

**HIGH COURT OF TRIPURA
AGARTALA
MAC App. No.7 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(s)

Versus

1. Smt. Susmita Barman (Kar),
W/O Late Shyamal Kar

2. Miss. Sayantika Kar,
D/O. Late Shyamal Kar

Both are residents of Badurtali Lane,
Krishnanagar, P.O. Agartala, PIN-799001,
P.S. West Agartala, District-West Tripura.

----Claimant-Respondent(s)

3. Smt. Sajeda Begam

W/O Michil Miah,
Resident of Srimantpur, Shobhapur,
P.S.-Sonamura, P.O. Sonamura,
District-Sepahijala, Tripura. PIN-799181,
(Owner of Truck bearing No.TR-03-B-1805)

----Owner-Respondent(s)

For Appellant(s) : Mr. Rajib Saha, Adv.

For Respondent(s) : Mr. Kishor Kumar Pal, Adv.

Date of hearing
& delivery of
Judgment & Order : 30.08.2025

Whether fit for
reporting : NO

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order(Oral)

This appeal is preferred challenging the judgment and
award dated 12.10.2023 delivered by Learned Member, MAC

Tribunal No.1, West Tripura, Agartala in connection with T.S.(MAC)/314/2022. By the said judgment and award, Learned Tribunal below has awarded a sum of Rs.58,05,700/- with interest at the rate of 9% per annum with effect from 18.11.2022 i.e., from the date of filing of the claim petition to till the date of actual realization/payment.

2. Heard Learned Counsel Mr. Rajib Saha, appearing on behalf of the appellant-Insurance Company and also heard Learned Counsel, Mr. Kishor Kumar Pal, appearing on behalf of the respondent-claimant petitioners. None appears on behalf of the owner of the offending truck bearing No.TR-03-B-1805 inspite of receipt of notice.

3. Taking part in the hearing, Learned Counsel for the appellant first of all drawn the attention of the Court regarding the determination of monthly income of the deceased by the Learned Tribunal below and submitted that based upon the income tax return for the year 2022-23, supported by balance sheet which was also not signed by the deceased(Exbt.-10 series in 4 sheets), Learned Tribunal below determined the total gross annual income of the deceased at Rs.7,56,568/- and from that, Rs.51,870/- was deducted towards tax and after that, Learned Tribunal below divided Rs.7,04,698/- by 12 and determined the monthly income of the deceased at Rs.58,725 which was too high as compared to the income tax return of 2021-22. Learned Counsel for the appellant-Insurance Company

further drawn the attention of the Court that in the income tax return for the year 2021-22(Exbt.-9), the total income of the deceased was shown at Rs.4,83,680/- when the deceased paid Rs.1000/- as tax, but surprisingly within a short span of time his yearly income has been shown as Rs.6,36,950/- which was too high because the income tax return for the year 2022-23 was electronically generated on 13.11.2022 and the income tax return for the assessment year 2021-22 was electronically generated on 30.03.2022. Learned Counsel further submitted that the alleged accident took place on 06.09.2022 and on 13.11.2022, the income tax return for the year 2022-23 was submitted and the balance sheet of his firm was also submitted and there is no scope to place any reliance upon that as the same is not free from any embellishment rather it appears that the same was a manufactured one. Learned Counsel for the appellant again submitted that since the Learned Tribunal below based upon the income tax return for the year 2022-23 supported by balance sheet as on 31.03.2022 determined the monthly income of the deceased at Rs.58,725/-, so, the calculation of amount cannot be relied upon. So, Learned Counsel for the appellant-Insurance Company urged for interference of judgment by this Court for the sake of justice.

It was further submitted by Learned Counsel for the appellant that the Learned Tribunal below at the time of delivery of judgment also awarded interest at the rate of 9% p.a. which was also too high because in most of the nationalized

banks nowadays interest at the rate of 7% or 7.25% or 7.5% only are being paid as being paid so the rate of interest also should be modified/reduced in his case. Finally, Learned Counsel for the appellant urged for allowing this appeal by setting aside the judgment.

4. On the other hand, Learned Counsel for the respondent-claimant petitioners submitted that on the alleged date of accident not only the deceased succumbed to his injuries but his wife also sustained injuries for which separate claim petition has been filed by the wife of the deceased and Learned Tribunal allowed the said claim petition filed by the present respondent-claimant petitioners and awarded compensation which is also pending for disposal before this Court on being appeal filed by the present appellant-Insurance Company. Regarding this appeal, Learned Counsel for the respondent-claimant petitioners strongly opposed the submission made by Learned Counsel for the appellant-Insurance Company and submitted that Learned Tribunal below based upon the oral/documentary evidence on record rightly determined the monthly income of the deceased at Rs.58,725/-. Learned Counsel further submitted that the return was duly accepted by the Income Tax Department and before the Learned Tribunal below, the appellant-Insurance Company in course of cross-examination of the respondent-claimant petitioner as PW-1 did not raise any ground to disbelieve Exbt.-9 and Exbt.-10(four sheets). Furthermore from the side of the

appellant-Insurance Company, no evidence was adduced to disbelieve the said documents. So at this stage of appeal, there is scope to accept the contention made by Learned Counsel for the appellant-Insurance Company. Furthermore according to Learned Counsel for the respondent-claimant petitioners, before the Learned Tribunal below also, the appellant-Insurance Company save and except denial did not adduce any other evidence on record to disallow the claim petition filed by the respondent-claimant petitioners.

It was further submitted by Learned Counsel for the respondent-claimant petitioners that even the Hon'ble Apex Court in different cases awarded interest at the rate of 9% per annum and in this case the Learned Tribunal below after consideration of the evidence on record imposed interest at the rate of 9% per annum which was rational and justified and at this stage there is no scope to interfere with the same. So, Learned Counsel urged for dismissal of this appeal filed by the appellant-Insurance Company.

5. In this case, the respondent-claimant petitioners filed one claim petition before the Learned Tribunal, alleging inter alia that on 06.09.2022 at about 11.45 am, the husband of the respondent-claimant petitioner No.1, Shyamal Kar along with the respondent-claimant petitioner No.1 were coming from Chottokhala towards Agartala via Udaipur by boarding a vehicle bearing registration No.TR-01-H-0405(Maruti Zen) and when they reached at Patichari near Atkabazar under Shantirbazar

Police Station, that time, one truck bearing registration No.TR-03-B-1805 came from the opposite direction with high speed and due to rash and negligent driving of the said vehicle by its driver. The driver took the vehicle in the wrong side and suddenly dashed against the right frontal portion of the vehicle, being boarded by the respondent-claimant petitioner No.1 and her husband bearing registration No.TR-01-H-0405 (Maruti Zen) and due to violent dashing, the right frontal portion of the Maruti Zen was totally damaged and the victim Shyamal Kar and his wife Susmita Barman(Kar) received fatal injuries and the fire service immediately thereafter brought both of them at Shantirbazar Hospital from where considering the gravity of the injury both the victims were shifted to AGMC & GBP Hospital and at GBP Hospital the attending doctor declared husband of claimant petitioner No.1 as dead and the claimant petitioner No.1 was shifted to ILS Hospital for better treatment. It was further submitted that the accident took place due to rash and negligent driving of the truck by its driver bearing No.TR-03-B-1805 and for that accident, a specific police case vide Shantirbazar PS case no.24 of 2022 under Section 279/338/427/304(A) of IPC read with Section 184 of M.V Act was registered. It was further submitted that the deceased was a businessman of Hardware Wholesale at Agartala Town under the name and style as M/S. Kar Agencies and from his shop he used to earn Rs.70,000/- per month and at the time of death, the deceased victim was 55 years old and due to untimely

death, the respondent-claimant petitioners have been suffering a lot, so, they filed the claim petition.

The owner of the truck contested the claim petition by filing written objection denying the assertions of the respondent-claimant petitioners and finally took the plea that on the alleged day of accident the offending truck was duly insured with the appellant-Insurance Company.

The appellant-Insurance Company also contested the case by filing written statement denying the assertions of the respondent-claimant petitioners and submitted that the claim petition was subjected to strict proof.

6. Upon the pleadings of the parties, Learned Tribunal below determined the following points for decision of the claim petition:

- i) Did deceased Shyamal Kar die in a road traffic accident occurred on 06.09.2022 at about 11.45 a.m. at Patichari near Athka Bazar on Agartala Sabroom Main Road under Santir Bazar Police Station out of use of vehicles bearing registration No. TR-01-H-0405 (Maruti Zen) and TR-03-B-1805 (Truck) due to rash and negligent driving by the driver of the Truck?**
- ii) Are the petitioners entitled to get compensation as prayed for and if so, to what amount and who is/are liable to pay the same?**
- iii) To what other reliefs the parties are entitled?**

7. To substantiate the aforesaid points, the respondent-claimant petitioner No.1 was examined herself as PW-1 and relied upon some documents which were marked as Exbt.-1 to Exbt -10 series.

On the other hand, the owner of the truck was examined as OPW-1 and relied upon some documents of the truck bearing registration No. TR-03-B-1805 which were marked as Exbt.-A to Exbt.-C. For convenience, the names of the witnesses as well as the exhibited documents are mentioned herein below:

Name of the witness of the claimant:

1. PW-1: Smt. Susmita Barman (Kar)

Exhibits of the claimant:

1. Exbt.1(i)-1(xi): FIR along with Ejahar, in lieu of seizure memo, Mechanical Inspection Reports.
2. Exbt.2(i)-2(xiii): Post Mortem Examination Report, Final Report.
3. Exbt.3: Death Certificate.
4. Exbt.4: Survival Certificate.
5. Exbt.5: Pan Card of Shyamal Kar.
6. Exbt.6: Aadhar Card.
7. Exbt.7: Insurance policy Certificate.
8. Exbt.8: Trade Licence.
9. Exbt.9: Income tax return acknowledgment.
10. Exbt.10 series: Income tax return acknowledgment, Balance sheet, Profit and loss account, Computation of tax.

Name of the witness of the opposite party No.1:

1. OPW-1: Smt. Sajeda Begam

Exhibits of the Opposite Party No.1:

1. Exbt.A: Policy certificate.
2. Exbt.B: Registration Certificate.
3. Exbt.C: Driving Licence.

Finally on conclusion of enquiry, Learned Tribunal below allowed the claim petition by the judgment and award dated 12.10.2023. The operative portion of the judgment runs as follows:

ORDER

"It is, therefore, held that the claimant petitioners are entitled to get compensation of Rs.58,05,700/- (Rupees Fiftyeight Lakh Five Thousand Seven Hundred only) with interest @ 9% per annum with effect from 18.11.2022 i.e. the date of filing of the claim petition till the date of actual payment as per Judgment of the Hon'ble Supreme Court of India passed on 17.10.2022 in CA No.7593 of 2022. The Opposite Party No.2 namely, MAGMA HDI General Insurance Company Ltd. will pay the amount of

compensation with interest within 30 days from today in terms of Section 168(3) of M.V. Act, 1988.

Out of the total awarded amount of compensation inclusive of interest, the claimant petitioner no.1 will get 70% and the claimant petitioner no.2 will get 30%. Out of the respective share of claimant petitioners no.1 and 2, 50% each of their respective share shall be kept in fixed deposit scheme in their respective name in any Nationalized Bank of their locality for a period of five years each and the remaining 50% of their respective share shall be paid to them through their respective bank account. The claimant petitioners no.1 and 2 shall however be at liberty to withdraw monthly interest from their fixed deposit to meet their day today expenses. No loan or premature withdrawal shall be permitted from/against any of the fixed deposit certificates without prior permission of this Tribunal.

Supply copy of this award free of cost to the parties.

The claim petition stands disposed of on contest."

And challenging that judgment, the appellant-Insurance company has preferred this appeal.

8. I have heard argument of both the sides and gone through the judgment and award delivered by Learned Tribunal below, and also the evidence on record adduced by the parties before the Learned Tribunal below. It is the admitted position that before the Learned Tribunal, the present appellant did not adduce oral/documentary evidence on record save and except filing of written statement. The respondent-claimant petitioner No.1 in her examination-in-chief in affidavit supported her version in the claim petition but during cross-examination by the present appellant-Insurance Company, she stated that on the alleged day the deceased Shyamal Kar was driving the vehicle bearing No.TR-01-H-0405(Maruti Zen) and she took her seat besides her husband in the front of the vehicle and she clarified that the truck in question was running on the wrong track at that relevant point of time. But regarding income tax

returns as relied upon by the respondent-claimant petitioners which were marked as Exbt.-9 and Exbt.-10 series, it appears that not a single question was raised by the appellant-Insurance Company to the respondent-claimant petitioner No.1 during her cross-examination by the appellant- Insurance Company before the Learned Tribunal below. Thus, it appears to this Court that this plea was firstly taken before this Court at the time of hearing of appeal.

However, at the time of hearing Learned Counsel for the appellant tried to draw the attention of the Court referring the income tax return for the period of 2021-22 and 2022-23 and submitted that in both the returns there was huge variation of income of the deceased. Furthermore, in the balance sheet of the firm belonging to the deceased, the total gross income of the deceased was shown as Rs.7,56,568/- which includes income from business as Rs.7,21,830/- and income from other sources as Rs.34,738/- i.e. accrued interest on fixed deposit and referring the same Learned Counsel for the appellant submitted that the said amount of income from other sources amounting to Rs.34,738/- could not be taken into consideration for determination of annual income of the deceased and urged for interference of this Court. But after going through these documents and also after going through the oral evidence on record, I do not find any scope to disbelieve Exbt.-10 series(4 sheets) relied upon by the respondent-claimant petitioners before the Learned Tribunal below. There is also no contrary

evidence on record from the side of the appellant-Insurance Company to disbelieve said Exbt.-10 series as relied upon by the claimant petitioners. So, it appears to this Court Learned Tribunal below at the time of delivery of judgment rightly determined the monthly income of the deceased at Rs.58,725/- and as such, I do not find any scope to interfere with the same.

Although the appellant took the plea that the accident took place on 06.09.2022 and the income tax return i.e. Exbt.-10 series was electronically generated on 13.12.2022. And from the evidence on record it appears that there was no infirmity in the judgment of the Learned Tribunal below regarding determination of monthly income of the deceased as a businessman of hardware. So, the submission of the Learned Counsel for the appellant cannot be accepted as a genuine and valid one to take a reverse view about determination of monthly income of the deceased by the Learned Tribunal.

9. However at the time of hearing, Learned Counsel for the appellant-Insurance Company drawn the attention of the Court that Learned Tribunal at the time of delivery of judgment imposed rate of interest at 9% per annum with effect from the date of filing the claim petition to till the date of actual payment. In this regard, this High Court in several judgments considering the rate of interest in the nationalized banks of the country determined the interest at the rate of 7.5% and it appears to this Court that the Learned Tribunal below at the time of delivery of judgment determined interest at the rate of

9% which appears to be in higher side. So considering all, after hearing the submission of Learned Counsel for the appellant it appears to this Court that only on this point the appellant is entitled to get some relief from this Court.

So, after hearing both the sides it appears that the percentage of rate of interest imposed by Learned Tribunal below should be interfered with. Accordingly, the rate of interest be awarded in favour of the respondent-claimant petitioners at the rate of 7.5% in place of 9%. Since Learned Counsel for the appellant in course of hearing of argument did not raise any other points to decide this appeal so this Court also does not find any illegality or perversity in the judgment delivered by the Learned Tribunal below.

10. Further on perusal of the judgment of the Learned Tribunal below it appears that based on the evidence on record Learned Tribunal came to the observation that the deceased was a businessman of hardware items who was running his establishment under the name and style as M/S. Kar Agencies and he had valid trade licence on that relevant point of time and relying upon the judgment of Hon'ble Supreme Court of India in **Sarla Verma & Ors. Vs. Delhi Transport Corporation** reported in **(2009) 6 SCC 121**, Learned Tribunal below applied multiplier of 11 and relying upon another judgment of Hon'ble Supreme Court in **National Insurance Co. Ltd. Vs. Pranay Sethi & Ors., (Spl. Leave Petition(civil) No.25590 of 2014)** further added 10% of the monthly income and

determined the loss of dependency at Rs.85,26,936/- and thereafter from that amount, deducted 1/3rd of the amount on account of personal expenditure and determined the net amount at Rs.56,84,624/- and after that, with that amount added Rs.16,500/- as loss of estate and Rs.16,500/- towards funeral expenses and towards loss of consortium, Rs.80,000/- (i.e. Rs.40,000 x 2) along with 10% in addition after expiry of 3 years and after final calculation, determined the total amount of compensation amounting to Rs.58,05,624/- (Rs.56,84,624/- + Rs.16,500/- +Rs.16,500/- + Rs.88,000/-). Since from the side of the appellant no further argument was raised in respect of other conventional heads save and except the rate of interest, so, it appears to this Court there was no illegality or perversity in the judgment delivered by Learned Tribunal below.

11. In the result, the appeal filed by the appellant-Insurance Company is partly allowed. The judgment and award dated 12.10.2023 delivered by Learned MAC Tribunal No.1, West Tripura, Agartala is hereby modified to the extent that the respondent-claimant petitioners shall be entitled to get the compensation of Rs.58,05,700/- along with interest at the rate of 7.5% per annum with effect from 18.11.2022 i.e. from the date of filing the claim petition to till the date of actual payment. The aforesaid amount be deposited by the appellant-Insurance Company to the Learned Tribunal below within a period of 6(six) weeks from the date of delivery of judgment by this Court and the disbursal of amount shall remain the same as

ordered by Learned Tribunal below by the aforesaid judgment and award dated 12.10.2023.

12. With this observation, this present appeal stands disposed of.

A copy of this judgment be furnished free of cost to the Learned Counsel for the appellant-Insurance Company and also a copy of this order be furnished free of cost to the Learned Counsel for the respondent-claimant petitioners.

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

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

JUDGE



सत्यमेव जयते