

**HIGH COURT OF TRIPURA
AGARTALA**

MAC App. No.91 of 2024

Magma HDI, General Insurance Company Ltd.,
Represented by its General Manager,
Magma House, 24 Park Street,
Kolkata- 700016, West Bengal.
Local office at Netaji Chowmuhani,
Within the building of HDFC Bank,
P.O. Agartala, P.S. West Agartala,
District: West Tripura, PIN- 799001.
(Insurer of Truck bearing No.TR-03-B-1805).

...Appellant.

Versus

- 1. Smt. Parul Bala Pal,**
W/O- Late Nirendra Rudra Paul,
Resident of Village- South Hurua,
P.O.- Kameswar,
P.S.- Dharmanagar, District- North Tripura
Pin- 799280.

...Claimant-Respondents.

- 2. Th. Suraj Singha,**
S/O. Jatin Singha,
Resident of Kameswar, P.S. Dharmanagar,
District- North Tripura.

...Owner Respondent.

- 3. Sri Arpan Deb,**
S/O. Sri Anjan Deb,
Resident of Vagyapur, Ward No.06,
P.S. Dharmanagar, Dist. North Tripura,
(Driver of vehicle No.TR-05-B-1800) (TATA Magic)

For Appellant(s)	:	Mr. Rajib Saha, Adv.
For Respondent(s)	:	Mr. Kundan Pandey, Adv,
Date of Hearing	:	29.11.2024
Date of delivery of Judgment and Order	:	30.11.2024
Whether fit for Reporting	:	NO

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This appeal under Section 173 of M.V. Act is filed challenging the judgment and award dated 22.05.2024 delivered by Learned Member, MAC Tribunal, North Tripura, Dharmanagar, in connection with case No.T.S. (MAC) No.16 of 2019.

02. Heard Learned Counsel, Mr. Rajib Saha, appearing on behalf of the appellant-Insurance Company and also heard Learned Counsel, Mr. Kundan Pandey, appearing on behalf of the claimant-respondent. None appeared on behalf of the respondent Nos.2 and 3 inspite of notice served upon them properly.

03. Taking part in the hearing, Learned Counsel for the appellant drawn the attention of the Court that in this case, there was contributory negligence on the part of the deceased but the Learned Tribunal below without appreciating the evidence on record decided the case and determined the compensation for which the present appellant has preferred this appeal before this Court. So, Learned Counsel urged for allowing this appeal by setting aside the judgment and award of the Learned Tribunal below.

04. Learned Counsel for the appellant-Insurance Company at this stage submitted that the Learned Tribunal

below after considering the evidence on record rightly and reasonably allowed the claim-petition of the claimant and passed the judgment/award, but the Learned Tribunal below at the time of determination of compensation awarded rate of interest only at the rate of 6% per annum, which should be atleast 7.5% for the sake of justice. No other points were raised by Learned Counsels for the parties.

05. In this case, the respondent-claimant filed one claim-petition under Section 166 of M.V. Act before the Learned Tribunal below alleging inter alia that on 14.10.2018 at about 3.00 p.m. her son Ashish Rudra Paul was proceeding towards Bagbassa from Missiontilla Bazar riding his elder brother's bike vide No.TR-05-A-8589 (Honda) and when he reached near brick field of one Usha Ranjan, that time one vehicle TATA Magic vide No.TR-05B-1800 came from the opposite direction with high speed suddenly dashed against the bike of the rider and destroyed the bike, for which the rider sustained multiple bleeding and grievous injuries all over his body. Immediately, the local people shifted the injured Ashish Rudra Paul to Dharmanagar District Hospital for treatment. Thereafter, the attending doctor of the said hospital referred the injured to Silchar Medical College & Hospital for his better treatment and then the family members of the injured shifted him to Silchar Medical College & Hospital on the same day, but unfortunately on arrival at Silchar, the injured succumbed to

his injury in course of treatment and according to the petitioner, the accident took place due to rash and negligent driving of the driver of the said TATA Magic vehicle. It was further stated that the deceased Ashish Rudra Paul was aged about 24 years 11 months at the time of accident and he passed B.Com examination in the year 2016 from Dharmanagar Govt. Degree College and prior to his death he was working as GDSMC-II under Head Post Office, Dharmanagar and his monthly salary was 11,984/-. Hence, the respondent-claimant filed the claim-petition before the Tribunal.

On receipt of notice the O.P. Nos.1 and 2 appeared and filed one written statement denying the assertions of the respondent-claimant-petitioner in the claim-petition and submitted that the O.P. No.1 is the registered owner of the offending vehicle bearing registration No.TR-05B-1800 (TATA MEGA XL BSIV), which was insured with the Insurance Company vide policy No.P0019000100/4103/804641 and the same was valid w.e.f. 29.05.2018 to mid night of 28.05.2019 and the vehicle had valid registration and other relevant documents and it was also stated that the O.P. No.2 was the driver of the offending vehicle. Hence, the O.P. Nos.1 and 2 by filing their written statement prayed for dismissal of the claim-petition.

06. The appellant as Insurance Company also contested the case before the Tribunal denying the assertions of the respondent-claimant-petitioner in the claim-petition and in para No.15 it was asserted that the alleged accident occurred due to contributory negligence on the part of the deceased as the deceased was also riding a bike bearing No.TR-05-A-8589 with his two friends as pillion rider on the day of alleged occurrence of offence. But the claimants did not make the owner and insurer of the involved bike in the case as party. So, the Insurance Company by the written statement prayed for dismissal of this claim-petition and it was further submitted that claim-petition was subjected to strict proof by the petitioners.

Before the Learned Tribunal, the claimant-petitioner adduced 3 nos. of witnesses including the respondent-claimant-petitioner and relied upon some documentary evidence which were marked as exhibits. For the sake of convenience the names of the witnesses of the respondent-claimant-petitioner and the exhibits are mentioned herein below:

Witnesses of Claimant-petitioner:-

PW1– Smt. Parul Bala Paul

PW2- Sri Biswajit Deb

PW3-Sri Biswajit Malakar

Exhibits of PW1:-

(i) Certified copy of post mortem report of deceased Ashish Rudra Paul in connection with Ghungoor OP GD entry no. 266 dated 14-

10-2018 total in five sheets marked as Exhibit-1(i) to 1(v).

(ii) Certified copy of inquest report prepared in respect of dead body of deceased Ashish Rudra Paul in connection with Ghungoor OP GD entry no. 266 dated 14-10-2018 in one sheet marked as Exhibit-2.

(iii) Certified copy of charge sheet in connection with Dharmanagar PS case no. 2018 DMN 160 under Section 279/338 of IPC and under Section 179/187 of M. V. Act and added Section 304A of IPC in six sheets of paper marked as Exhibit-3(i) to 3(vi).

(iv) Certificate issued by the Ministry of Communication, Department of Posts, Govt. of India dated 05-02-2019 confirming that deceased Ashish Rudra Paul was working as a Daily Rated Worker in Dharmanagar Head Post Office marked as Exhibit-4.

(v) Copy of birth certificate of the deceased bearing registration no. 314 dated 31-12-1997 marked as Exhibit-5.

(vi) Copy of the marksheet of B. Com (Part-III) issued by Tripura University for the year 2016 of the deceased as Exhibit-6.

(vii) Copy of death certificate of husband of the claimant namely Nirendra Rudra Paul bearing No.D-2019: 16-01246-000015 dated 17-10- 2019 marked as Exhibit-7.

On the other hand, the O.P. No.2, Sri Arpan Deb was examined as OPW1 and proved certain documents which were also marked as exhibits:

(a) Copy of the insurance policy of the vehicle bearing No. TR-05B1800 marked as Exhibit-A.

(b) Copy of the registration certificate of the vehicle bearing No. TR05B-1800 as Exhibit-B.

(c) Copy of driving license of Sri Arpan Deb marked as Exhibit-C.

(d) Downloaded copy of the judgment dated 25-07-2022 in PRC (SP) 39 of 2019 passed by Ld. J. M. First Class, Dharmanagar marked as Exhibit-D.

07. Finally, after taking evidence and also on conclusion of the enquiry, Learned Tribunal below by the judgment and award dated 22.05.2024 allowed the claim-petition filed by the respondent-claimant-petitioner. The operative portion of the

judgment/award dated 22.05.2024 of the Learned Tribunal below runs as follows:

O R D E R

17. In view of the above discussion and findings, the application under Section 166 of the Motor Vehicles Act, 1988 filed by the claimant-petitioners is allowed on contest.

The Opposite Party No.3, The MAGMA HDI General Insurance Co. Ltd. Block 3B, B201-202, Ecospace Business Park, Ambuja Reality Campus, Action Area 2, New Town, Kolkata, West Bengal-700156 shall pay the compensation of Rs.20,14,000/- (Rupees twenty lakh fourteen thousand) only to the claimant-petitioner within a period of 30 days from this day of award. This award of compensation shall carry interest at the rate of 6% per annum from the date of presentation of the claim petition before this Tribunal i.e. 08-03-2019 till the date of realization.

18. Keeping in mind the guidelines of Hon'ble Apex Court in General Manager, Kerala State Road Transport Corporation, Trivandam Vs. Ms. Sushama Thomas and others (AIR 1994 SC 1631) and the guidelines as laid down in Union Carbide Corporations case (1991) 4 SCC 584 and subsequent decision of the Hon'ble High Court of Tripura in case no. MAC Application 36 of 2006 Joydeep Chakraborty Vs. Pintu Sharma and another, since the claimant petitioner namely Smt. Parul Bala Pal is a woman, it is ordered that 50% of the awarded amount together with interest shall be fixed in a long term fixed deposit scheme at least for a period of six years in her name in any Nationalized Bank giving a scope to her to draw the monthly interest accrued on it.

No loan or other advances in any form shall be allowed on such fixed certificate without the express permission of this tribunal.

Rest 50% of the awarded amount together with interest shall be released in her favour by transmitting it directly to her savings bank account to allow her to meet the expenditure of her livelihood which she might have incurred for the death of the deceased.

Supply a copy of the judgment to the claimant-petitioner for her ready reference and a copy of the judgment shall also be communicated to the Opposite Party No.3, The MAGMA HDI General Insurance Co. Ltd. Block 3B, B201-202, Ecospace Business Park, Ambuja Reality Campus, Action Area 2, New Town, Kolkata, West Bengal-700156 to facilitate the payment of the awarded compensation in time.

Prepare the award accordingly. Thus, the instant claim petition is disposed off on contest.

From the judgment/award of the Learned Tribunal below, it appears that the Learned Tribunal below after determination of the calculation awarded a sum of Rs.20,14,000/- to the respondent-claimant-petitioner with 6% interest per annum from the date of filing the claim-petition till the date of realization.

08. I have heard arguments of both the sides and also perused the judgment delivered by the Learned Tribunal below including the evidence on record of the contesting parties. As already stated the claimant-petitioner to substantiate the issues adduced 3 nos. of witnesses.

09. The respondent-claimant-petitioner as PW1 in her examination-in-chief in affidavit supported her version made in the claim-petition.

During cross-examination by the appellant-Insurance Company, she stated that her son, Ashish Rudra Paul along with two more riders were riding the motor bike bearing No.TR-05A-8589 at the time of accident and her son did not have any driving licence. But she did not make her son, Debashish Rudra Paul, the registered owner in this case as party.

10. PW2, Biswajit Deb in his examination-in-chief supported the version of the PW1, i.e. the respondent-claimant-petitioner.

During cross-examination, he was declined to cross-examination by the OP Nos.1 and 2 and during cross-examination by the appellant-Insurance Company nothing came out relevant.

11. Similarly, PW3, Biswajit Malakar also in his examination-in-chief in affidavit supported the version of the respondent-claimant-petitioner in his examination-in-chief.

He was declined to cross-examination by the O.P. Nos.1 and 2 but in course of cross-examination by the appellant-Insurance Company, nothing also came out relevant.

12. O.P. No.2, as already stated was examined in this case as O.P.W1. He relied upon some documents in support of his defence, which were marked as Exhibit A to D, as already stated. After going through the evidence on record and also from the exhibited documents including the charge-sheet relied upon by the respondent-claimant-petitioner, it appears that on the alleged day, i.e. on 14.10.2016 at about 1500 hours when the son of the claimant-respondent, Ashish Rudra Paul along with his two friends were proceeding towards Bagbassa to Dharmanagar with a motor bike being driven by Ashish Rudra Paul vide No.TR-05A-8589, which was owned by Debashish

Paul, elder brother of the deceased and when the bike reached near brick field of one Usha Ranjan that time one TATA ACE vehicle bearing No.TR-05B-1800 came in high speed from the opposite direction and dashed against the bike for which the victim fell down on the road from the bike and received severe bleeding injury on his person. He was shifted to Dharmanagar Hospital from where he was shifted to Silchar Medical Hospital for better treatment and during treatment the victim succumbed to his injury and after post mortem examination, the doctor opined that the death was caused as a result of injuries as described which were antemortem and caused by blunt force impacts. The said charge-sheet was marked as Exhibit-3(i)-3(vi). The said documentary evidence relied upon by the respondent-claimant-petitioner was remained un rebutted or unchallenged by the contesting opposite parties including the present appellant. More so, to substantiate the defence, the present appellant-Insurance Company did not adduce any oral/documentary evidence on record.

13. Situated thus, after going through the evidence on record, it appears that the plea of contributory negligence as alleged by Learned Counsel for the appellant, in course of hearing of argument could not be proved by the appellant before the Learned Tribunal below by adducing evidence on record. So, the plea as taken by the appellant-Insurance Company, in course of hearing of argument before this Court

cannot be accepted in the eye of law, although the plea of contributory negligence was taken by the appellant-Insurance Company in the written statement before the Learned Tribunal below. Thus, it appears to this Court that the Learned Tribunal below after appreciating the oral/documentary evidence on record rightly and reasonably has determined the amount of compensation and delivered the judgment/award in favour of the respondent-claimant-petitioner properly for which there is no scope to interfere of the award by this Court at this stage. More so, there was no cross-objection from the side of the respondent-claimant before this Court regarding enhancement of the rate of interest as awarded by the Learned Tribunal below, so, the plea taken by Learned Counsel for the respondent-claimant-petitioner also cannot be accepted at this stage.

14. In course of hearing of argument, Learned Counsel for the respondent-claimant-petitioner relied upon one citation of the Hon'ble Apex Court in **Sudhir Kumar Rana vs. Surinder Singh and Others** dated 06.05.2008 reported in **(2008) 12 SCC 436**, wherein in para No.9 Hon'ble the Apex Court has observed as under:

"9. If a person drives a vehicle without a licence, he commits an offence. The same, by itself, in our opinion, may not lead to a finding of negligence as regards the accident. It has been held by the courts below that it was the thing to say that the appellant was not possessing any licence but no finding of fact has

been arrived at that he was driving the two-wheeler rashly and negligently. If he was not driving rashly and negligently which contributed to the accident, we fail to see as to how, only because he was not having a licence, he would be held to be guilty of contributory negligence."

Referring the same, Learned Counsel for the Insurance Company submitted that if it is proved that the rider of the bike had no driving licence, for that it cannot be said that there was negligence on the part of the rider towards the accident and here in the case at hand, there was no rebuttable evidence on record from the side of the contesting respondents that there was contributory negligence on the part of the deceased at the time of the accident. So, the plea taken by the appellant in this appeal is not sound in law and cannot be legally sustained.

15. Thus, considering the facts and circumstances of the case, I do not find any scope to interfere with the judgment/award delivered by the Learned Tribunal below. Hence, the appeal is liable to be dismissed.

16. In the result, the appeal filed by the appellant stands dismissed being devoid of merit. The judgment and award dated 22.05.2024 delivered by the Learned Tribunal below is hereby upheld and accordingly, it is affirmed. The appellant-Insurance Company be asked to deposit the amount of compensation as ordered by the Tribunal by the said judgment dated 22.05.2024 to the Registry of this High Court,

within a period of six (6) weeks from the date passing of this judgment/order. From the record, it appears that as per order of this Court dated 06.09.2024, the appellant-Insurance Company has already deposited a sum of Rs.10,07,000/- to the Registry of this High Court vide cheque No.607911 dated 24.09.2024. So, the appellant-Insurance Company be asked to deposit the balance amount with accrued interest to the Registry of this High Court within the aforesaid period. With this observation, this appeal stands disposed of.

Send down the LCR along with a copy of the judgment/order to the Learned Tribunal below and copy of this judgment be furnished to the Learned Counsel for the Insurance Company and also to the Learned Counsel for the respondent-claimant-petitioner.

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

JUDGE

MOUMITA DATTA

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