

**HIGH COURT OF TRIPURA
AGARTALA**

MAC App. No.94 of 2024

ICICI Lombard General Insurance Company Limited,
GRS Tower, Old RMS Chowmuhan, P.S. West Agartala,
West Tripura, Pin 799001.
Insurer of vehicle bearing registration No.TR-02G-1775,
(Bolero Pickup Vehicle).

...Appellant.

Versus

- 1. Smt. Anjana Das (Mother of the deceased),**
W/O- Sri Bakul Das,
Resident of Village- Bhagyapur,
P.O.- Dhanbilash,
P.S. & Sub-Division- Kailashahar,
District- Unakoti, Tripura
Pin- 799280.

...Claimant-Respondent.

- 2. Sri Sanjit Sinha,**
S/O. Sri Binode Sinha,
Resident of Village- Fultali,
P.S. & Sub-Division- Kailashahar,
District- Unakoti, Tripura. (Driver and Owner)
[(Owner-cum-Driver of the offending vehicle bearing
registration No.TR-02G-1775, (Bolero Pickup Vehicle)]

...Owner Respondent.

For Appellant(s)	:	Mr. Rajib Saha, Adv.
For Respondent(s)	:	Mr. Samarjit Bhattacharjee, Adv, Mr. D. Paul, Adv.
Date of Hearing	:	27.11.2024
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 16.01.2024

delivered by Learned Member, MAC Tribunal No.1, Unakoti District, Kailasahar, in connection with case No.T.S. (MAC) No.40 of 2022. By the said judgment, Learned Tribunal below has awarded compensation amounting to Rs.11,50,000/- with 6% interest per annum from the date of filing the claim-petition w.e.f. 29.09.2022 to within two months i.e. from that day of judgment, failing which the O.P. shall have to pay penal interest at the rate of 9% per annum till the date of actual payment.

02. Heard Learned Counsel, Mr. Rajib Saha, representing the appellant and also heard Learned Counsel, Mr. Samarjit Bhattacharjee, appearing on behalf of the claimant-respondent and Learned Counsel, Mr. D. Paul for the owner-respondent.

03. In course of hearing of argument, Learned Counsel for the appellant-Insurance Company submitted that before the Learned Tribunal, the driving licence of the driver was not properly produced, because the offending vehicle was a heavy vehicle and the driving licence produced (Exhibit-C) was for driving of LMV-NT vehicle. So, Learned Tribunal below relying upon the judgment of Hon'ble Apex Court in **AIR 2011 SC 1234 (Kusum Lata & Ors. Vs. Satbir & Ors.)** and applied the principle of 'Pay and Recovery' and fastened the liability of payment of compensation upon the Insurance Company, i.e.

the present appellant herein which was not permissible in the eye of law.

Learned Counsel further submitted that the rate of interest determined by the Learned Tribunal below was highly excessive and the Learned Tribunal below in the judgment/award did not assign any reason for fixing such further rate of interest and urged for fixing the rate of interest at the rate of 7.5% per annum.

04. Learned Counsel for the claimant-respondent also fairly submitted that the claimant shall have no objection if the rate of interest is fixed at the rate of 7.5% per annum.

Learned Counsel for the respondent-owner urged for passing appropriate order.

05. I have heard submission of both the sides and also gone through the judgment and award of the Learned Tribunal below. The respondent-claimant filed one claim-petition before the Learned Tribunal below alleging inter alia that on 09.05.2022, one Sridam Das along with his other workers were returning back from Kanchanbari with decoration articles by boarding in a vehicle bearing No.TR-02G-1775 (Bolero Pick Up Vehicle) and when the vehicle reached near Assam Rifles Camp on Kamalpur-Kailashahar Road at about 5 a.m., that time the vehicle dashed against a culvert and as a result, all the workers of the vehicle fell down on the road and sustained

injury. Sridam Das sustained severe injury on his person. Police shifted him to Fatikroy PHC, as his condition was precarious. So, he was further shifted to Kailashahar District Hospital when the doctor declared him as dead. On the basis of information a *suo-moto* FIR was laid and accordingly, Fatikroy P.S. case No.19/2022 under Section 279/338 IPC with added Section 304A was registered. According to the respondent-claimant, the accident occurred due to rash and negligent driving of the offending vehicle bearing No.TR-02G-1775 (Bolero Pickup Vehicle). It was also the case of the respondent-claimant that Sridam Das was a decorator by profession and his monthly income was Rs.20,000/- and on the day of alleged accident, he was only 22 years old. So, the respondent-claimant filed the claim-petition.

Before the Tribunal, the Insurance Company, i.e. the appellant herein and the owner-cum-driver appeared and submitted their written statement denying the assertions of the respondent-claimant. However, upon the pleadings of the parties, Learned Tribunal below framed some issues and to substantiate the issues both the parties have adduced oral/documentary evidence on record and after conclusion of the enquiry, the Learned Tribunal below allowed the claim-petition of the respondent-claimant and awarded compensation in favour of the respondent-claimant. The operative portion of the judgment and award dated 16.01.2024 runs as follows:

A W A R D

12. In the result, it is ordered that O.P. No. 2, The ICICI Lombard Nibhaye Vaade Insurance Company Ltd., Regional Office - 2nd Floor, RMS Chowmuhani, Agartala, West Tripura, the Insurer of the offending vehicle bearing No. TR 02-G-1775 (Bolero Pickup), as per the principle of pay and recover shall pay the awarded amount of compensation of Rs.11,50,000/- (Rupees eleven lakh fifty thousand) with interest @ 6% per annum from the date of filing of the case, i.e., on 29-09-2022 to the claimant-petitioner within 02(two) months from today, failing which the OP No.2 shall have to pay penal interest of 9% p.a. till the date of actual payment.

13. Order regarding manner of disbursement of the compensation amount shall be passed as per the guidelines of the Hon'ble High Court of Tripura after payment of the awarded amount.

14. Supply copy of this award free of cost to the claimantpetitioner and OP Nos. I &2 through their engaged learned counsels.

15. The case stands disposed of.

So, after hearing both the sides and also after going through the judgment and award of the Learned Tribunal below, it appears that the Learned Tribunal below rightly relying upon the judgment of the Hon'ble Apex Court as stated above (Supra), opted to apply the principle of 'Pay and Recovery Policy' for want of admissible driving licence of the driver of the offending vehicle and fastened the liability of payment of compensation upon the appellant. So, I find no infirmity in the said principle applied by the Learned Tribunal below. But regarding fixing of the rate of interest, it appears that Learned Tribunal below at the time of determination of compensation directed the appellant to pay the amount of

compensation with 6% interest from the date of filing the claim-petition i.e., w.e.f. 29.09.2022 to within two months from the date of delivery of judgment i.e. w.e.f. 16.01.2024, failing which the appellant-Insurance Company shall have to pay penal interest at the rate of 9% per annum from the date of actual payment.

06. On perusal of the said part of the findings of the Learned Tribunal below, it appears that the said observation was not in accordance with law. As Learned Counsel for both the appellant and respondent-claimants during argument fairly submitted for fixing the rate of interest at the rate of 7.5% per annum, so, in the considered view of this Court, the rate of interest be fixed at the rate of 7.5% per annum from the date of filing the claim-petition i.e., w.e.f. 29.09.2022 to till the date of actual payment.

07. In the result, the appeal filed by the appellant is hereby partly allowed. The judgment and award of the Learned Tribunal below is modified to the extent that the appellant-Insurance Company shall pay total amount of compensation of Rs.11,50,000/- along with 7.5% interest per annum from the date of filing the claim-petition i.e. w.e.f. 29.09.2022 till the date of actual payment to the respondent-claimants. From the record it appears that, as per order of this Court, the appellant has already deposited 50% of the amount of compensation to the Registry of this High Court. So, the appellant-Insurance

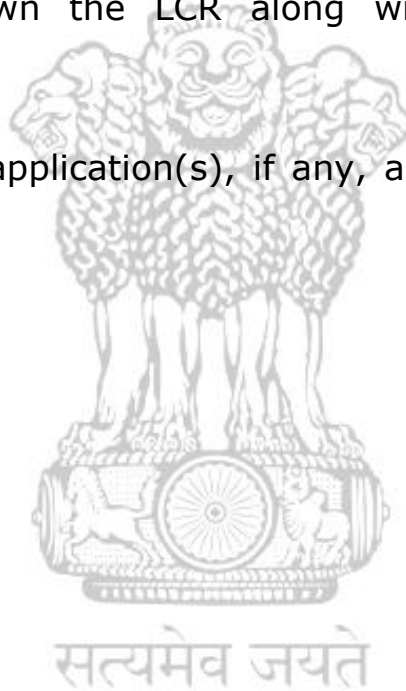
Company be asked to deposit the balance amount of compensation with accrued interest as per judgment to the Registry of this High Court within a period of six weeks from the date of passing of this judgment/ order.

A copy of this order be supplied free of cost to Learned Counsel for the appellant-Insurance Company and also to the Learned Counsel for the respondent-claimants. With this observation this appeal stands disposed of.

Send down the LCR along with a copy of the judgment/order.

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

JUDGE



MOUMITA
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