60,000/- per year and the multiplier in case of a person aged 41 to 45 is 14 as per the principles laid in ***Sarla Verma's*** case. Therefore, the total loss of income works out to Rs.8,40,000/-, out of which  $\frac{1}{3}$ rd i.e. Rs.2,80,000/- has to be deducted for the personal expenses of the deceased and therefore, the compensation on account of loss of dependency work out to Rs.5,60,000/-. In addition thereto, the widow is entitled to Rs.10,000/- for loss of consortium. The claimants are also entitled to Rs.10,000/- for funeral expenses and Rs.10,000/- for conventional damage i.e. Rs.5,90,000/-.

**[7]** In view of the above discussions, the appeal is partly allowed and the award is enhanced from Rs.4,87,000/- to Rs.5,90,000/-. The insurance company has already paid the amount awarded by the learned Tribunal. It is therefore, directed to deposit the enhanced amount of Rs.1,03,000/- along with interest @ 6% per annum from the date of filing of

the claim petition till deposit of the amount in the Registry of this Court within 12(twelve) weeks from today. The entire enhanced amount shall only be paid to the widow, Smt. Ruma Mitra(Das).

**[8]** The appeal is disposed of with the aforesaid terms. No order as to costs.

Send down the LCRs forthwith.

**CHIEF JUSTICE**

*d.de.*