

**HIGH COURT OF TRIPURA
AGARTALA
MAC APP No.54 of 2024**

The Divisional Manager,
The Oriental Insurance Co. Ltd.
H.G.B. Road Agartala, West Tripura,
A company registered under the Companies Act, 1956,
Represented by the Assistant Manager cum Officer
in Legal Hub/Authorized Signatory, Agartala, Division Office,
H. G. B Road, (Near Sarkar Nrusing Home), Agartala,
West Tripura

-----Appellant(s)

Versus

- 1. Janu Begam,**
Wife of Late Sabek Miah
- 2. Main Uddin,**
Son of Late Sabek Miah
- 3. Ambiya Begam Alias Ambiya Khatun,**
Wife of Rustam Miah Alias Rustam Ali Miah

** As per the Hon'ble Court's order dated
18.09.2024 passed in IA No.2 of 2024, respondent
No.3 namely Ambiya Begam Alias Ambiya Khatun
be treated as substituted legal heir of deceased
respondent No.4 namely Rustam Miah Alias
Rustom Ali Miah and respondent No.4, Rustom
Miah Alias Rustom Ali Miah to be deleted from
the memo of appeal.

----- Claimant-Respondent(s)

- 4. Sri Kishore Debbarma,**
Son of Shambhu Debbarma,
Resident of village:Chintaram Kobra Para,
P.O. Birendranagar, P.S. Jirania,
District: West Tripura,
(owner of Motor Bike No.TR01-S-4860 Achiever Motor Bike)

----- Respondent(s)

**Along with
CO(FA) No.1 of 2025**

- 1.Janu Begam,**
Wife of Late Sabek Miah
- 2.Main Uddin,**
Son of Late Sabek Miah
- 3.Ambiya Begam Alias Ambiya Khatun,**
Wife of Late Rustam Miah Alias Rustam Ali Miah

All are resident of Prafully Sarkar Para,
Jiraniakala, P.O. Birendranagar,
P.S. Radhapur, District: West Tripura

[The Cross objection No.2 being minor, is represented by his natural guardian mother i.e. cross objector No.1]

----Cross-Objector

Versus

1. Shri Kishore Debbarma,

Son of Late Shambu Debbarma,
Village: Chinta Ram Cobra Para,
P.O. Birendranagar, PS Jirania,
District-West Tripura.

2. Oriental Insurance Company Limited Omaha,

Represented by its Divisional Manager,
Having its office at H.G. Basak Road,
Agartala, District: West Tripura

---- Respondent(s)

In MAC App. No.54 of 2024

For Appellant(s) : Mr. Karnajit De, Adv.
For Respondent(s) : Mr. Tapash Datta Majumder, Sr. Adv.
Mr. Dalit Kalai, Adv.

In CO(FA)No.1 of 2025

For Appellant(s) : Mr. Tapash Datta Majumder, Sr. Adv.
Mr. Dalit Kalai, Adv.

For Respondent(s) : None

Date of hearing : 28.04.2025

Date of delivery of
Judgment & Order : 30.04.2025

Whether fit for
reporting : **YES**

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

Both the appeals bearing No.MAC APP No.54 of 2024 along with CO(FA) No.1 of 2025 are taken up together for hearing and decision. The appeal bearing No.MAC APP No.54 of 2024 is preferred by the appellant insurance company and the cross-objection under Order XLI Rule 22 of CPC is preferred by

the respondent-claimant petitioners for enhancement of the award delivered by the Learned MAC Tribunal on 24.08.2023 in TS(MAC)136 of 2018.

02. Heard Learned Counsel Mr. K. De appearing on behalf of the appellant insurance company and also heard Learned Senior Counsel Mr. T. D. Majumder assisted by Mr. D. Kalai, Learned Counsel appearing on behalf of the respondent-claimant petitioners in the MAC APP No.54 of 2024 and for the claimant-objector in CO(FA) No.1 of 2025.

03. In course of hearing of argument Learned counsel appearing for the appellant insurance company first of all drawn the attention of the court referring para No.11 of the judgment/award delivered by the MAC Tribunal and submitted that at the time of delivery of award Learned Tribunal below relied upon the judgment in **Shamanna & Another vs. Divisional Manager, Oriental Insurance Company Ltd. & Others** reported in **AIR 2018 SC 3726** wherein it was mentioned that if the driver does not possess valid driving license then the insurer would be liable to pay compensation and recover the same from the owner of the vehicle. But herein the case at hand no driving license was produced because in proving the case the OP owner of the motor bike bearing No.TR-01-S-4860 adduced evidence as OPW-1 and the copy of insurance policy certificate and form 24 (screen report) in respect of the motor bike were produced by him which were marked as Exbts.A and B in comparison with the originals. But

surprisingly before the Learned Tribunal no driving license of the rider of the offending bike was produced. So the principle of aforesaid citation of **Shamanna and Another** (supra) cannot be applied in this case. Learned counsel further submitted that the Tribunal below at the time of determination of award determined the monthly income of the deceased at Rs.12,000/- per month as a skilled worker. But nowhere the claimant petitioner could prove that the deceased was a skilled worker and as such the status of the deceased cannot be treated as skilled worker and the Learned Tribunal below based on the notification of the High Court determined the monthly income of the deceased @Rs.12,000/- per month which should be not more than Rs.10,000/-. So on the aforesaid two points Learned counsel for the appellant urged before the court for interference of the award and to modify the award accordingly.

04. On the other hand, Learned Senior Counsel, Mr. T. D. Majumder assisted by Mr. D. Kalai, Learned Counsle appearing for the respondent-claimant petitioners drawn the attention of the court that the deceased was a worker of a grill factory and his colleague who has appeared before the Tribunal to depose as a witness as PW-3 very categorically stated that the monthly income of the deceased was Rs.20,000/- per month. But the Tribunal without any basis and in absence of contrary evidence on record from the side of the contesting opposite parties determined the monthly

income of the deceased @Rs.12,000/- per month which was too less and it should be enhanced and accordingly he urged before the court to interfere with the judgment and award and to enhance the compensation awarded by the Learned Tribunal below. It was further submitted by Learned Senior Counsel that based upon the judgment of **Shamanna & Another** (supra) Learned Tribunal below rightly made the observation that the insurance company should pay the compensation to the claimants and thereafter should recover the amount from the owner of the vehicle towards 'Pay and Recovery policy' and urged before the court for dismissal of the appeal filed by the appellant insurance company. Here in the case at hand the respondent-claimant petitioners submitted one claim petition before the Learned Tribunal below under Section 166 of MV Act alleging inter alia that on 03.03.2018 at about 4 p.m. the deceased Sabek Miah was proceeding towards Champaknagar from Jirania ADC Chowmuhani along with another person by riding his motor cycle keeping left side of the road and when they reached at Khamar Bari near S.S. brick field on Assam-Agartala road that time the offending vehicle bearing registration No.TR-01-S-4860 (motor bike) which was coming from the opposite direction being driven in excessive speed rashly and negligently dashed against said deceased Sabek Miah resulting which deceased sustained multiple grievous injuries

on his head and other parts of his body. Immediately after the accident deceased was first taken to Jirania Hospital from where he was referred to AGMC and GBP Hospital where the attending doctor declared him as dead and on the following day post-mortem was conducted on the dead body of the deceased. It was asserted that the accident took place due to rash and negligent driving by the rider of the motor bike bearing No.TR-01-S-4860. It was further submitted that at the time of accident the deceased was a welder and was earning Rs.20,000/- per month and at the time of death he was 28 years of old. So the claimant-petitioners filed the claim petition. The OP owner No.1 contested the case by filing the written statement denying the assertions made by the petitioners in the claim petition and further submitted that on the alleged day the vehicle was duly insured with the Oriental Insurance Company bearing Policy No.322796/31/2018/685 covering the period with effect from 04.07.2017 to 03.07.2018. So the OP owner took the plea that if any liability arises for making payment of compensation to the claimant-petitioners that should be borne by the insurance company. The OP No.2 is the Insurance Company in the claim petition contested the same by filing another written statement denying the assertions of the claimant-petitioners in the claim petition and further submitted that on the alleged day the rider of the motor bike

had no driving license and the age, income of the deceased was also disputed and finally submitted that the claim petition was subjected to strict proof by the petitioners.

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

- (I) Whether the victim Sabek Miah expired due to a road traffic accident on 03.03.2018 at Khamarbari near SS Brick Field under PS Jirania?**
- (II) Whether the accident occurred due to rash and negligent riding of the motor bike bearing No.TR01-S-4860?**
- (III) Whether the petitioners are entitled to get compensation in this case? If so, what would be the amount of compensation and who shall be held liable for making the compensation to the claimant petitioners?**

06. To substantiate the issues the claimant-petitioners and the OP owner have adduced oral/documentary evidence on record and finally on conclusion of enquiry the Learned Tribunal passed the judgment/award.

Witnesses of the claimant-petitioners:

- (i)PW-1: wife of the deceased**
- (ii) PW-2: Krishna Debnath**
- (iii)PW-3: Oab Miah**

Documents relied upon by the claimant-petitioners:

- (i)Exbt.1(i) to 1(xv): certified copy of FIR, ejahar, seizure lists, Surath Hal report, post-mortem report, 161 statements and charge-sheet in connection with Jirania PS case No.18 of 2018 in 15 sheets**
- (ii) Exbt.2: original copy of post-mortem certificate**
- (iii)Exbt.3: original death certificate of deceased Sabek Miah**
- (iv)Exbt.4: original PRTC certificate as Exbt.4**

On the other hand the OP owner was examined as OPW-1 and he relied upon two documents which were marked as Exbt.A as copy of insurance policy certificate and Form 24 (screen report) in respect of the motor bike bearing No.TR-01-S-4860 as Exbt.B. But no driving license is produced by the OP owner in respect of the rider of the offending motor bike. Even

there was no evidence on record that the rider has/had any prior driving license.

07. Finally on conclusion of enquiry Learned Tribunal below allowed the claim petition. The operative portion of the judgment/award runs as follows:

"13. The instant application under Section-166 of the Motor T. S.(MAC) 136 of 2018 12/13 Vehicles Act, 1988 filed by the claimant-petitioners is hereby partly allowed and a sum of Rs.27,60,400.00 (Rupees Twenty seven lakhs sixty thousand and four hundred) only is awarded in favour of claimant – petitioners as compensation for the death of Sabek Miah, in a Road Traffic Accident, as aforesaid, and thus whole amount of compensation shall be paid by OP No.2, the Oriental Insurance Co. Ltd., within a period of one month. The aforesaid amount shall carry interest @ 7.5% per annum to be paid from the date of filing of claim-petition, i.e., from 21.08.2018 till the date of payment.

14. Out of the said amount i.e., Rs.27,60,400.00 (Rupees Twenty seven lakhs sixty thousand and four hundred), a sum of Rs.6,90,100.00 each with proportionate interest, shall be paid to claimantpetitioner No.3 and 4, the parents of the deceased. An amount of Rs.6,90,100.00 with proportionate interest, shall be paid to the minor son of the deceased, i.e., claimant-petitioner No. 2. The rest amount of Rs.6,90,100.00 with proportionate interest, shall be paid to the spouse of the deceased, i.e., claimant-petitioner No.1.

15. In the event of deposit of the Awarded amount with interest, Rs.90,000.00 each shall be released in favour of each of the claimant-petitioner Nos.1, 3 and 4 out of their respective shares, in their respective bank accounts for enabling them to meet necessary expenses and the rest amount shall be kept in numbers of fixed deposit schemes of maximum Rs.2,00,000.00 each in any Nationalized Bank for five years in their name separately as per their share. However as claimant-petitioner No.2 is minor so his entire share along with proportionate interest, shall be kept in a fixed deposit scheme in a Nationalized Bank for a period of five years or for the period till attainment of his majority, whichever is later. However, the interest out of fixed deposit to be credited shall be disbursed monthly to the respective account of the petitioner No.1,3 and 4. The monthly interest out of fixed deposit for petitioner No.2 shall be credited to the account of petitioner No. 1 for the purpose of necessary T. S.(MAC) 136 of 2018 13/13 expenditure to be incurred for Op No. 2.

16. No loan or withdrawal shall be permitted in the fixed deposit account nor joint name shall be allowed nor any cheque book, ATM card can be issued against fixed deposit account.

17. Let a copy of this Award be furnished to the parties through their Ld. Counsels, for information.

18. The case is thus disposed of on contest. Enter the result in the relevant Register."

08. Challenging that judgment and award the appellant insurance company has preferred this appeal and on the other hand the claimant-petitioners as cross-objectors have preferred the cross-objection under Order XLI Rule 22 for enhancement of the award.

09. As already stated, at the time of hearing of argument Learned Senior Counsel Mr. T. D. Majumder drawn the attention of the court that although the deceased had monthly income of Rs.20,000/-, but the Tribunal only determined the monthly income of deceased as a skilled worker @Rs.12,000/- per month. Now let us see the evidence on record in this regard. PW-1 Janu Begam is the wife of the deceased. She in her examination-in-chief reiterated her submission made in the claim petition and relied upon the documents which were marked as Exbt.1(i) to 1(xv), Exbt.2, Exbt.3 and Exbt.4. During cross-examination by OP No.1 save and except denial nothing came out relevant. Further during cross-examination by the insurance company she stated that she did not see the alleged accident and also she did not produce any driving license of her deceased husband nor she produced any document showing monthly income of her deceased husband.

10. PW-2, Krishna Debnath deposed that he knew the deceased who died on 03.03.2018 at Khamarbari. He further deposed that he is also Welder by profession working in a grill factory and during lifetime Sabek Miah, the deceased and the

witness himself were working together as Welder in the Grill factory belonging to one Pradip Paul of Jirania Khala and deceased Sabek Mia also part time worker in another workshop belonging to one Una Mia of Jirania Block Chowmuhani. He stated that from the grill factory of Pradip Paul deceased Sabek Miah used to earn Rs.12,000/- per month and as a part time worker in the workshop of Una Miah deceased Sabek Miah also used to earn Rs.8,000/- per month and in total he used to earn Rs.20,000/- per month. He also stated that the deceased Sabek Miah was very energetic person and skilled Welder. During cross-examination by the OP owner save and except denial nothing came out relevant. During cross-examination by the insurance company he stated that he did not produce any certificate to show that he used to work in the grill factory of Pradip Paul and he did not produce any document in support of monthly income of the deceased.

11. PW-3 in his examination-in-chief tried to support the version of the claimant-petitioners. During cross-examination he stated that the alleged accident occurred on the National Highway. Nothing more came out relevant.

12. Kishore Debbarma is the OP No.1 in the main case. In his examination-in-chief he tried to support the version made in the written statement and also relied upon the documents which were marked as Exbts.A and B. During cross-examination by the claimant-petitioners and the insurance company nothing came out relevant.

These are the material evidence on record of the claimant-petitioners and OP No.1 in respect of determination of the points framed by the Learned Tribunal below.

13. I have heard argument of both the sides and perused the judgment delivered by the Learned Tribunal below. It appears to this court that admittedly in this case no income certificate of the deceased could be produced by the claimant-petitioners before the Tribunal. Learned Tribunal below at the time of determination of award based upon the notification of the High Court of Tripura dated 04.08.2023 determined the monthly income of the deceased as a skilled worker @Rs.12,000/- per month and with that amount Learned Tribunal below added 40% as future prospect relying upon the judgment in **National Insurance Co. Ltd. Vs. Pranay Sethi** reported in **AIR 2017 SC 5157** and also relied upon the judgment of **Smt. Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr.** reported in **(2009) 6 SCC 121** and deducted 1/4th towards the personal and living expenses of the deceased and determined the yearly income of the deceased @Rs.1,51,200/- and with that amount he added multiplier 17 as per **Sarla Verma** (supra) and finally determined the loss of dependency amounting to Rs.25,70,400.00/- and with that amount he also added Rs.15,000/- towards loss of estate, Rs.15,000/- towards funeral expense as per the judgment rendered by the Hon'ble Supreme Court in **Pranay Sethi** (supra) and also awarded Rs.80,000/- towards loss of filial

consortium and further awarded Rs.1,60,000/- towards loss of spousal consortium, parental consortium etc. Thus the Tribunal determined the total amount of compensation amounting to Rs.27,60,400.00/- and ordered for payment of compensation to the claimant-petitioners and as such from the judgment and award of the Learned Tribunal below it appears to me that Learned Tribunal below did not commit any error or wrong in determination of the aforesaid amount of compensation in favour of the claimant-petitioners. The citation as referred by Learned Tribunal below seems to be inappropriate. In this regard Hon'ble the Supreme Court of India in **National Insurance Co. Ltd. Vs. Swaran Singh and Others** reported in **(2004) 3 SCC 297** in para Nos.110(iii, iv & v) observed as under:

"110. The summary of the findings to the various issues as raised in these petitions is as follows:

(iii) The breach of policy condition e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof wherefor would be on them.

(v) The court cannot lay down any criteria as to how said burden would be discharged, inasmuch as the same would depend upon the facts and circumstance of each case."

14. From the aforesaid observation of the Hon'ble Apex Court it appears that in absence of driving license also

there is scope to award compensation with 'Pay and Recover policy'. Situated thus, it appears that Learned Tribunal below rightly fastened the liability of payment of compensation upon the insurance company. From the evidence of the respondent-claimant petitioners it appears that they could not produce any documentary evidence regarding monthly income of the deceased @ Rs.20,000/- per month. However, the Learned Tribunal below based on the notification of this High Court determined the monthly income of the deceased @ Rs.12,000/- per month as a skilled worker. No contrary evidence in this regard could be laid by the objectors to disbelieve the same. So it appears to this court that by the said judgment/award no irregularity and illegality has been committed by the Learned Tribunal below for which the interference of the court is required. Situated thus, after hearing both the sides it appears to me that there is no merit in the appeal filed by the appellant and there is also no merit in the cross-objection filed by the respondent-claimant-petitioners as objector for which both the appeal and the cross-objection are liable to be dismissed.

14. In the result, the appeal filed by the appellant, insurance company stands dismissed being devoid of merit and at the same time the CO(FA)No.1 of 2025 filed by the claimant-petitioners as objectors also stands dismissed being devoid of merit for want of cogent evidence on record. The judgment and award delivered by the Learned Motor Accident Claims Tribunal No.2, West Tripura, Agartala in connection with Case

No.T.S.(MAC)136 of 2018 stands upheld and accordingly the same stands affirmed. The appellant insurance company be asked to deposit the compensation to the Learned Tribunal below within a period of six weeks from the date of delivery of judgment.

With this observation the appeal and the cross-objection are stands disposed of accordingly.

Send down the LCR along with a copy of this judgment and award to the Learned Tribunal below.

A copy of this judgment be given to the Learned Counsel Mr. K. De appearing for the appellant, insurance company free of cost for information and compliance and also a copy of this judgment be supplied to Learned Senior Counsel Mr. T. D. Majumder appearing on behalf of the respondents.

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

JUDGE

सत्यमेव जयते