

**HIGH COURT OF TRIPURA**  
**AGARTALA**

MAC APP. No.86/2019

1. Smt. Bandana Shil, W/o Late Balaram Shil,
2. Sri Biswajit Shil, S/o Late Balaram Shil,
3. Smt. Jayanti shil, D/o Late Balaram Shil.

All are of Village – 2 No. Fulkumari, Durgabari,  
P.S – R. K. Pur, Udaipur, District – Gomati, Tripura.  
(Petitioner Nos.2 and 3 being minor represented by petitioner  
No.1, their mother, natural guardian).

..... Appellants(s).

**Vs.**

1. Sri Matilal Das, S/o Late Hari Mohan Das,  
Village – Netaji Nagar ONGC,  
P/S Amtali, Agartala, West Tripura.  
*[Owner of vehicle bearing registration No.TR-01-Q-1840(TATA  
Truck Water Tanker)].*
2. Sri Nepal Das Majhi, S/o Rabi Das Majhi,  
Village – Gokulnagar (N. C. Nagar), Bishalgarh,  
P.S. Bishalgarh, Shipahijala, Tripura.  
*[Driver of vehicle bearing registration No.TR-01-Q-1840(TATA  
Truck Water Tanker)].*
3. The Branch Manager, National Insurance Company Limited,  
Bishalgarh Branch, Bishalgarh Business Centre,  
Agartala-Sabroom Road, P/S Bishalgarh, Shipahijala, Tripura.  
*[Insurer of vehicle bearing registration No.TR-01-Q-1840(TATA  
Truck Water Tanker)].*

..... Respondent(s).

**\_B\_E\_F\_O\_R\_E\_**

**HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI**

For Appellant(s) : Mr. A Acharjee, Advocate.

For Respondent(s) : Mr. A K Deb, Advocate.

Date of hearing : 23<sup>rd</sup> September, 2020.

Date of judgment : 30<sup>th</sup> September, 2020.

Whether fit for reporting : No.

**J U D G M E N T**

This appeal is filed by the original claimants. They seek enhancement of the compensation awarded by the Motor Accident Claims Tribunal, Udaipur, under impugned award dated 26<sup>th</sup> November, 2019.

[2] Brief facts are as under :

One Balaram Shil aged about 55 years, husband of the claimant No.1 and father of claimants No.2 and 3, was going towards his house at about 7:00 O'clock in the evening on 30<sup>th</sup> April, 2018 on his motorcycle when one water tanker coming from the opposite direction collided with his motorcycle causing fatal injuries. His widow and minor son and daughter, therefore, filed a claim petition before the Tribunal seeking compensation of Rs.26,00,000/- from the driver, owner and insurer of the vehicle involved in the accident. The claims Tribunal held that the driver of the tanker was solely negligent in causing the accident. Regarding

compensation, the case of the claimants was that deceased was a heavy motor vehicle driver and he used to drive trucks between Assam and Agartala from which he would earn Rs.25,000/- per month. However, the claimants produced no evidence of the income or any other documentary evidence of the occupation of the deceased. The sole testimony on the occupation and income of the deceased was the oral deposition of the widow. The Tribunal nevertheless believed that the deceased was a driver and would be expected to earn Rs.7,000/- per month. The Tribunal applied multiplier of 11 looking to the age of the deceased, as provided in the Supreme Court judgment in case of *Sarla Verma & Ors. Vs. Delhi Transport Corporation & another*, reported in (2009) 6 SCC 121. The Tribunal set apart one-third for the personal expenditure of the deceased and awarded a sum of Rs.6,16,000/- towards the loss of dependency benefits. To this, the Tribunal added Rs.15,000/- towards loss of estate, Rs.15,000/- for funeral expenses and Rs.10,000/- for loss of consortium. The Tribunal thus arrived at a total of Rs.6,56,000/- by way of compensation which was awarded to the claimants.

[3] Appearing for the claimants, learned counsel Mr. A Acharjee submitted that the Tribunal committed a serious error in assessing income of the deceased at Rs.7,000/- per month. Though the deceased was

engaged as a heavy motor vehicle driver, no increase for future income was granted. Further, compensation awarded under conventional heads is also inadequate.

[4] On the other hand, learned counsel Mr. A K Deb for the insurance company opposed the appeal contending that the Claims Tribunal has awarded sufficient compensation and no enhancement is required.

[5] According to the claimants, the deceased was engaged as a truck driver. However, the claimants did not produce any independent evidence, much less any documentary evidence of engagement or income of the deceased. The least that the claimants could have produced was a driving licence for heavy vehicle. Even if, it was not possible for the claimants to summon the employer and establish with accuracy the monthly income of the deceased, when the case of the claimants was that he was regularly engaged in driving heavy transport vehicles, the deceased would certainly have a licence to drive such a vehicle. The claimants could not produce even such basic document. All that the claimants offered by way of evidence was the oral deposition of the widow of the deceased. The Tribunal, therefore, committed an error in believing that the deceased himself was engaged as a driver. However, that does not mean that the

deceased was not earning anything at all. He had a family to support. Even if believing that he was doing labour work or odd jobs, looking to the recent accident, one can safely take his income at Rs.7,500/- per month.

[6] In view of the decision of Supreme Court in case of *National Insurance Company Limited Vs. Pranay Sethi & others* reported in (2017) 16 SCC 680, considering the age of the deceased, there would be 10% increase for future income. His prospective income, therefore, would come to Rs.8,250/- per month or Rs.99,000/- per annum. Setting apart one-third for the personal expenditure of the deceased, this would leave a net of Rs.66,000/- for the family per annum. Applying a multiplier of 11, the loss of dependency benefit works out at Rs.7,26,000/-.

[7] As per the decision of Supreme Court in case of *Pranay Sethi(supra)*, she would be awarded Rs.15,000/- towards funeral expenses and Rs.15,000/- for loss of estate i.e. a total of further Rs.30,000/-.

[8] Towards consortium, Supreme Court in case of *Pranay Sethi(supra)* had laid down the stand of Rs.40,000/-. In subsequent judgments, it has now been clarified that such loss of consortium would be available for the surviving spouse as well as children and that the same would be awarded separately per such claimant. Reference in this respect

may be made to the recent decision of Supreme Court in case of *United India Insurance Company Ltd. Vs. Satinder Kaur alias Satwinder Kaur and Ors.*, reported in *2020 SCC Online 410*.

[9] The total compensation to be awarded to the claimants works out as under :

|  |                 |
|--|-----------------|
| Loss of dependency   | : Rs.7,26,000/- |
| Funeral expenses   | : Rs. 15,000/-  |
| Loss of estate   | : Rs. 15,000/-  |
| Loss of consortium ( <i>one time at the rate of Rs.40,000/- per such claimant.</i> ) | : Rs.1,20,000/- |

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***Total Rs.8,76,000/-***

[10] The insurance company shall deposit before the Claims Tribunal the additional compensation with simple interest @ 7.5% per annum from the date of claim petition till actual deposit which shall be done within 8(eight) weeks from today.

Appeal is disposed of accordingly. Pending application(s), if any, also stands disposed of.

**( AKIL KURESHI ), CJ**