THE HIGH COURT OF TRIPURA
AGARTALA

MAC APP 74 of 2015

National Insurance Company Limited,
Agartala Division Office, 42, Akhaura Road,
P.O. Agartala, P.S. West Agartala,
District- West Tripura,
represented by its Divisional Manager

… ***Appellant***

- **Versus** –

1. **Smt. Prabita Debnath (Roy)**,
   wife of late Manas Roy,
2. **Master Arghajit Roy**,
   son of late Manas Roy,
3. **Smt. Prabita Debnath (Roy)**,
   wife of Sri Manilal Roy,
   - all are residents of Bansh Para, P.O. Belonia
   P.S. Belonia, District- South Tripura

   [The respondent no. 2 being minor is represented by his natural guardian-mother, Smti. Prabita Debnath (Roy), the respondent- No.1]
4. **Md. Sabdar Ali**,
   son of late Md. Rasul Miah,
   resident of West Bank of Jagannath Dighi,
   P.O. R.K. Pur, P.S. R.K. Pur, District- Gomati, Tripura
   (owner of Max Jeep bearing No. TR-03-3769)

… ***Respondents***

BEFORE
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the appellant	: Mr. S. Lodh, Advocate.
For the respondents	: Mr. S. Adhikari, Advocate
Date of hearing	: 14.09.2017
Date of delivery of judgment & order	: 29.01.2018
Whether fit for reporting	: NO

JUDGEMENT AND ORDER (ORAL)

Heard Mr. S. Lodh, learned counsel appearing for the appellant as well as Mr. S. Adhikari, learned counsel appearing for the respondents.

2. This is an appeal filed under Section 173 of the Motor Vehicles Act, from the judgment and award dated 29.08.2015 delivered in T.S (MAC) 21 of 2012 by the Motor Accident Claims Tribunal, West Tripura, Agartala, No.2. The National Insurance Company Limited as the insurer of the offending vehicle has been saddled with the liability of making the payment of the award. There is no dispute that the appellant is the insurer of the offending vehicle (MAX jeep) bearing registration no. TR-03-3769. By this appeal, the appellant has questioned two findings viz. (i) the deceased died due to the road traffic accident and (ii) the award would carry interest @9% per annum.

3. The brief fact which is essentially relevant is that in the road traffic accident which occurred on 02.02.2010, one Manash Roy who was travelling by his motorcycle bearing registration no. TR-03-A-6115 was dashed by one Max jeep bearing registration no. TR-03-3769, hereinafter, referred to as the offending vehicle, at Bagma-Salbagan coming from the opposite direction at high speed. Manash Roy suffered grievous injuries on various parts of his person and he was rushed to Tripura Sundari District hospital, Udaipur by the offending vehicle itself. On assessment of his condition, he was referred to TMC & Dr. BRAM teaching hospital, Agartala. He was admitted there on the day of the accident itself and was discharged on 11.02.2010 with advice to attend the

dental outpatient department (OPD) for further management. The injured was thereafter taken to Kolkata for better treatment, but his life could not be saved. On his return on 14.05.2010, the injured died at his residence at Joynagar, Agartala. In the wake of the said accident, R.K. Pur PS case no. 32 of 2010 was registered under Sections 279/338 added lateron with section 304A of the IPC against the driver of the Max jeep for rash and negligent driving. The victim was working in a Micro Finance company at Udaipur and according to the claim-petition, he was earning Rs.4,681/- per month. At the time of his death, he was 30 years according to the claimants.

4. The owner of the offending vehicle by filing the written statement admitted the accident, but denied rash and negligent driving of the vehicle. In the written statement filed by the owner of the offending vehicle, it has been stated that for rash and negligence of the victim, the accident took place. One Ratan Sarkar having a valid driving license was driving the vehicle at the relevant point of time. The vehicle had all the requisite documents. The insurer filed the written statement denying and disputing all claims and prayed for dismissal of the claim.

5. On scrutiny of the records, it appears that the claimant-respondent no.1 examined herself as PW-1 and introduced the documentary evidences viz. the discharge

certificate of the victim from TMC hospital, Agartala, certificate of Charring Cross Nursing Home, Kolkata and other six documents relating to the treatment of the victim at Kolkata [Exhibit 2 series] along with the papers relating to the police case [Exhibit 1 series]. The claimant-respondent no. 1 had also introduced 26 money receipts [Exhibit 3 series] and one money receipt from the Charring Cross Nursing Home [Exhibit 4 series], 3 money receipts as ambulance charges [Exhibit 5 series] and 14 money receipts relating to the test and purchasing of the medicines [Exhibit 6 series]. In addition, 5 bills of the Charring Cross Nursing Home [Exhibit 7 series], death certificate of the victim [Exhibit 8], Voter Identity Card [Exhibit 9], the discharge certificate of the victim from Tripura Sundari District Hospital, Udaipur [Exhibit 10], air tickets [Exhibit 11], a copy of the admit card of the Secondary Examination of the victim [Exhibit 12], salary certificate of the victim [Exhibit 13] and a copy of the citizenship certificate of the victim [Exhibit 14] were also placed in the evidence by the claimant-respondent no. 1. 2 prescriptions [Exhibit 15 series] were also introduced and made part of the evidence. Even though the opposite parties including the appellant did not adduce any evidence, but the owner of the offending vehicle as the opposite party had introduced the documents such as driving

license of the driver, the insurance policy, the emission test certificate respectively marked as Exhibits A-1, A-2 and A-3.

6. On appreciation of the evidence, the claims tribunal in terms of the principle as laid down in ***Sarala Verma and others vs. Delhi Transport Corporation and others*** report in ***2009 ACJ 1298 (SC)*** and ***Rajesh and others vs. Rajbir Singh and others*** reported in ***2013 ACJ 1403 (SC)*** has observed that the dependants of the victim are entitled to get the sum of Rs.10,82,950/- with interest @9% per annum from the date of filing of the claim petition i.e. 10.01.2012 till realization. In addition to the said compensation, the claimants were awarded compensation for loss of consortium and for loss of deprivation or love and affection [*see para 12 of the impugned judgment and award dated 27.08.2015*]. The tribunal has clearly observed that " ***.... The accident took place for rash and negligent driving of the Max jeep in which Manash Roy sustained injury which resulted in his death on 14.05.2010***".

5. Mr. Lodh, learned counsel appearing for the appellant has submitted that there is no proof whether the victim died out of the road traffic accident or not. Mr. Lodh, learned counsel has emphatically stated that on 11.02.2010 the victim was discharged from the hospital, but there is no explanation what caused the death of the victim on 14.05.2010. Mr.Lodh, learned counsel having referred to one

prescription issued by the Calcutta Institute of Maxillofacial Surgery and Research on 13.03.2009 [Exhibit 2 series] has claimed that the petitioner was suffering from 'Oedematois Pancreatic'. According to Mr. Lodh, learned counsel, this prescription itself sheds light that the petitioner was suffering from 'oedematois pancreatic' which might have resulted the death of the victim.

6. Mr. Adhikari, learned counsel appearing or the respondents in order to repel the submission made by Mr. Lodh, learned counsel appearing for the appellant has submitted that the appellant or the owner of the offending vehicle did not file further evidence, as stated above. From the admit card issued by the Tripura Board of Secondary Education, it appears that the victim was born on 03.01.1979. The victim was getting a net salary of Rs.4,681/- from the Rose Valley Office at Udaipur Branch. That apart, from the discharge certificate dated 02.02.2010 [Exhibit 10], it appears that the petitioner was referred from Tripura Sundari District Hospital, Udaipur to GBP hospital, Agartala for head injuries that he received in the said road traffic accident. Mr. Adhikari, learned counsel has referred to the death certificate [Exhibit 8] to establish the date of death, but from that certificate the cause of death cannot be ascertained, but from various medical reports, it has been established that from the accident the victim suffered serious injuries in

parietal area along with the midline of the skull. Even in the CT scan carried out on 02.02.2010, the scalp hematoma in the parietal area was found along with the midline. It was diagnosed as the acute hemorrhage. Mr. Adhikari, learned counsel has also relied on a decision of the Gauhati High Court in ***Union of India vs. Bholi Rai*** reported in ***2011 (3) TAC 837 (Gau)*** where it has been observed that:

> **"CW 6, who is an Assistant Engineer in the MSEB under whom the deceased was working at the time of the accident, also deposed that after the deceased met the accident, he never joined his duty as he was under prolonged medical treatment. He further deposed that after three years, the victim came back to pynursla and wanted to resume duty, but was not allowed as there was no medical fitness certificate: he was walking with the support of a crutch. CW 6 testified that the victim was a diabetic patient and opined that the combined effect of the accident and the blood sugar he had, had shortened his life. Except for his opinion, this witness also corroborated the factual statements given by CW 1. In my opinion, there is sufficient evidence to hold that the vehicular accident was mainly responsible for the death of the deceased. CW 6 is admittedly not an expert opinion to assert that the death of the deceased was due to the combined effect of the accident and blood sugar had by the deceased. Moreover, this was not the pleaded case of the insurer. The principles for determining causal relationship between user of a motor vehicle and the accident which resulted in death or disablement have been explained by the Apex Court in Shivaji Dayanu Patel Vs. Vatschala Uttam More, (1991) 3 SCC 530. This is what the Apex Court said at paragraphs 34, 35 and 36 of the judgment:**
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> **"34. In the context of motor accidents the expression "caused by" and "arising out of" are often used in statutes. Although both these expressions imply a causal relationship between the accident resulting in injury and the use of the motor vehicle but they differ in the degree of proximity of such relationship. This distinction has been lucidly brought out in the decision of the High Court of Australia in Government Insurance Office of N. S. W. Vs. R. J. Green case, wherein Lord Barwick, C. J. has stated:**
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> > **"Bearing in mind the general purpose of the Act I think the expression "arising out of" must be taken to require a less proximate relationship of the injury to the relevant use of the vehicle than is required to satisfy the words "caused by". It may be that an association of the injury with the use of the vehicle may yet be enough to satisfy the expression "arise out of" as used in the Act and in the policy. "**
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> **35. In the same case, Windeyer, J. has observed as under:**
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> > **"The words 'injury caused by or arising out of the use of the vehicle' postulate a causal relationship between the use of the vehicle and the injury. 'caused by' connotes a 'direct' or 'proximate' relationship of cause and effect. 'arising out of' extends this to a result that is less immediate; but it still carries a sense of consequence."**

> **36. This would show that as compared to the expression "caused by", the expression "arising out of" has a wider connotation. The expression "caused by" was used in Sections 95 (1) (b) (i) and 96 (2) (b) (ii) of the Act. In Section 92-A, Parliament, however, chose to use the expression "arising out of" which indicates that for the purpose of awarding compensation under Section 92-A, the causal relationship between the use of the motor vehicle and the accident resulting in death or permanent disablement is not required to be direct and proximate and it can be less immediate. This would imply that accident should be connected with the use of the motor vehicle but the said connection need not be direct and immediate. This construction of the expression "arising out of the use of a motor vehicle" in Section 92-A enlarges the field" of protection made available to the victims of an accident and is in consonance with the beneficial object underlying the enactment. "**

Mr. Adhikari, learned counsel in order to nourish his submission has submitted that the award of 9% interest is not abnormal or exorbitantly high and referred to ***Josphine James vs. United India Insurance Company Limited and another*** reported in ***2013 ACJ 2418***. In that case, the apex court following the ***Association of Victims or Uphaar Tragedy*** reported in ***2012 ACJ 48(SC)*** has awarded interest at the rate of 9% per annum on the compensation awarded in favour of the appellant. Mr. Adhikari, learned counsel has further submitted that this appeal is not maintainable in absence of permission or leave granted in favour of the appellant by the tribunal under Section 170(b). In ***Jospine James (supra)*** it has been observed that in ***United India Insurance Company Limited vs. Shila Datta*** reported in ***2011 ACJ 2729***, it has been clearly held that the insurer is not entitled to file the appeal questioning the quantum of the compensation in any manner. Their defence is limited to the terms of Section 149(2) of the MV Act. However, in ***Shila***

Datta (supra), the correctness of ***National Insurance Company Limited vs. Nicolletta Rohtagi*** reported in ***2002 ACJ 1950(SC)*** has been raised and the question has been referred for determination by a larger bench.

7. Having appreciated the submission as advanced by the learned counsel appearing for the parties, it appears that the solitary question that requires consideration is whether the death of the victim namely Manash Roy is related to the road traffic accident or not, inasmuch as the award of 9% per annum is consistent to the lending interest rate of the scheduled banks. So far, the finding of fact on the death of the victim namely Manash Roy is concerned, what Mr. Lodh, learned counsel has pointed out that the victim was a chronic patient of 'Oedematois Pancreatic' based on the certificate dated 13.03.2009 [Exhibit 2 series]and 19.04.2010 [Exhibit 15 series] cannot be relied inasmuch as nowhere in those certificates it has been stated that the said illness took its toll causing death of the victim. On the contrary, it appears that the victim suffered hemorrhage, as observed on the basis of the CT scan and he was treated in various hospitals, as stated above to mitigate the consequence of the said medical emergency. Finally, the victim died on 14.05.2010.

8. First, the appellant did not adduce any evidence following the due process to show that the said illness from which the victim was suffering, was so fatal that in all

probabilities he died out of the said illness. Having referred the prescriptions by means of submission, such opinion evidence cannot be introduced in the court unless an expert comes and examines the records and comments on that the cause of death was for the said illness, this court is bound by the documents, as submitted. Since there is no challenge in respect of the mode of calculating the compensation etc., this court will not embark on re-assessment of such calculation. The compensation as determined is quite reasonable and hence this appeal is bound to fail and accordingly the same is dismissed. The appellant is directed to pay the entire amount, if not paid by this time, with interest to the tribunal below within a period of one month from today. If any amount has been deposited in the Registry of this court that shall be released to the claimants in conformity to the mode, provided by the tribunal in paragraphs 12, 13 and 14 of the judgment dated 29.08.2015.

There shall be no order as to costs.

Send down the LCRs forthwith.

JUDGE

Saikat