

IN THE HIGH COURT OF TRIPURA
AGARTALA

MAC App. No.64 of 2014

New India Assurance Company Ltd.,
Agartala Division, Mantribari Road, Agartala,
represented by its Deputy Manager
(Insurer of the Bus No.TR-01-1365)

..... Appellant

– Vs –

- 1. Sri Pulin Shil Sharma,
son of late Ramesh Shil Sharma
- 2. Smt. Madhuri Shil Sharma,
wife of Sri Pulin Shil Sharma
- 3. Sri Prasenjit Shil Sharma,
son of Sri Pulin Shil Sharma
 - being minor is represented by his natural guardian,
the respondent No.2
 - all are residents of village Kalachara,
P.O. & P.S. Manu Bazar, Sabroom, District : South Tripura
presently residing at village Hapania, P.O. & P.S. Amtali,
District : West Tripura

.....Claimant-respondents

- 4. Sri Sujit Das,
son of Nilmohan Das,
resident of Kamalnagar, P.O. Tutabari,
P.S. Kalyanpur, District : Khowai, Tripura
(Owner of the Bus No.TR-01-1365)

.....Owner-respondent

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the appellant	:	Mr. A. Gon Choudhury, Advocate				
For the respondents No.1-3	:	Mr. P.S. Roy, Advocate				
Date of hearing	:	18.11.2016				
Date of judgment & order	:	30.11.2016				
Whether fit for reporting	:	<table border="1"><tbody><tr><td>Yes</td><td>No</td></tr><tr><td></td><td>√</td></tr></tbody></table>	Yes	No		√
Yes	No					
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JUDGMENT & ORDER (ORAL)

This is an appeal under Section 173 of the Motor Vehicles Act by the New India Assurance Company Ltd., the insurer of the offending vehicle bearing registration No.TR-01-1365 [Bus] owned by the respondent No.4.

2. The facts which are not in dispute in this appeal are that, one Rajib Shil Sharma, now deceased, boarded the Bus bearing registration No.TR-01-1365 from Teliamura with a view to reach Atharamura near Bishwakarma Mandir at about 8.30am. For rash and negligent driving, the said Bus met an accident and Rajib Shil Sharma sustained severe injuries on his person. The injured was shifted to the Teliamura hospital and he was referred to the GBP hospital at Agartala, but on that very night he succumbed to the injuries. According to the claimant-respondents No.1 to 3, at the time of his death he was aged about 25 years and his monthly income was ₹9,000 per month from his engagement. The said accident has been investigated by the police under the Mungiakami P.S. Case No.26/2012 under Section 279/338/304A of the IPC.

3. The Tribunal, after recording the evidence, both oral and documentary, has observed as under :

"No evidence is adduced by the O.Ps to contradict the statement of the petitioner as well as the documentary evidence. It is therefore, established that Rajib Shil Sharma died in a road traffic accident occurred on 25.11.2012 at Mungiakami due to rash and negligent driving of the Bus vehicle bearing registration No.TR-01-1365."

Thereafter, the income of the deceased has been determined at ₹7,500 against ₹9,000 per month as claimed by the claimant-respondents. Following the principles as laid down in **Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr.**, reported in **(2009) 6 SCC 121**, the compensation was summed up at ₹16,73,000 in the manner as provided in the table hereunder :

Sl. No.	Heads	Calculation
(i)	Income	Rs.7,500/-
(ii)	50% (i) above to be added as future prospects.	Rs.7,500/-+ Rs.3,700/- = Rs.11,250/-
(iii)	1/3 rd of (ii) deducted as personal expenses of the deceased since he died bachelor leaving the parents and minor brother who were dependent on the income of deceased.	Rs.7,500/-
(iv)	Compensation-applied multiplier 18	Rs.7,500/- X 12 X 18 = Rs.16,20,000/-
(v)	Pain loss and sufferings	Rs.25,000/-
(vi)	Funeral expenses	Rs.25,000/-
(vii)	Attendant charge and transportation expenses	Rs.3,000/-
	Total compensation awarded	Rs.16,73,000/-

4. The appellant-insurer has been directed to pay the said amount to the claimant-respondents with interest @ 8% per annum from the date of institution of the claim petition till the payment is made. It has been further directed that the said award shall be satisfied within a period of 2(two) months from the date of the award, else 10% interest per annum shall be borne by the appellant-insurer till the payment is made.

5. The appellant-insurer being aggrieved by the said judgment dated 21.03.2014 as delivered in Title Suit (MAC) No.19/2013, has preferred this appeal on the grounds, viz.

- (i) the determination of income of the deceased is based on no evidence and the said determination is entirely arbitrary;
- (ii) since the deceased was bachelor, the Tribunal ought to have deducted 50% as the personal expenses in terms of Sarala Verma (supra).

6. Mr. Gon Choudhury, learned counsel appearing for the appellant has submitted that though the claimant-respondents have asserted that the deceased was working with the Asian Oil Field Service Ltd., but no documentary evidence in support of his income has been adduced to establish that he was getting a sum of ₹9,000 per month. Further, Mr. Gon Choudhury, learned counsel has stated that, in Sarala Verma (supra), it has been clearly held that, where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. As regards, the bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent/s and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be

considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependent on the father [see paragraph 31].

7. From the other side, Mr. P.S. Roy, learned counsel appearing for the claimant-respondents has submitted that Sarala Verma (supra) has also observed that such principle is subject to proof. Unless it is proved that the father or the siblings were dependant on the income of the bachelor, 50% shall be deducted for personal expenses from the income of the deceased. Mr. Roy, learned counsel has relied on another decision of the apex court in **Ashvinbhai Jayantilal Modi Vs. Ramkaran Ramchandra Sharma & Anr.**, reported in **2014 ACJ 2648**, where the apex court in the case of bachelor approved the deduction of one third as personal expenses.

8. Except the claimant-respondent No.1, Pulin Shil Sharma (PW.1), nobody has turned up as the witness. PW.1 has stated that, his son was working with Asian Oil Field Service Ltd. and earning ₹9,000 per month. According to PW.1, his son was the only earning member in the family and the whole family was dependent on his income.

9. Regarding the younger brother of the deceased there is no statement in the said testimony. In the cross-examination, he has admitted that the deceased was a bachelor and he could not submit any document as to the salary of the deceased at ₹9,000 per month.

Even if it is believed that the entire family was dependant on the income of the deceased it cannot be held that the dependency would continue in future also inasmuch as PW.1 himself has stated that he was aged about 50 years. The claimant-respondents have failed to adduce any cogent evidence in support of the income of the deceased. Even there is no proof that the deceased was serving as an employee in the Asian Oil Field Service Ltd.

10. Having scrutinised the records and due regard to the submissions made by the learned counsel for the parties, this court is of the view that the income of the deceased is to be assessed at ₹6,000 per month. Moreover, in view of the principle as clearly laid down in Sarala Verma (supra), 50% is required to be deducted from his income for having the just compensation within the ambit of Section 168 of the Motor Vehicles Act. As a result, the compensation requires to be re-assessed in the following manner:

Sl. No.	Heads	Calculation
(i)	Income	₹6,000
(ii)	50% (i) above to be added as future prospects.	₹6,000 + ₹3,000 = ₹9,000
(iii)	50% deducted as personal expenses of the deceased since he died bachelor	₹4,500
(iv)	Loss of dependency on applying the multiplier '18'	₹4,500 X 12 X 18 = Rs.9,72,000
(v)	Loss of love and affection	₹1,00,000
(vi)	Loss of consortium	₹1,00,000
(vii)	Funeral expenses	₹25,000
(viii)	Attendant charge and transportation expenses	₹10,000
	Total compensation awarded	₹12,07,000 (rupees twelve lakh seven thousand)

11. The appellant shall deposit the entire awarded sum in the Tribunal within a period of 2(two) months from today on deducting the amount, if any, as already paid. The said amount shall carry interest @ 9% per annum from 04.01.2013 i.e. the date of filing the claim petition till the money is deposited in the Tribunal. This court is also of the view that the Tribunal does not have any authority to impose any penal interest within the ambit of Section 171 of the Motor Vehicles Act and accordingly the penal interest @10% per annum for failure of making the payment within the stipulated time stands quashed. If the amount is deposited, the disbursement shall be made in the manner as provided in the impugned judgment. But ₹50,000 each would be separately counted for the claimant-respondents No.1 and 3 for loss of love and affection and ₹1,00,000 shall be separately accounted for the claimant-respondent No.2. Thereafter, each of the claimant-respondents shall get equal share of the award. Finally, the amount for loss of love and affection or consortium, as the case may be, shall be added to their respective shares. For purpose of avoiding any confusion, the said direction of the Tribunal is extracted hereunder :

"The petitioner No.1 and petitioner No.2 are also directed to open an individual bank account with any nationalized bank and shall submit a photocopy of the passbook duly certified by the banker for depositing 50% of the amount of their share directly from the Court to the individual bank account of the petitioners No.1 and 2. The rest 50% of their share of compensation, shall be kept in a fixed deposit scheme with any nationalized bank for a period of 5 years in the name of the petitioner No.1 and petitioner No.2. No loan shall be allowed to the petitioner Nos.1 and 2 against the said fixed deposit amount and the petitioner Nos.1 and 2 are not allowed to any premature withdrawal of the said amount without the permission of this Tribunal. However, petitioner Nos.1 and 2 are at liberty to

withdraw the monthly interest accrued to the said fixed deposit amount.

The entire share of compensation of the petitioner No.3, who is minor shall be invested in a fixed deposit scheme of any nationalized bank for a period till the minor attains majority and also for further five years after attaining his majority. No loan or premature withdrawal of the said amount shall be allowed. However, petitioner No.1, being the natural guardian of the minor is at liberty to withdraw the monthly interest accrued on the said fixed deposit amount for utilizing the same for welfare and education of the minor petitioner No.3."

12. In view of what has been held hereinabove, the appeal is allowed to the extent as indicated above.

Send down the LCRs forthwith.

JUDGE

ROY