HIGH COURT OF TRIPURA
AGARTALA

MAC App. No.14 of 2024

The Oriental Insurance Company Limited
Represented by the Assistant Manager cum Officer
in Legal Hub, Agartala, Division Office, H.G.B. Road,
(Near Sarkar Nursing Home), Agartala, West Tripura

---- Appellant(s)

Versus

1. **Sri Judhisthir Das,**
   S/o. Lt. Durga Charan Das
   Of South Sarat Palli, Khas Noagaon
   R.K. Nagar, Khayarpur, West Tripura
2. **Sri Jatindra Das,**
   S/o. Lt. Durga Charan Das
   Of TRTC Para, P.S. Ambassa, Dhalai.
3. **Sri Haridhan Das**
   S/o. Lt. Durga Charan Das
   Of Mohar Cherra, Khowai.
4. **Smt. Jagat Rani Das**
   W/O Sri Shyamal Das
   D/O Lt. Durga Charan Das
   Of Khayarpur, R.K. Nagar, West Tripura
5. **Sri Arjun Das**
   S/O Lt. Durga Charan Das
   Of Mohar Cherra, Khowai
6. **Smt. Padma Das**
   W/O Sri Swapan Das
   D/O Lt. Durga Charan Das
   Of Debichara, Dhalai.
7. **Sri Barun Chandra Das**
   S/O Lt. Durga Charan Das
   Of Mohar Cherra, Khowai
8. **Smt. Tarulata Das**
   W/O Sri Birendra Das
   D/O Lt. Durga Charan Das
   Of Dwarikapur, Teliamura

VERSUS

----Claimants-Respondent(s)

9. **Sri Hari Kumar Jamatia**
   S/O Lt. Sachindra Kumar Jamatia
   Of Khamarbari, Hadrai
   P.S.- Teliamura, District- Khowai
   (Owner of TR-01-M-4501, Motor Cycle)

-----Respondent

along with

<u>CO(FA) No.03 of 2024</u>

1. **Sri Judhisthir Das,**
   S/o. Lt. Durga Charan Das
   Of South Sarat Palli, Khas Noagaon
   R.K. Nagar, Khayerpur, West Tripura
2. **Sri Jatindra Das,**
   S/o. Lt. Durga Charan Das
   Of TRTC Para, P.S. Ambassa, Dhalai.
3. **Sri Haridhan Das**
   S/o. Lt. Durga Charan Das
   Of Mohar Cherra, Khowai.
4. **Smt. Jagat Rani Das**
   W/O Sri Shyamal Das
   D/O Lt. Durga Charan Das
   Of R.K. Nagar, Khayarpur, West Tripura
5. **Sri Arjun Das**
   S/O Lt. Durga Charan Das
   Of Mohar Cherra, Khowai
6. **Smt. Padma Das**
   W/O Sri Swapan Das
   D/O Lt. Durga Charan Das
   Of Devicherra, Dhalai.
7. **Sri Barun Chandra Das**
   S/O Lt. Durga Charan Das
   Of Mohar Cherra, Khowai
8. **Smt. Tarulata Das**
   W/O Sri Birendra Das
   D/O Lt. Durga Charan Das
   Of Dwarikapur, Teliamura, Khowai.

---- Claimant Respondent Cross-objectors

VERSUS

1. **The Oriental Insurance Company Ltd.**
   Represented by the Assistant Manager cum Officer
   in Legal hub, Agartala Division Office,
   H.G.B. Basak Road (near Sarkar Nursing Home)
   Agartala, West Tripura

2. **Sri Hari Kumar Jamatia,**
   S/O Late Sachindra Kumar Jamatia
   Of Khamarbari, Hadrai, P.S. Teliamura,
   District- Khowai Tripura
   (Owner of TR-01-M-4501 Motor Cycle).

---- Respondents

HIGH COURT OF TRIPURA
सत्यमेव जयते

In MAC App. No.14 of 2024

For Appellant(s)	:	Mr. Prahallad Kr. Debnath, Adv.
For Respondent(s)	:	Mr. Asutosh De, Adv, Mr. Tanmay Debbarma, Adv.

In CO(FA) No.03 of 2024

For Cross-objector(s)	:	Mr. Asutosh De, Adv.
For Respondent(s)	:	Mr. Prahallad Kr. Debnath, Adv.
Date of hearing	:	07.02.2026
Date of delivery of Judgment & Order	:	11.02.2026
Whether fit for reporting	:	YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

Both the MAC App. No.14 of 2024 and the CO(FA) No.03 of 2024 have arisen out of a common judgment and award for which both the matters are taken up together for hearing and disposal and by this common judgment, this appeal and CO(FA) are disposed of.

02. Heard Learned Counsel, Mr. P. Kr. Debnath appearing on behalf of the appellant-Insurance Company in MAC App. No.14 of 2024 and Learned Counsel, Mr. A. De for the claimants and also heard Learned Counsel, Mr. A. De in the CO(FA) as the cross-objector on behalf of the claimants and Learned Counsel, Mr. P. Debnath appearing on behalf of the Insurance Company.

03. The appeal is preferred by the Insurance Company under Section 173 of M.V. Act for quashing/setting aside the judgment delivered by Learned Member, MAC Tribunal No.4, West Tripura, Agartala in T.S.(MAC) No.248 of 2019 and the CO(FA) is filed by the respondent-claimant-petitioners under Order 41, Rule 22 of CPC against the appeal filed under Section 173 of M.V. Act by the Insurance Company for enhancement of the award. By the judgment and award Learned Tribunal has awarded compensation amounting to Rs.9,27,600/- along with 9% simple interest per annum w.e.f. 20.12.2019 i.e. from the date of filing the claim-petition to till the date of realization.

04. At the time of hearing, Learned Counsel for the appellant-Insurance Company submitted that in memo of appeal the grounds have been projected by the appellant-Insurance Company. In para **(d)** of the memo of appeal, it was stated that at the time of accident the driver of the bike was in drunken condition and he was driving the motor bike with two pillion riders who were seated behind the said bike and in course of police investigation, the said fact also revealed but the Learned Tribunal did not consider the same. Furthermore, before the Tribunal, the owner could not produce the valid driving license of the deceased and the police report also specifically stated that the driver had no valid driving license on that relevant point of time at the time of accident, but the Learned Tribunal did not consider the said fact. Furthermore, the Insurance Company collected a report on RTI that the driving license of the driver was fake and in absence of valid driving license, there was no scope on the part of the Tribunal to award any compensation in favour of the claimants fastening the liability of compensation upon the Insurance Company for which the judgment of the Learned Tribunal below needs to be interfered with.

It was further submitted that by the judgment and award Learned Tribunal has awarded a sum of Rs. Rs.9,27,600/- with 9% interest from the date of filing the claim-petition to till the date of realization, which according to Learned Counsel was beyond the several judgments of Hon'ble Supreme Court. It was also submitted that even at present the rate of interest of the National Banks is less than 7%. In such a situation, the Tribunal without considering the present market interest rate has awarded 9% interest for which the judgment of the Learned Tribunal suffers from infirmities and the same needs to be interfered with. Learned Counsel for the appellant in course of hearing further submitted that towards the loss of consortium, Learned Tribunal awarded Rs.3,20,000/- for eight petitioners who were not dependent upon the income of the deceased and as such in view of the judgment of Hon'ble Supreme Court, there was no scope to award that much amount towards the head loss of consortium, it should be only Rs.40,000/- and also prayed for taking note of the said submission.

05. On the other hand, Learned Counsel, Mr. A. De appearing on behalf of the respondent No.1 i.e. the owner of the motor bike bearing No.TR-01-M-4501 who was examined as OPW1 produced all the relevant documents of the vehicle

including the driving license of the driver submitted that the owner before the Tribunal exhibited the driving license of the rider Sumen Jamatia which was marked as **Exhibit-D** without any objection from the present Insurance Company and furthermore, the said document in course of investigation was seized by I.O. Even in the pleadings submitted by the appellant-Insurance Company, there was not a single whisper that the document was fake and fabricated and no evidence was adduced in this regard as witness to substantiate the same nor any witness of the Transport Department from Nagaland is adduced as witness to substantiate that the driving license was a 'fake' one. Furthermore, the Insurance Company also did not adduce any oral/documentary evidence on record in this regard for drawing the attention of the Learned Tribunal Court. As such according to Learned Counsel, there is no merit in the appeal filed by the appellant-Insurance Company and urged for dismissal of the same. Regarding enhancement, Learned Counsel submitted that admittedly, the claimant-petitioners are village rustic people and they could not produce and prove any documentary evidence in respect of the monthly income of the deceased. So, Learned Counsel urged before the Court to consider the notification of this High Court regarding determination of income in respect of MAC cases and prayed for enhancement of the award.

Learned Counsel for the claimants further submitted that in respect of 'consortium' there are several judgments of the Supreme Court, where there is provision for awarding three types of consortium :(a) spousal consortium (b) parental consortium, (c) filial consortium. So, Learned Tribunal at the time of determination of compensation rightly awarded the said amount of 'consortium' and there was no infirmity to that and urged for upholding the judgment.

Considered.

06. In this case the claimant-appellants i.e. the respondents in the MAC Appeal and the objectors in the CO(FA) filed one claim-petition before the Tribunal with the assertions that on 08.05.2016 when Chinta Bala Das (Since dead) was proceeding on foot through Khowai-Teliamura Road at about 4.30 P.M. and while she reached near Moharcherra School suddenly one motor cycle bearing No.TR-01-M-4501 which was coming from Lal Tilla side with high speed in rash and negligent manner dashed the victim on the road. As a result of which, she fell down on the road and sustained multiple injuries on her person. Thereafter, she was taken to Teliamura Hospital from where she was referred to AGMC and GBP Hospital and on the same day she succumbed to her injuries. Hence, the claimant-petitioners being the sons and daughters filed the claim-petition. It was also asserted that the accident occurred due to rash and negligent driving of the motor bike rider and it was also submitted that the deceased was aged about 60 years and as a maid-servant and from MNREGA, she used to earn Rs.8,000/- per month. The case was registered as TS(MAC)

No.248 of 2019. Before the Tribunal, the owner of the offending bike appeared and contested the case by filing written statement denying the assertions of the claimant-petitioners and submitted that at the time of accident the rider of the bike had valid driving license and the vehicle was duly insured with the present appellant-Insurance Company. The Insurance Company also filed their written statement denying the assertion of the claimant-petitioner and further took the plea that the claim-petition was subjected to strict proof by the claimants.

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

I S S U E S

(1) Whether Chinta Bala Das died in a vehicular accident which alleged to have been took place on 8.5.2016 at about 4.30 p.m. near Mohorchara School on Khowai – Teliamura Road under Teliamura P.S. Khowai District due to rash and negligent driving of motor cycle bearing No. TR-01-M4501 by its rider?

(2) Whether the claimant petitioners being the sons and daughters of the deceased, are entitled to get compensation, if so, upto what extent and who shall be liable to pay the same?

08. To substantiate the issues, from the side of the claimant-appellant one witness was adduced and certain documents were relied upon which were marked as exhibits and the O.P. owner of the bike was examined as O.P.W 1 and relied upon some documents which were also marked as exhibits.

Finally, on conclusion enquiry Learned Tribunal below allowed the claim-petition filed by the claimant-petitioner. The operative portion of the judgment/order of the Learned Tribunal below runs as follows:

O R D E R

12. In the result, claim is awarded in following terms:-

(i) Claimant petitioners are entitled to get the award of Rs. 9,27,600/- (Rupees nine lakhs twenty seven thousand six hundred) only along with 9% simple interest per annum from the date of the petition i.e. w.e.f. 20.12.2019 till the date of realization thereof from the O.P. No.2 the Oriental Insurance Co. Ltd.

(ii) 40% of the award of all the claimants be invested by purchasing separate Fixed Deposit Certificates from Nationalised Bank for a period of five years with auto renewal facility and the claimant petitioners shall open savings account in the same bank. No loan or advance or pre-mature withdrawal shall be allowed without prior sanction of this Tribunal. The interest accrued on the fixed deposit certificates shall be directly transmitted to the individual savings accounts by the concerned bank. The concerned bank shall retain the original fixed deposit certificates and the copies of the certificates to be handed to all the claimant petitioners. The claimant petitioners are directed to submit photocopies of their bank pass book.

(iii) The O.P. No.2 Oriental Insurance Co. Ltd. shall deposit the amount so ordered along with interest thereon within one month to this Tribunal from the date of the order.

(iv) Copy of this order so awarded to be served upon the parties not later than 15 days from the date of this award.

(v) The case stands disposed on contest.

09. I have gone through the award of the Learned Tribunal below very carefully and also perused the record of the Learned Tribunal including the evidence on record. Admittedly, in this case, the driving license of the rider of the bike was proved by the owner and the same was marked as **Exhibit-D** without any objection from the Insurance Company. The appellant-Insurance Company in the written statement submitted before the Tribunal did not take any specific plea that the driving license was 'fake'. Even to substantiate their contention the Insurance Company did not adduce any oral evidence on record nor proved any documentary evidence on record. Furthermore, to substantiate the RTI information no such officer of the Transport Department from Nagaland was adduced to prove that Exhibit-D was fake and fabricated. Even before the Tribunal as already stated save and except written statement, the Insurance Company could not adduce any oral/documentary evidence on record. Situated thus, the plea taken by the Insurance Company that the driving license was fake and the same needs to be cancelled and the judgment needs to be set aside, cannot be accepted.

Now, regarding 'consortium' there were numerous judgments of the Hon'ble Supreme Court. Now, let us discuss the five judges bench Judgment of the Hon'ble Supreme Court in **National Insurance Company Ltd. vs. Pranay Sethi & Ors.** reported in **(2017) 16 SCC 680,** wherein in para No.52, the Hon'ble Apex Court observed as under:

> **"52. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh [Rajesh v. Rajbir Singh, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149] . It has granted Rs 25,000 towards funeral expenses, Rs 1,00,000 towards loss of consortium and Rs 1,00,000 towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though Rajesh [Rajesh v. Rajbir Singh, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149] refers to Santosh Devi [Santosh Devi v. National Insurance Co. Ltd., (2012) 6 SCC 421 : (2012) 3 SCC (Civ) 726 : (2012) 3 SCC (Cri) 160 : (2012) 2 SCC (L&S) 167] , it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute**

> **over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs 15,000, Rs 40,000 and Rs 15,000 respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads."**

From the aforesaid judgment of **Pranay Sethi (supra)**, it appears that the five judges' bench of the Hon'ble Supreme Court decided consortium at Rs.40,000/-.

09. Thereafter, in another judgment in **United India Insurance Company Limited vs. Satinder Kaur alias Satwinder Kaur & Ors.** reported in **(2021) 11 SCC 780,** wherein in para Nos.28, 29, 30, 31 and 37.12, the Hon'ble Apex Court observed as under:

> **"(e) Three conventional heads**
>
> **28. In Pranay Sethi [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] , the Constitution Bench held that in death cases, compensation would be awarded only under three conventional heads viz. loss of estate, loss of consortium and funeral expenses. The Court held that the conventional and traditional heads, cannot be determined on percentage basis, because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified, which has to be based on a reasonable foundation. It was observed that factors such as price index, fall in bank interest, escalation of rates, are aspects which have to be taken into consideration. The Court held that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs 15,000, Rs 40,000 and Rs 15,000, respectively. The Court was of the view that the amounts to be awarded under these conventional**

heads should be enhanced by 10% every three years, which will bring consistency in respect of these heads:

> **(a) Loss of estate — Rs 15,000 to be awarded.**
>
> **(b) Loss of consortium.**

29. Loss of consortium, in legal parlance, was historically given a narrow meaning to be awarded only to the spouse i.e. the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads for awarding compensation in various jurisdictions such as the United States of America, Australia, etc. English courts have recognised the right of a spouse to get compensation even during the period of temporary disablement.

30. In Magma General Insurance Co. Ltd. v. Nanu Ram [Magma General Insurance Co. Ltd. v. Nanu Ram, (2018) 18 SCC 130 : (2019) 3 SCC (Civ) 146 : (2019) 3 SCC (Cri) 153] this Court interpreted "consortium" to be a compendious term, which encompasses spousal consortium, parental consortium, as well as filial consortium. The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse.

31. Parental consortium is granted to the child upon the premature death of a parent, for loss of parental aid, protection, affection, society, discipline, guidance and training. Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love and affection, and their role in the family unit."

From the aforesaid observation, it appears that in Magma General Insurance Company Limited, Hon'ble the Apex Court interpreted "consortium to be a compendious term, which encompasses spousal consortium, parental consortium, as well as filial consortium. The right to 'consortium' would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse." It was further observed that "parental consortium is granted to the child upon the premature death of a parent, for loss of parental aid, protection, affection, society, discipline, guidance and training".

10. Finally, in the said case in para No.37.12 Hon'ble the Apex Court awarded the following amounts under the conventional heads:

> **"37.12. Insofar as the conventional heads are concerned, the deceased Satpal Singh left behind a widow and three children as his dependants. On the basis of the judgments in Pranay Sethi [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] and Magma General [Magma General Insurance Co. Ltd. v. Nanu Ram, (2018) 18 SCC 130 : (2019) 3 SCC (Civ) 146 : (2019) 3 SCC (Cri) 153] , the following amounts are awarded under the conventional heads:**
>
> **(i) Loss of estate : Rs 15,000**
>
> **(ii) Loss of consortium:**
>
> **(a) Spousal consortium : Rs 40,000**
>
> **(b) Parental consortium : 40,000 × 3 = Rs 1,20,000**
>
> **(iii) Funeral expenses : Rs 15,000"**

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11. Here in the case at hand, there are/were in total 8 appellants who are the sons and daughters of their deceased mother, namely, Chinta Bala Das. So, for the eight appellants at the time of delivery of judgment, Learned Tribunal rightly awarded compensation under the head "loss of consortium at Rs.3,20,00/- and in my considered view that was rightly awarded by the Learned Tribunal below and there is no scope to interfere with the same. Before the Tribunal as already stated the claimant-appellants have adduced witness and in support of the monthly income of the deceased the claimant-objectors could not prove any documentary evidence on record and after hearing both the sides, Learned Tribunal determined the monthly income of the deceased at Rs.8,000/- per month which was in the considered opinion of this Court was reasonable because being an MNREGA worker, definitely the deceased could have earned not less than Rs.8,000/- per month. So, there is no infirmity in the judgment of the Tribunal regarding monthly income of the deceased. Even in the objection filed by the claimants, there was no plea to consider the notification of this High Court and that notification was for decision of cases in Lok Adalat. So, the submission of Learned Counsel that the monthly income of the deceased should be determined as per notification of this High Court, issued for determination of the case during Lok Adalat. Even before the Learned Tribunal also no such plea was taken cannot be accepted.

12. So, in this regard, I find no merit in the cross-objection filed by the claimant-appellants for enhancement of monthly income of the deceased. However, on perusal of the judgment of the Learned Tribunal, it appears that the Learned Tribunal at the time of delivery of judgment awarded rate of interest @9% per annum which in my considered opinion was too high, because in most of the cases, this Court also awarded rate of interest @7.5%. So, in the considered opinion of this Court, the rate of interest awarded by the Tribunal needs to be interfered with, keeping the rest part of the judgment undisturbed.

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13. In the result, the appeal filed by the appellant-Insurance Company is partly modified to the extent that rate of interest of @7.5% in place of 9% affirming the judgment and award delivered by Learned Tribunal by the said judgment dated 12.07.2023. The appellant-Insurance Company shall pay the awarded amount of Rs.9,27,600/- along with interest @7.5% in place of 9% w.e.f. 20.12.2019 to till the date of actual realization within a period of two(2) months from the date of passing of this judgment and shall deposit the amount to the Learned Tribunal accordingly. If, any amount is paid, that would be deducted accordingly from the award. The cross-objection filed by the claimant-appellants as objectors accordingly stands dismissed being devoid of merit.

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

Send back the record to the Learned Trial Court along with a copy of this judgment/award.

Supply a copy of this judgment/order to Learned Counsel for the appellant-Insurance Company for information and compliance and also a copy of this order be supplied to Learned Counsel for the respondent-claimant-petitioners for information.

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

PURNITA DEB

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Purnita

JUDGE

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