

**HIGH COURT OF TRIPURA
AGARTALA
MAC.APP.No.105 of 2024**

Magma HDI General Insurance Co. Ltd.,
represented by its Regional Manager(Legal),
presently having office at ANUJ CHAMBER,
4th Floor, 24 Park Street, Kolkata-700016,
(Insurer of vehicle No.TR-06-A-1753 Truck)

---- Appellant(s)

Versus

1. Smti. Sarubala Debbarma,
wife of Late Khelan Debbarma

2. Smti. Tripurani Debbarma,
daughter of Late Khelan Debbarma

3. Smti. Raima Debbarma,
daughter of Late Khelan Debbarma

all are at present residing at
care of Sri Upendra Debbarma of
Rabicharan Thakur Para, P.S.Radhapur,
District-West Tripura
(Earlier they were residing at Bairagi Para,
P.S.Kalyanpur, District-Khowai, Tripura)

----Claimant-Respondent(s)

4. Sri Tapas Giri,
son of Sri Maran Giri of
Tutabari Purba Kalyanpur,
P.S.Kalyanpur, District-Khowai,
Tripura
(Owner of vehicle No.TR-06-A-1753 Truck)

----Owner-Respondent(s)

5. Bajaj Allianz General Insurance Co. Ltd.,
Sreeji Tower, 3rd Floor,
care of Guwahati Tea
Ware Housing Pvt. Ltd.,
Adjacent to Mahindra Show Room,
Near Ganesh Guri Fly Over, Christian Basti,
Guwahati-781005, Assam
(Insurer of vehicle bearing No.TR-06-5931 Scooty)

----Respondent-Insurer(s)

For Appellant (s)	:	Mr. Samar Das, Adv.
For Respondent(s)	:	Mr. Sankar Bhattacharjee, Adv. Ms. Jeley Debbarma, Adv.
Date of Hearing	:	28.04.2025
Date of Judgment & Order	:	30.04.2025
Whether fit for reporting :		NO

HON'BLE MR. JUSTICE BISWAJIT PALIT**Judgment & Order**

This appeal is preferred by the appellant-Insurance Company for setting aside/modification of the award delivered by Learned Member, MACT No.1, West Tripura, Agartala dated 04.07.2024 in connection with Case No.T.S.(MAC)63 of 2020.

[2] Heard Mr. Samar Das, Learned counsel appearing on behalf of the appellant-Insurance Company and also heard Mr. Sankar Bhattacharjee, Learned counsel appearing on behalf of the respondent Nos.1 to 3.

[3] In course of hearing, Mr. S. Das, Learned counsel appearing on behalf of the appellant-Insurance Company drawn the attention of the Court that in this case, at the time of determination of compensation, three issues were framed by the Learned Tribunal below and accordingly, the Learned Tribunal below discussed the issues and gave the findings. But in determining the amount of compensation, Learned Tribunal below worked out the compensation amounting to Rs.49,69,500/- with 7% w.e.f.13.05.2020 to till the date of actual payment. But the respondent-petitioner No.1 being a government servant is not entitled to get any compensation because she was not dependent upon the income of the deceased but the Learned Tribunal below did not consider the same.

[4] It was further submitted by Learned counsel for the appellant-Insurance Company that in this case, rate of interest have been imposed by 7% which was in higher side and needs to be modified. Furthermore, there was contributory negligence on the part of the deceased which the Learned Tribunal below has failed to appreciate and consider and thus

gave an erroneous finding. So, Learned counsel for the appellant-Insurance Company at the end urged for interference of the judgment/award by setting aside the same or to modify the award.

[5] On the other hand, Mr. Sankar Bhattacharjee, Learned counsel appearing on behalf of the respondent-claimant petitioners submitted that there was no illegality or infirmity in the judgment/award delivered by the Learned Tribunal below and the point regarding dependency of the claimant-petitioner No.1 no such objection was raised by the appellant before the Learned Tribunal below in course of trial and as such, the same cannot be accepted at this stage. Furthermore, since the respondent-claimant petitioner No.1 is/was a government servant it does not mean that she was also not depending upon the income of the deceased and as such, there is no scope to interfere with the judgment delivered by the Learned Tribunal below. In respect of rate of interest, Learned counsel for the respondent-claimant petitioner submitted that Learned Tribunal below imposed only 7% interest which is rightly been determined by the Learned Tribunal below and as such, urged for dismissal of this appeal with costs.

[6] I have heard both the sides at length and perused the record of the Learned Tribunal below. It appears that the respondent-claimant petitioner filed one claim petition before the Learned Tribunal below alleging inter alia that on 11.02.2020 when the victim Khelan Debbarma was proceeding towards his school at Utabari S.B. School from his residence by riding the Scooty bearing registration No.TR-06-5931 and when he reached near the gate of his School at about 7 a.m. suddenly, one truck bearing registration No.TR-06-A-1753 came from the back side

with high speed rashly and negligently dashed against him from his back side though there was no fault on the part of the victim and the Truck was responsible for the said accident. As a result of which the victim fell down and sustained fatal injuries. Soon after the accident, the victim was shifted to the Kalyanpur Hospital where from he was referred to AGMC & GBP Hospital at Agartala wherein the Doctor declared him as dead. After that postmortem examination was conducted over the dead body of deceased and a police case was registered at Kalyanpur P.S. vide Kalyanpur P.S. Case No.12 of 2020. It was further submitted that the deceased was an under-graduate Teacher under the Directorate of School Education, Government of Tripura having his monthly salary of Rs.47,475/- and was 53 years old at the time of death and the claimant-petitioner Nos.2 and 3 being the daughters of the deceased were dependent upon the income of the deceased but the claimant-petitioner No.1 was/is a government servant and the father of the deceased was also not dependent upon him. Hence, the claimant-petitioners filed the claim petition.

[7] The OP No.1 being the owner cum driver of the Mini Truck appeared and submitted that he is the owner of vehicle bearing No.TR-06-A-1753(Tata ACE Gold) which met with an accident on 11.02.2020 at about 7 a.m. near Tutabari S.B. School and as a result, one teacher Khelan Debbarma who was riding the Scooty sustained fatal injuries. It was also submitted that on the alleged day, the vehicle was duly insured with the Magma HDI General Insurance Company Ltd. covering the period from 30.05.2019 to 29.05.2020 and as such, if any compensation is awarded that should be borne by the Insurance Company.

[8] The OP No.2 in the original claim petition i.e. the Insurance Company appeared and submitted that the claim petition is subjected to strict proof by the claimant petitioners and denied the assertions of the claimant petitioners in their claim petition.

[9] Upon the pleadings of the parties, following issues were framed :

“(1) Did deceased Khelan Debbarma die in a road traffic accident occurred on 11.02.2020 at about 7 a.m. near the gate of Utabari S.B. School under Kalyanpur P.S. out of use of vehicles bearing registration No.TR-06-5931(Scooty) and TR-06-A-1753(Truck) due to rash and negligent driving by the driver of Truck vehicle ?

(2) Are the petitioners entitled to get compensation as prayed for and if so, to what amount and who is liable to pay the same ?

(3) To what other reliefs the parties are entitled ?”

To substantiate the issues, claimant-petitioner No.2, Miss Tripurani Debbarma was examined as PW-1 and she relied upon some documents which were marked as Exbt.1 to Exbt.10. The OP No.1 also examined as OPW-1 and relied upon some documents which were marked as Exbt.A and Exbt.B.

[10] Finally, on conclusion of enquiry, Learned Tribunal below vide judgment and award dated 04.07.2024 allowed the claim petition. The operative portion of the said judgment and award runs as under :

“It is therefore, held that the claimant petitioners are entitled to get compensation of Rs.49,69,500/- (Rupees Forty-nine Lakh Sixty nine Thousand Five hundred only) with interest @ 7% per annum with effect from 13.05.2020 i.e. the date of filing of the claim petition till the date of actual payment. O.P No.2 i.e.Magma HDI General Insurance Co. Ltd. shall pay the amount of compensation with interest within 30 days from today.

Out of the awarded amount of compensation inclusive of interest, the petitioner no.1 will get 40% and the petitioners no.2 and 3 will get 30% each. Out of the respective share of the petitioners no.1, 2 and 3, 50% each of their shall be kept in fixed deposit scheme in their respective name with any Nationalized Bank of their locality for a period of five years each and the remaining 50% shall be paid to them through their respective bank accounts. No loan or withdrawal shall be permitted from any of the fixed deposit certificates without prior

permission of this Tribunal. The petitioners no.1,2 and 3 shall, however, be at liberty to withdraw monthly interest from their fixed deposit accounts to meet up their day to day expenses.

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

The claim petition stands disposed of on contest.

Make necessary entry in the T.R and in CIS.”

Challenging that award, this appeal is preferred.

[11] I have heard detailed arguments of both the sides and gone through the record of the Learned Tribunal below including the judgment/award. There is no dispute on record in respect of fact of accident on the alleged day. It is also the admitted position that the claimant-petitioner No.1 is the wife of the deceased and the claimant-petitioner Nos.2 and 3 are the daughters of the deceased. There is no contrary evidence on record from the side of the contesting OPs that the claimant petitioners were not depending upon the income of the deceased. Furthermore, the Insurance Company in course of enquiry before the Learned Tribunal below did not raise this point nor submitted any contrary evidence on record to substantiate their contention and furthermore, by not adducing oral/documentary evidence on record they failed to satisfy the tribunal below that the claimant-petitioner No.1 was not entitled to get any compensation. As per the principle of claim case the dependents are to be duly compensated by the MACT but here in the case at hand nowhere I find that the claimant-petitioner No.1 was not depending upon the income of the deceased being the legally married wife and as such, the Learned Tribunal below rightly allowed the claim petition and also apportioned the compensation among the claimant-petitioner No.1 and other two claimants.

[12] Further, on perusal of the records it appears that Learned Tribunal below determined the monthly income of the deceased at Rs.47,475/- since he was a government servant and relying upon the judgment of **National Insurance Co. Ltd. v. Pranay Sethi & Ors.** [Special Leave to Petition(Civil) no.25590 of 2014] added 15% with that amount as future income and determined the monthly income of the deceased at (Rs.47,475 + Rs.7,121/-)=Rs.54,596/- and assessed the loss of dependency at (Rs.54,596 x 12 x 11)=Rs.72,06,672/- and deducted 1/3rd amount on account of personal expenditure of the deceased and calculated the income of the deceased at (Rs.72,06,672 - Rs.24,02,224/-)=Rs.48,04,448/- towards net income. Thereafter, relying upon the judgment of **Pranay Sethi**(supra) awarded Rs.15,000/- toward loss of estate, further awarded Rs.15,000/- towards funeral expenses and towards loss of consortium allowed Rs.1,30,000/- i.e.@ Rs.40,000/- each for three claimants. With that amount he further added more 10% based upon the judgment of **Pranay Sethi**(supra) and thus calculated total amount of compensation amounting to Rs.49,69,500/- and fastened the liability of payment of compensation upon the Insurance Company for making payment of compensation to the respondent-claimant petitioners. However, at the time of awarding compensation awarded rate of interest @ 7% p.a. w.e.f.13.05.2020 to till the date of actual payment which in my considered view the rate of interest should be 6% p.a. in place of 7% w.e.f.13.05.2020 to till the date of actual payment. Regarding apportionment of amount there was no dispute, so, the same is not interfered with.

[13] In the result, the appeal filed by the appellant is partly allowed with modification that the respondent-claimant

petitioners shall be entitled to get Rs.49,69,500/- with 6% interest p.a. in place of 7% interest p.a. w.e.f.13.05.2020 to till the date of actual payment. The appellant-Insurance Company shall deposit the amount to the Tribunal below within a period of 6(six) weeks from the date of passing of the judgment for making payment to the respondent-claimant petitioners. If any amount by this time is paid that amount also shall be deducted from the total amount of compensation to be paid by the appellant-Insurance Company. The disbursal of amount would be made as per observation of the Learned Tribunal below.

A copy of this judgment/award be furnished free of cost to Learned counsel for the appellant-Insurance Company and a copy of this judgment also be supplied to Learned counsel for the respondent-claimants free of cost.

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

JUDGE