

**HIGH COURT OF TRIPURA
AGARTALA
MAC App. No.5 of 2024**

National Insurance Co. Ltd.,
Represented by the Divisional Manager,
Office at A. K. Road, P.S.-West Agartala,
District-West Tripura (Insurer of the offending vehicle No.TR-01-AF-4852(motor cycle)).

----- Opposite Party No.2-Appellant(s)
Versus

- 1. Sri Pranati Debnath,**
D/O Sri Narayan Debnath,
- 2. Smt. Saraswati Debnath**
D/O Sri Narayan Debnath
- 3. Sri Rupan Debnath**
S/O Sri Narayan Debnath
- 4. Sri Rajesh Debnath**
S/O Sri Narayan Debnath

All are residing at Bijohnagar, Near Bijohnagar High School,
P.S.-Sidhai, District-West Tripura, Pin-799211.

----- Claimant Respondents

- 5. Smt. Kanan Debnath (Saha)**
W/O Lt. Subal Saha
Of Durjohnagar, Near Durjohnagar School, Natun Nagar
PS-Airport, District-West Tripura.
(Owner of the offending vehicle No.TR-01-AF-4852(Motor cycle))

-----Opposite Party-Respondent(s)

For Appellant(s)	:	Ms. Rajasree Purkayashtha, Adv.
For Respondent(s)	:	Mr. Sankar Lodh, Adv, Mr. Subham Majumder, Adv.
Date of hearing	:	27.05.2025
Date of delivery of Judgment & Order	:	29.05.2025
Whether fit for reporting	:	NO

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This appeal under Section 173 of MV Act is
preferred by the Insurance Company challenging the judgment

and award dated 17.06.2023 delivered by Learned MAC Tribunal, West Tripura, Agartala in connection with case No.TS(MAC) No.125 of 2019. By the said judgment and award, Learned Tribunal below has awarded a sum of Rs.15,32,536/- with 7.5 % p.a. with effect from the date of filing of claim petition i.e. on 11.06.2019 to till the date of realization.

2. Heard Learned Counsel Ms. Rajasree Purkayastha appearing on behalf of the appellant-Insurance Company and also heard Learned Counsel Mr. Sankar Lodh along with Learned Counsel Mr. Subham Majumder appearing on behalf of the respondent-claimant petitioners. None appeared on behalf of the owner of the offending vehicle.

3. Taking part in the hearing Learned Counsel for the appellant-Insurance Company first of all drawn the attention of the Court referring PM examination report where the age of the deceased has been shown as 50 years without any basis and further drawn the attention of the Court to the forwarding report(Exbt.-4/1) wherein the concerned Doctor at the time of sending requisition to O/C GB outpost, Tripura (West) has mentioned the age of the deceased as 65 years. Furthermore, Learned Counsel drawn the attention of the Court referring the examination-in-chief by way of affidavit of witness Rupam Debnath wherein the said witness has mentioned that at the time of death his mother was 49 years old and submitted that in support of the actual age of the deceased the respondent-claimant petitioners have failed to produce any documentary

evidence before the Learned Tribunal below and without any basis as to how the concerned doctor mentioned the age of the deceased as 50 years, the Learned Tribunal below applied the multiplier of 13 which was not proper in absence of documentary evidence on record.

Learned Counsel for the appellant in her second part of argument submitted that the monthly income of the deceased was determined at Rs.9,180/-. The deceased was a day labourer and the Learned Tribunal below did not give any observation as to how the said amount was determined at the time of delivery of judgment. So, in summing up Learned Counsel for the Insurance Company urged for interference with the judgment and award delivered by Learned Tribunal below by allowing this appeal.

4. On the other hand Learned Counsel Mr. Sankar Lodh appearing on behalf of the respondent-claimant petitioners first of all drawn the attention of the Court to the claim petition filed by the respondent-claimant petitioners wherein in the respective column of age of the deceased it was written as 49 years at the time of death. Learned Counsel further drawn the attention of the Court referring the written statement filed by the owner of the vehicle and the Insurance Company wherein those contesting respondents did not dispute anything regarding the age of the deceased. Further Learned Counsel Mr. Lodh drawn the attention of the Court referring the examination-in-chief in affidavit of Sri Rupam Debnath wherein

in para No.4 of his examination-in-chief, he specifically stated that at the time of death his mother was 49 years old and in this regard the appellant-Insurance Company during cross-examination did not raise any objection regarding age of the deceased so at this stage there is no scope to raise this issue by the appellant that no documentary evidence was adduced by the respondent-claimant petitioners before the Learned Tribunal below. Learned Counsel Mr. Lodh further submitted that even this High Court also has determined the minimum wages of a labourer at Rs.10,000/- per month. Here in the case at hand the Learned Tribunal below based upon the notification issued by Labour department, Government of Tripura determined the revised pay of wages for the highly skilled worker at Rs.306/- per day and thus calculated the monthly income of the deceased at Rs.9,180/- per month, so, there was no infirmity in the said observation made by the Learned Tribunal below in this regard. So, in summing up Learned Counsel for the respondent-claimant petitioners fairly submitted before the Court that there was no infirmity or inconsistency in the judgment delivered by Learned Tribunal below and urged for dismissal of this appeal.

5. The brief facts of the case is that the respondent-claimant petitioners filed one claim petition before the Learned Tribunal below alleging inter alia that on 31.01.2019 Subhasi Debnath (since dead) was proceeding towards her house from nearby her relative's house by walking maintaining herself with the extreme left side of the road and in course of the journey

when she reached near Bijohnagar High School that time a vehicle bearing Registration No.TR-01-AF-4852(Motor cycle) which was coming from the same direction with high speed due to rash and negligent driving by its rider suddenly lost control over the vehicle and dashed against the victim for which the accident took place. As a result of which, said Subhasi Debnath(since dead) sustained greivous head injury, neck injury, chest injury, abdomen injury and injuries to other parts of her body. Immediately thereafter with the aid of the local people she was brought to one Primary Health Centre but considering her injuries as greivous in nature, the attending doctor referred her to AGMC & GBP Hospital, Agartala and then and there she was taken to AGMC & GBP Hospital wherein she was admitted in the hospital as an indoor patient but during treatment in the hospital she succumbed to her injuries on 01.02.2019. On the basis of that accident, Sidhai PS case No.9/2019 under Section 279/338 of IPC was registered and later on Section 304A of IPC was added.

The claim petition was contested by the OP No.1- the owner of the offending bike by filing written statement denying the entire assertions of the claimant petitioners and further took the plea that on the alleged day the vehicle was assured with the National Insurance Company Ltd.

The OP No.2-Insurance Company also contested the claim petition by filing written statement denying the assertions of the respondent-claimant petitioners in their claim

petition and further submitted that the claim petition is subjected to strict proof by the respondent-claimant petitioners.

6. Upon the pleadings of the parties, Learned Tribunal below framed the following issues:

- i) **Is the claim petition maintainable in its present form and nature?**
- ii) **If the death of Subhasi Debnath was caused due to a road traffic accident which occurred on 31.01.2019 at about 14:00 hours at Bijohnagar High School on Agartala-Simna road under Sidhai PS due to the rash and negligent driving of the vehicle bearing Registration No.TR-01-AF-4852, (Motor Cycle)? If so, is the claimant petitioner entitled to get compensation as prayed for?**
- iii) **Who shall be liable for payment of compensation to the claimant petitioner?**

7. To substantiate the issues, the appellant-claimant petitioner has adduced oral/documentary evidence on record which were marked as Exhibits.

Name of the witness of the appellant-claimant petitioner:

- 1. PW-1: Sri Rupan Debnath**

Exhibits of the appellant-claimant petitioner:

- 1. Exbt.1: Certified copy of printed FIR.**
- 2. Exbt.2: Certified copy of FIR.**
- 3. Exbt.3: Certified copy of Seizure list.**
- 4. Exbt.4: Certified copy of postmortem report.**
- 5. Exbt.5: Certified copy of charge sheet.**

Finally, on conclusion of enquiry Learned Tribunal below allowed the claim petition of the respondent-claimant petitioners and fastened the liability of payment of compensation upon the Insurance Company. The operative portion of the judgment and award of the Learned Tribunal below runs as follows:

ORDER/AWARD

"The OP No.2, The National Insurance Company Ltd is directed to deposit the awarded compensation of

Rs.15,32,536/- (Rupees fifteen lakhs thirty two thousand five hundred thirty six) only within 30 days from today with interest thereon at the rate of 7.5% per annum with effect from date of filing of the claim application i.e. from 11.06.2019 to till realization of the full.

Distribution of Compensation

The claimant No.2 to 5 are equally entitled to get compensation.

Protection Awarded Compensation

Sixty percent(60%) of the amount of compensation of claimant No.2 to 5 are to be deposited for five years and the rest amount are to be released in their favour in their bank account.

In case of necessity, the Tribunal can be approached for withdrawal fixed deposited amount. On maturity of the fixed deposits the Banker shall credit the amounts to the sole SB Accounts of claimants without any further order from the Tribunal.

Furnish a copy of the award to both sides.

The case stands disposed of on contest."

Challenging the said judgment and award, the present appeal is preferred.

8. I have heard both the sides at length and perused the record of the Learned Tribunal below. It is the admitted position that in the claim petition, the respondent-claimant petitioners shown the age of the deceased as 49 years at the time of filing the claim petition. Accordingly, PW-1, Rupan Debnath i.e. the son of the deceased in his examination-in-chief in affidavit in para No.4 specifically stated that at the time of death his mother was 49 years old and she used to earn Rs.12,000/- per month. The said PW-1 duly cross-examined by the present appellant-Insurance Company but surprisingly the appellant-Insurance Company at the time of cross-examination of said PW-1 did not put a single question to him regarding age of the deceased as 49 years. It is on record that in Exbt.-4/2 i.e. PM examination report, the age of the deceased was shown

as 50 years but on what basis the age was shown as 50 years by the attending doctor at the time of submitting PM report that could not be ascertained and on perusal of Exbt.-4/1 i.e. forwarding report it appears that in the said forwarding report the attending doctor mentioned the age of the deceased as 65 years but the Learned Tribunal below at the time of determination of compensation determined the age of the deceased as 50 years. In **Sarla Verma(Smt) and others v. Delhi Transport Corporation and Another** dated **15.04.2009** reported in **(2009) 6 SCC 121** wherein in para No.42, Hon'ble the Apex Court observed as under:

"42. We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying *Susamma Thomas:(1994) 2 SCC 176*, *Trilok Chandra:(1996) 4 SCC 362* and *Charlie:(2005) 10 SCC 720*), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."

On perusal of the said paragraph it appears that the Hon'ble Apex Court has been pleased to observe that multiplier of 13 would be applicable if the age of the deceased is in between 46 to 50 years. Here in this case if it is found that the deceased was 49 years in that case multiplier would be 13 and if it is 50 years the same multiplier would also be applied.

9. In Exbt.-4/1 although the doctor at the time of sending requisition to O/C mentioned the age of the deceased as 65 years but in this regard in the considered opinion of the

Court, the same was mentioned without any specific reference or base, so, no reliance can be placed upon that. In my considered view, Learned Tribunal below rightly determined the multiplier in the light of the aforesaid judgment as 13 and I find no infirmity in the said observation of the Learned Tribunal below.

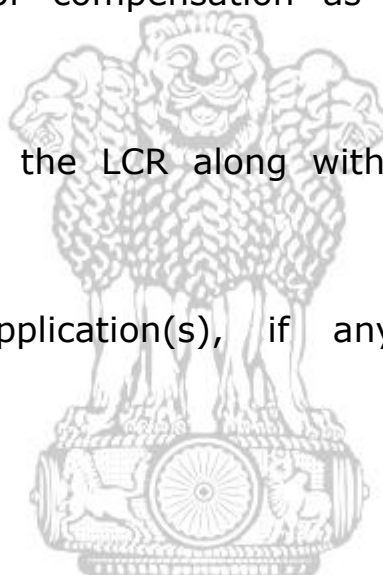
10. Regarding monthly income of the deceased, the Learned Tribunal below relied upon PM examination report and determined the age of the deceased as 50 years at the time of death although the respondent-claimant petitioners took the plea that the deceased was 49 years. As already stated, multiplier would be 13 in view of the judgment of Hon'ble Supreme of India in **Sarla Verma(supra)** both in respect of 49 or 50. Since the appellant before the Learned Tribunal below did not challenge the age of the deceased at the time of death by way of cross-examination or by their specific assertions in the written statement so at this belated stage the said submission cannot be accepted. Further as referred by Learned Counsel for the appellant, the Learned Tribunal below at the time of determination of compensation based upon the notification of Labour Department, Government of Tripura determined the monthly income of the deceased at Rs.9,180/-(Rs.306/- per dayx30 days) which in my considered view was justified and rational. So, the plea taken by the appellant before the High Court at the time of hearing of appeal in my considered view cannot be accepted. Situated thus after going through the

judgment of the Learned Tribunal it appears that there was no infirmity in the judgment delivered by Learned Tribunal below. Hence this appeal is liable to be dismissed.

11. In the result the appeal filed by the appellant-Insurance Company is dismissed being devoid of merit. The judgment and award dated 17.06.2023 delivered by Learned MAC Tribunal, West Tripura, Agartala in connection with case No. TS(MAC)/125/2019 is hereby upheld and accordingly the same is affirmed. The appellant-Insurance Company be asked to deposit the award or compensation as ordered by the Tribunal shortly.

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

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



सत्यमेव जयते

JUDGE