

HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_
MAC. App. No.65 of 2022

Cholamandalam MS General Insurance Company Ltd.

.....Appellants

V_E_R_S_U_S

Manju Debnath & 4 Others.

.....Respondents

| | | |
|-------------------|---|--------------------------|
| For Appellant(s) | : | Mr. R. Saha, Advocate. |
| For Respondent(s) | : | Mr. D. C. Roy, Advocate. |

HON'BLE MR. JUSTICE T. AMARNATH GOUD
_F_I_N_A_L_O_R_D_E_R_

28/04/2023

Heard Mr. R. Saha, learned counsel appearing for the appellant.
Also heard Mr. D. C. Roy, learned counsel appearing for the respondents.

[2] This is an appeal filed under Section-173 of the Motor Vehicles Act, 1988 read with Section-168 of the Act, by the appellant, insurance company challenging the judgment and award dated 02.03.2022 passed by the learned Motor Accident Claims Tribunal, No.4, West Tripura, Agartala, in connection with T.S.(MAC)176 of 2018.

[3] Brief facts leading to this case is that on 20.06.2017 at about 7.15 p.m. Swapan Debnath (deceased) was returning home at Radhanagar from Karaiban Chowmuhani Ration Shop by riding his bicycle and while reached at Karaiban Chowmuhani at that time a Tipper Truck bearing registration No. TR-01-AB-1641 coming from Mohonpur side with high speed in rash and negligent manner suddenly dashed him. As a result, the deceased sustained grievous injuries on various parts of his body and died on the spot. Thereafter, the body of the deceased was taken to the AGMC & GBP Hospital on that night and on the next day post mortem examination was done. Hence, the claimant petitioners being the dependents of deceased Swapan Debnath filed this suit seeking

compensation to the tune of Rs.90,00,000/-. It has been further contended that the accident occurred due to reckless and irresponsible driving of the vehicle by its driver. That the deceased was of the age of 49 years and being an agriculturist earned about Rs.15,000/- per month.

[4] After hearing the learned counsel appearing for the parties and after looked into the material evidence on record, the learned Court bellow has observed as under:

“(i) Claimant petitioners are entitled to get the award of Rs.19,69,000/-(Nineteen lacs sixty nine thousand) only along with 9% simple interest per annum from the date of registration of claim i.e, w.e.f. 23.11.2018 till the date of realization thereof.

The amount of compensation shall be divided in equal share.

(ii) 50% of the share of the claimant petitioner Nos.1 and 2 each and 25% of the share of claimant-petitioner No.4 in the award be invested by purchasing separate Fixed Deposit certificates from any Nationalized Bank at least for the next 5 years with a liberty to the claimant petitioner Nos.1, 2 and 4 to withdraw the monthly interest from their own accounts and no loan or advance or pre-mature withdrawal shall be allowed without prior sanction of this Tribunal.

Entire share of claimant petitioner No. 3 (minor daughter) shall be invested by purchasing separate Fixed Deposit certificate from any Nationalized Bank at least for the next 5 years or upto the age of 21 years of claimant-petitioner No.3 whichever is later and no loan or advance or pre-mature withdrawal shall be allowed without prior sanction of this Tribunal.

However, the claimant petitioner No.1 shall have the liberty to withdraw the monthly interest from the account of her minor daughter.

Needless to say that the amount so ordered to be paid to the minor claimant petitioner shall be incurred only for her welfare and benefit.

The OP No.2 , i.e., the Chola mandalam MS General Insurance Company Limited shall deposit the awarded amount along with interest thereon within one month from this day with this Tribunal.

Supply a copy of this award free of cost to the parties by not later than 15 days from the date of the award.

The case stands disposed off on contest.”

[5] Mr. R. Saha, learned counsel appearing for the appellant has submitted that the learned Court below erred in law by putting the liability of pay compensation to the claimant respondents upon the appellant insurance company and as such, the impugned judgment and award of the learned tribunal dated 02.03.2022 is unsustainable and is not tenable in the eye of law and is liable to be set aside. He has further contended that the learned tribunal has miserably failed to consider the argument advanced by the learned counsel for the appellant. The tribunal cannot consider the purported monthly income of the deceased. The claimants had totally failed to submit any documents from a competent authority in support of the income of the deceased. In spite of that the learned tribunal below had considered the monthly income @ 12,000/- which is not at all tenable in the eye of law.

[6] The learned tribunal has committed a grave error of law by giving 25% towards future prospect of the deceased. as because the claimant had failed to prove the profession of the deceased nor able to give any valid evidence regarding his profession as well as his monthly income. The learned tribunal has most arbitrarily and erroneously allowed the interest @9% per annum on the entire award of compensation as granted in favour of the claimant-respondents which is absolutely inconsistent in terms of the law laid down by the Apex Court on the issue of granting rate of interest.

[7] Mr. Saha, learned counsel has averred that the learned Court below wrongly arrived at the quantum of award of Rs.19,69,000/- along with an interest of 9% P.A. from the date of filing i.e. from 23.11.2018 till the date of realization at the Court without applying judicial mind properly since the same is absolutely inconsistent with the prevailing bank interest rate. The impugned judgment and award dated 02.03.2022 is bad in law since the same

has been passed by the learned tribunal below inconsistently in terms of the established provisions of law as well as the law laid down by the Apex Court.

[8] Though the respondent No.5, the owner of both the vehicles, had exhibited the insurance policy but there is some violation of condition of the insurance policy as such the present appellant is not liable to pay any compensation amount to the claimant-respondents and on this score only the impugned judgment and award is required to be interfered with by this Court for fair ends of justice.

[9] In view of above submissions advanced by the learned counsel appearing for the appellant, for ends of justice, let us re-visit the reasons upon which the Court below has decided the case.

[10] On perusal of the record it is found that the claimant-petitioners submitted certified copy of orders dated 31.7.2019, 20.8.2019 and 15.11.2019 passed in PRC (SP) 208 of 2017 from which it appears that the driver of the offending vehicle on the fact in issue of this case pleaded guilty in the criminal trial and was convicted by the Court for committing such offence under Sections 279/304A of IPC and Section 187 of M.V. Act. Thus, there is no doubt in holding that deceased Swapan Debnath died due to the road traffic accident occurred on 20.06.2017 for rash and negligent driving of the vehicle bearing No. TR-01-AB-1641 (tipper truck) by its driver.

[11] It has been established by the claimant petitioners that the death of deceased was caused due to rash and negligent driving of the driver of offending vehicle. Therefore, the claimant petitioners being the wife, son, daughter and mother of the deceased are entitled to have the compensation under the beneficial legislation, namely the M.V. Act as the claimant petitioners were dependent on the income of the deceased as stated in their claim petition and the fact was not disputed by any party. Moreover, Ext.8 i.e. the survival certificate issued on the occasion of death

of Lt. Swapan Debnath supports such contention of the claimant-petitioners.

[12] In the claim petition the age of the deceased was mentioned as 49 years. As per Ext.6 i.e. transfer certificate issued by School Education Department, Govt. of Tripura, his date of birth was 26.2.1968. As per death certificate he died on 20.6.2017 at the age of 49 years. Thus, from all those documents it is clear that at the time of death deceased Swapan Debnath was at the age of 49 years.

[13] The learned Court below has decided the monthly income of the deceased as Rs.12,000/- on the basis of an certificate issued by the SDM which has no evidentiary value and cannot be relied upon. The Court below has considered the purported monthly income of the deceased without proper evidence let in by the claimant before. The claimants had totally failed to submit any documents from a competent authority in support of the income of the deceased. Thus, the same may be reduced from Rs.12,000/- to Rs.10,000/- The deceased was being at his age group of 40 to 50 years there should be 25% addition in his income as future prospect having self employment.

[14] In view of the law laid down in Sarla Varma's case (AIR 2009 SC 3104) for the age group of 46 to 50 the appropriate multiplier is M-13. Besides where the number of dependent family members is 4 to 6, deduction would be 1/4th (one fourth) towards personal and living expenses of deceased. In the present suit there are four dependents and so the deduction will be 1/4th.

[15] Now, in view of the aforesaid principles of law the amount of compensation can be calculated in the following manner:

- (I) Income per month = Rs.10,000/- only.
- (II) 25% of above to be added as future prospect $10,000 \times 25\% =$ Rs.2500/- only.

(III) Total of Sl. Nos. (I) and (II) above comes to Rs.10,000/- + Rs. 2500/- = Rs. 12,500/-.

(IV) One fourth (1/4) of above to be deducted as personal and living expenses of deceased:- Rs.12,500/- minus Rs.3,125/- = Rs.9375/- only.

(V) Compensation after applying multiplier of 13: Rs.9375 X 12 X 13 = Rs.14,62,500/- only.

(VI) Loss of Estate = Rs.15,000/-only.

(VII) Funeral expenses = Rs.15,000/- only.

[16] Now, regarding granting of compensation for loss of consortium is not only limited to the spouse but also it extends to the parents and children of the deceased and each of the parents and children is entitled to get compensation for loss of consortium besides the spouse at the rate of Rs.40,000/-.

[17] In this respect, the Hon'ble Supreme Court (a two judges Bench) in Civil Appeal No.9581 OF 2018 (Arising out of SLP (Civil) No. 3192 of 2018) between **Magma General Insurance Co. Ltd. -vs- Nanu Ram Alias Chuhru Ram & Ors., 2018 SCC OnLine SC 1546, (2018) 18 SCC 130 dated 18.09.2018** held as under:

“8.7 A Constitution Bench of this Court in Pranay Sethi (supra) dealt with the various heads under which compensation is to be awarded in a death case, one of these heads is Loss of Consortium. In legal parlance, “consortium” is a compendious term which encompasses ‘spousal consortium’, ‘parental consortium’, and ‘filial consortium’. The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse. Spousal consortium is generally defined as rights pertaining to the relationship of a husbandwife which allows compensation to the surviving spouse for loss of “company, society, co-operation, affection, and aid of the other in every conjugal relation.” Parental consortium is granted to the child upon the premature death of a parent, for loss of “parental aid, protection, affection, society, discipline, guidance and training.” Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit. Consortium is a special prism reflecting changing norms

about the status and worth of actual relationships. Modern jurisdictions world-over have recognized that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child. The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of Filial Consortium. Parental Consortium is awarded to children who lose their parents in motor vehicle accidents under the Act. A few High Courts have awarded compensation on this count. However, there was no clarity with Rajasthan High Court in respect to the principles on which compensation could be awarded on loss of Filial Consortium. The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under 'Loss of Consortium' as laid down in *Pranay Sethi* (supra). In the present case, we deem it appropriate to award the father and the sister of the deceased, an amount of Rs.40,000 each for loss of Filial Consortium."

[18] Thus, in this suit the claimant petitioner No.1 being the wife, claimant petitioner No.2 being the son, claimant-petitioner No.3 being the daughter and claimant petitioner No.4 being the mother of the deceased are entitle to get compensation at the rate of Rs.40,000/- each as loss of consortium. Thus, the calculation will be loss of consortium Rs. 40,000/- each dependent i.e. $40,000 \times 4 = \text{Rs.}1,60,000/-$.

[19] But in view of *Pranay Sethi* case as mentioned above, the 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 percent in every 3 years. The judgment was passed in the year 2017 and so three years has already been elapsed from the date of passing judgment of *Pranay Sethi* case. Thus, reasonable compensation which is to be given under the conventional heads shall increase 10%.

[20] In this case under conventional heads (loss of estate, funeral expenses and loss of consortium) the compensation amount is (15,000/- + 15,000/- + 1,60,000/-) = Rs. 1,90,000/- X 10% = Rs.2,09,000/-. Transportation cost = Rs. 5,000/- (A lump sum amount is awarded as there is no document submitted in this respect). Hence, total compensation stands at Rs.14,62,500+2,09,000/- + 5000/- = Rs.16,76,500/- only.

[21] Now coming to the question of liability, it appears that the O.P. No.1 being owner of the offending vehicle claimed that his vehicle was insured with the O.P. No.2. In support of such claim he has proved the policy of insurance (Ext.A) which was valid at the time of accident. It is also not the case of the O.P. No.2 that the vehicle was not insured with them. It is, therefore, held that the O.P. No.2 being insurer is liable to satisfy the award.

[22] In view of above modification, the present appeal stands partly allowed. The appellant-insurance company shall deposit the awarded amount within a period of one month from the date of receipt of the copy of this order, if not already deposited. Consequently, the claimants are at liberty to withdraw the same unconditionally as per procedure as decided by the learned Court below.

[23] In the result, the appeal stands partly allowed to the extent as indicated above. Draw the award accordingly.

JUDGE

A. Ghosh