

**HIGH COURT OF TRIPURA
AGARTALA**

MAC APP No.23 of 2017

The New India Assurance Company Ltd.,
Divisional Office, 4, Mantribari Road,
represented by Divisional Manager,
P.S. West Agartala, District: West Tripura,
Insurer of the vehicle No.TR-01-A-4445 [auto rickshaw]

-----Appellant(s)

Versus

1. Smt. Jharna Rani Das,
wife of late Parimal Chandra Das,
resident of village: Santanagar,
Siddhi Ashram,
District: West Tripura

2. Sri Babul Banik,
Owner of the vehicle bearing Registration
No.TR-01A-4445 [auto rickshaw]

3. Smt. Sita Rani Das,
wife of Sr. Chhaya Ranjan Das
village: Ishanpur, P.O. Ishanpur,
P.S. Sidhai, District: West Tripura

----- Respondent(s)

For Appellant(s) : Ms. S. Deb Gupta, Adv.

For Respondent(s) : Mr. A. Nandi, Adv.

Whether fit for
Reporting : YES

HON'BLE MR. JUSTICE S. TALAPATRA

Judgment & Order

31/07/2018

Heard Ms. S. Deb Gupta, learned counsel appearing for
the appellant, New India Assurance Company Ltd. as well as
Mr. A. Nandi, learned counsel appearing for the respondent

No.1, the only surviving dependent of the victim inasmuch as Mr. Nandi, learned counsel has submitted that the respondent No.3 Smt. Sita Rani Das has expired in the pendency. Be that as it may, the report of the death was not formally submitted before this court, but submission of Mr. Nandi, learned counsel is taken note of.

02. This is an appeal under Section 173(1) of the Motor Vehicles Act by the insurer of the vehicle No.TR-01-A-4445 [Auto Rickshaw], New India Assurance Company Limited from the judgment and award dated 21.11.2016 delivered in TS (MAC) No.292/08 by the Motor Accident Claims Tribunal, No.3, West Tripura, Agartala. This appeal has a chequered history. Once the claim petition filed by the respondent No.1 was dismissed as the tribunal was not satisfied with the evidence that the death of the victim namely Parimal Das was from involvement of the vehicle bearing No. TR-01-A-4445 [auto rickshaw] owned by the respondent No.2 herein.

03. Being aggrieved by the said decision dated 21.11.2016 delivered in TS(MAC) No.298 of 2008, the respondent No.1 filed an appeal under Section 173(1) of the Motor Vehicles Act in this court being MAC APP No.77 of 2011. The said appeal was allowed and disposed by the judgment and order dated 30.11.2015 by affording a further

opportunity to the claimant-respondents by observing as under:

"In view of the above discussions, the award of the learned Tribunal is set aside. The matter is remanded to the learned Tribunal to decide the issue afresh. The learned Tribunal while deciding the issue of negligence shall only rely upon eye witnesses because the petitioner has clearly stated that she was not present at the spot and as already stated hereinabove the names of the eye witnesses must find mention in the contemporaneous record either of the first police investigation report or the second investigation report. Even if they are found in the second investigation report the insurance company and the owner of the vehicle will have full opportunity to cross examine the said witnesses. The parties who are present are directed to appear before the learned Tribunal on 20th January, 2016. Thereafter the learned Tribunal shall issue notice to the owner-cum-driver of the auto rickshaw and an attempt shall be made to complete the service by 31st March, 2016. Thereafter two opportunities shall be given to the petitioner to lead her evidence in the month April, 2016 or May, 2016. It is made clear that the petitioner will not be entitled to more than two opportunities because she has already been given sufficient opportunity by the trial Court and if she does not lead evidence then the matter shall be decided on merits without considering her evidence. In case she leads evidence then the insurance company and the owner shall be given three opportunities in the months of June, July and August, 2016 to lead evidence. Arguments should be MAC App. No. 77 of 2011 Page 6 of 6 6 heard in the month of September/October, 2016 and the matter be disposed of by 30th November, 2016."

04. In terms thereof, the appellant was given further opportunity by the tribunal when the matter was pleaded before on remand. The claimant-respondent No.1 examined two witnesses viz. herself being PW-1 and one Bimal Chandra Dey as PW-2. Apart that, the respondent No.1 introduced the police report [Exbt.1 series], the salary certificate [Exbt.2], the death certificate of the deceased, Parimal Das [Exbt.3] and voter identity card [Exbt.4] in the evidence. Even the respondent No.2 examined himself as OPW-1. At his instance some documents relating to the ownership of the vehicle and copy of the driving license etc. were introduced in the evidence.

05. After recording the evidence, the tribunal has taken a holistic view of the matter and observed that the respondent No.1 has established her case on the touchstone of the preponderances of the probability. Even a decision of the Delhi High Court in **National Insurance Company Limited vs. Pushpa Rana and Ors.** reported in **2009 ACJ 287** was relied while assessing the probative value of the chargesheet. In **Pushpa Rana** (supra), Delhi High Court has observed that where the claimants filed either the certified copy showing the completion of investigation by the police or issuance of the charge sheet u/s 279/304-A IPC or the certified copy of FIR or the recovery of mechanical inspection report of the offending vehicle, then these documents are sufficient proof to reach a conclusion that the driver was negligent. Finally, the compensation to the extent of Rs.21,572/- was assessed and directed to be paid with interest @ 7% per annum from the date of institution of the claim till the payment is made.

06. Ms. S. Deb Gupta, learned counsel appearing for the appellant has strenuously argued that it is apparent on the face of the record that there is a collusion between the claimant respondent No.1 and the respondent No.2, owner of the offending vehicle. For this purpose, she has referred a passage from para-7 of the written objection filed by the respondent No.2 as the opposite party No.1 in the tribunal. For making a definite reference to those averments, the

relevant part from para-7 of the said written objection is extracted hereunder:

"The answering opposite party do not have any idea or knowledge whether any accident have occurred as on last 4.4.2007 at about 4.00-4.30 PM occasioned near Dropgate over Agartala-Bishalgarh road. It is further submitted that the opposite party No.1 is the owner driver. So he should have certain knowledge of involvement of his vehicle into any accident allegedly arose as on 14.4.2007. It is an admitted fact that prosecution have registered a cognizable case against the driver of the offending vehicle bearing registration No.TR-01-A-4445. Being noticed by the prosecution I have bailed out my vehicle and myself. It is further submitted that as per route permit my normal plying of vehicle of are to be confined between RMS chowmuhan and GB but sometime I like other driver covering other places if hired or reserved by the public. As such there is not restriction."

07. But while giving the testimony in the court when the matter was remanded, OPW-1 has stated in para-1 of the examination-in-chief as filed under Order 18 Rule 4 of the CPC in the following manner:

"That, I am the opposite party No.1 of the case No.T.S.(MAC) 298 of 2008. I have been impleaded as necessary party on the basis of owner of offending vehicle involved in the accident occurred as on last 14.04.2007 near Drop Gate on South-West part of Agartala-Bishalgarh Road at about 4/4.30 PM. Actually on that day a road traffic accident was occurred involving my vehicle while I was coming from Siddhi Ashram side towards Agartala due to face to face collusion with rider of a Scooter. West Agartala Police Case No.121 of 2008 under Section 279, 304A of I.P.C. was registered against me."

It is the same person who made two different statements, one in the written objection and the other in the inquiry.

08. Ms. S. Deb Gupta, learned counsel appearing for the appellant has therefore submitted that the tribunal had no reason to trust OPW 1. That apart, she has submitted that there was no accident. The role of the police requires stricter scanning inasmuch as the police filed a final report without chargesheeting anyone. Thereafter, on further investigation,

the police chargesheeted the respondent No.2 for driving his vehicle recklessly and negligently. Even, there was no details of the occurrence. PW-1 [the respondent No.1] has adduced PW-2, Bimal Chandra Dey who has stated that he had witnessed the accident and he was examined by the police.

In his cross-examination he has stated inter alia:

"When I was returning home along with my marketing products/materials from Agartala at about 4.30 to 5 PM by my bi-cycle, while I am crossing Drop Gate I found an Auto Rickshaw running at a high speed coming from the direction of Siddhi Ashram made a head on collision with a Motor Cycle rider resulted into falling on the ground over the road. All the passerby including other vehicles have stopped. The Traffic Police on duty have raised an alarm to stop the offending vehicle. The driver of the offending vehicle have slow down his vehicle, then I took the note of the registration number of the said offending vehicle as TR-01A-4445 (Auto Rickshaw). But ultimately the driver of the vehicle has fled away from the spot by violating the traffic signal towards Agartala. Thereafter I rushed to the spot and identified the victim and I found that the victim is of out locality and he was known to me. Thereafter he was shifted to I.G.M. Hospital, Agartala with the help of police personnel and other local public, but I returned home with intention to inform his family members. Accordingly at about 5.30 to 6 PM on that date I have informed the matter to his wife and thereafter rushed to the I.G.M. Hospital and finally rushed to G.B.P. Hospital, Agartala as in the mean time injured victim was shifted. It is pertinent to mentioned here that the accident was occurred due to rash and negligence driving from the part of the driver of the offending vehicle bearing registration No.TR-01A-4445 (Auto Rickshaw). The family members of the victim tried to the best of their ability to rescue the victim, but ultimately he succumbed on 16.04.2007."

09. Ms. S. Deb Gupta, learned counsel appearing for the appellant has submitted that Sri Bimal Dey was not even known to the police when the police submitted the first final report and as such his credibility is shrouded by doubt. He cannot be relied as well by the court for purpose of coming to an inference in respect of involvement of the said vehicle.

10. Ms. S. Deb Gupta, learned counsel has further submitted that even the FIR was delayed by almost one year

for launching the police investigation. The episodes relating to the accident and their report to the police station are hearsay and visited by serious doubt about the correctness of the accident. Ms. S. Deb Gupta, learned counsel has further submitted that without prejudice same benefits as given as the special damage are to be interfered with in terms of **National Insurance Company Limited vs. Pranay Sethi and Ors.** reported in **(2017) 16 SCC 680** where the apex court has affirmed the principles as settled by **Sarla Verma and Others vs. Delhi Transport Corporation and Another** reported in **(2009) 6 SCC 121** and **Reshma Kumari and Ors. vs. Madan Mohan and Anr.** reported in **(2013) 9 SCC 65**. In **Pranay Sethi** (supra) the apex court has revisited the decision of **Rajesh and Ors. vs. Rajbir Singh and Ors** reported in **(2013) 9 SCC 54** and **Santosh Devi vs. National Insurance Company Ltd. and Ors.** reported in **(2012) 6 SCC 421**. In the said judgment the apex court has streamlined the non-pecuniary damages in the following manner on reversing the principle of **Rajesh** (supra):

"While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax."

Even on the conventional heads the changes have been made by **Pranay Sethi** (supra) as under:

"Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."

11. Thus, it has been urged by Ms. S. Deb Gupta, learned counsel that on the conventional heads, the amount shall be less from what has been awarded by the tribunal.

12. Mr. A. Nandi, learned counsel appearing for the respondent No.1 has submitted that the police had further investigated the matter and filed the final report under Section 173(2) of the Cr.P.C. against the respondent No.2 who himself claimed that he was driving the vehicle at the time when it dashed the bike of the husband of respondent No.1 namely Parimal Chandra Das, who died in the accident.

13. There is no dispute that the deceased had been working as an employee of National Insurance Company Limited and he used to draw a net salary of Rs.16,881/-. No attempt was made by the tribunal to segregate the tax that he paid on his salary. Be that as it may, it is apparent from the pay slip [Exbt.2] that the victim used to draw salary of Rs.11,254.20/- as there used to be deduction of Rs.5,130.97/-. After deducting the professional tax, the amount would come to $[11254.20 - 180] = \text{Rs.}11,074.20/-$. The respondent No.1 was entitled to 50% of the said amount i.e. Rs.5,537.01/- as the loss of the future prospect in terms of **Sarla Verma** (supra). Thus the total salary index per month is to be computed @ $[11,074.20 + 5537.01] = \text{Rs.}16,611.03/-$. On account of the personal expenses one-

third therefrom is liable to be deducted. After deduction on account of personal expenses, the amount [Rs.16,611 – Rs.5557] comes to Rs.11,074.00/-. This would be the unit for purpose of computing of the compensation as there is no dispute about the multiplier as chosen. Hence the total compensation would be [Rs.11,074/-x 12] = Rs.1,32,888/- x 15 [multiplier] = Rs.19,93,320/-. But the conventional heads would carry the following amounts:

- (i) the loss of consortium Rs.40,000/-
- (ii) loss of estate Rs.15,000/- and
- (iii) funeral charges Rs.5,000/-.

Thus, the total compensation would be Rs.2,053,320.00/-.

14. Thus the amount comes to Rs.1,32,888/-. Again the said amount shall be multiplied by the multiplier 15 for getting the compensation. To restate, the compensation comes to [Rs.1,32,888/x15]=19,93,320/- Along with the said sum for loss of consortium Rs.40,000/-, for loss of the estate - Rs.15,000/- and for funeral expenses - Rs.5,000/- be added. The total compensation thus would come to [19,93,320+40,000+15,000+5000]=20,53,320/-.

15. The said amount shall be paid to the respondent No.1 with interest @ 7% per annum from the date of institution of the claim till the payment is made. The deduction and the conventional heads are made in terms of

the decision of the apex court in **National Insurance Company Limited vs. Pranay Sethi and Ors.** (supra).

15. In the result, this appeal is partly allowed to the extent as stated above.

The appellant shall deposit the entire amount in the tribunal after deducting the amount, if any, paid by the appellant.

There shall be no order as to costs.

JUDGE

