**(2009) 12 GAU CK 0034**

**Gauhati High Court (Agartala Bench)**

**Case No:** None

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| Raba Laxmi Debbarma and Others | | APPELLANT |
| | Vs | |
| Nupur Deb and Another | | RESPONDENT |

**Date of Decision:** Dec. 2, 2009

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 5 Rule 9
- Motor Vehicles Act, 1988 - Section 173
- Penal Code, 1860 (IPC) - Section 279, 304(A)

**Citation:** (2011) ACJ 2421 : (2010) 2 GLR 707 : (2010) 2 GLT 93 : (2011) 1 RCR(Civil) 449

**Hon'ble Judges:** T.NK. Singh, J

**Bench:** Single Bench

**Judgement**

T.NK. Singh, J.

This appeal, for enhancement of the award, u/s 173 of the Motor Vehicles Act, 1988, is directed against the judgment and award dated 17.3.2007 passed by the learned Member, Motor Accident Claims Tribunal, West Tripura, Khowai in T.S.(MAC) No. 23 of 2006.

2. Heard Mr. S. Talapatra, learned senior advocate, assisted by Mr. D. Bhattacharjee, learned Counsel appearing for the appellants as well as Mr. P. Goutam, learned Counsel appearing for the respondent No. 2. The New India Assurance Co. Ltd. The service of notice to the respondent No. 1 by registered post with A.D. shall be deemed to have been effected properly under Order V, Rule 9 of the Code of Civil Procedure, imasmuch as, neither the AD Card nor the registered post returned unserved even after lapse of many months from the date of taking steps for service of notice to the respondent No. 1 by registered post with AD. None appears for the respondent No. 1 without showing any cause.

3. The concise facts, sans unnecessary details, leading to the filing of T.S.(MAC) No. 23 of 2006 are noted for decision of the present appeal:

The appellants-claimants are the wife, children and mother of the deceased Dilip Debbarma, who was serving as Deputy Inspector of Schools in the Government of Tripura and he (Late Dilip Debbarma) was aged about 42 years at the time of his death in a vehicular accident on 4.10.2006. On that very day, i.e., on 4.10.2006, while Lt. Dilip Debbarma was coming from the side of Teliamura to his house at Mograi Sadhu Para, Jirania in a motor cycle and reached near the Lake Point on 44, National Highway at Baramura, the offending vehicle, i.e., Tata Truck bearing registration No. AS-01-K-8076 dashed him from the back side at a high speed due to negligent driving of the offending vehicle. As a result of the said vehicular accident, the deceased Dilip Debbarma sustained head injury and other injuries and died on the spot. Then and there, one Sri. Sishir Debnath, a TSR Jawan (Habildar), who was on duty at Lake Point, Baramura, lodged an ejahar for the said vehicular accident to the Teliamura Police Station and, accordingly, Teliamura P.S. Case No. 62/2006 dated 4.10.2006 was registered u/s 279/304A of IPC. Thereafter, the deceased Dilip Debbarma was taken to the Teliamura Hospital, where he was declared brought dead. After performing the post mortem examination of the dead body of Dilip Debbarma, his dead body was handed over to the appellants-claimants.

4. After investigation, police submitted the charge sheet against the driver of the offending vehicle in the court of the SDJM, Khowai, West Tripura. The present respondent No. 2. The New India Assurance Co. Ltd. is the insurer of the offending vehicle bearing registration No. AS-01-K-8076 vide policy No. 530706/31/06/01/00000209. As per the School Certificate, the date of birth of the deceased Dilip Debbarma was 14.11.1964 and as such, at the time of his death, the deceased Dilip Debbarma was aged 42 years. The total salary, i.e., monthly emolument of the deceased Dilip Debbarma who was working as Deputy Inspector of Schools in the Government of Tripura for the September 2006 was, Rs. 12,487 and the total deduction from the said total emolument was Rs. 4,809. As such, after deduction of the said amount, i.e., Rs. 4,809, the net monthly emolument of the deceased Dilip Debbarma was Rs. 7,678, which was also certified by the Head of Office and D.D.O., Education Inspectorate Harepkuwer, Khowai, Tripura, TTAADC.

5. The appellants-claimants filed T.S.(MAC) No. 23 of 2006 before the learned Member, Motor Accident Claims Tribunal, Khowai, West Tripura against the present respondents, i.e., the respondent No. 1 - Owner of the offending vehicle and the respondent No. 2 - Insurer of the offending vehicle, claiming compensation for the death of Dilip Debbarma in the said vehicular accident at the tune of Rs. 30,77,584. In the claim petition, it was categorically pleaded that at the tims of death of the deceased Dilip Debbarma, the service period remaining to Lt. Dilip Debbarma was 16 years and he was in the panel for further promotion. The said vehicular accident was due to rash and negligent driving of the offending vehicle and the respondent

No. 2-The New India Assurance Co. Ltd., Beltala Branch, Opposite ASEB Reltala, Baisistha Road, Guwahati is the insurer of the offending vehicle.

6. The respondent No. 1-Owner of the offending vehicle did not contest the suit though notice was sent to her by registered post vide postal receipt No. 13382 and, accordingly, the suit was proceeded ex parte against the respondent No. 1 - Owner of the offending vehicle. The respondent No. 2 - Insurer of the offending vehicle filed the written statement, wherein the respondent/opposite party No. 2 raised some technical pleas that the claimants-appellants are required to produce the original post mortem report, death certificate, school certificate, survival certificate and salary certificate of the deceased Dilip Debbarma before the Tribunal. Save and except these technical points raised in the written statement, the respondent/opposite party No. 2 was not denying the case of the appellants-claimants that the respondent/opposite party No. 2 is the insurer of the offending vehicle bearing registration No. AS-01-K-8076.

7. In support of their case, the appellants-claimants examined three witnesses, i.e., P.W. No. 1 - Smt. Reba Laxmi Debbarma (appellant No. (1), P.W. No. 2 - Shri Debjyoti Debbarma (appellant No. 2) and P.W. No. 3-Shri Kartik Debbarma (father of the deceased Dilip Debbarma).

P.W. No. 1 - Smt. Reba Laxmi Debbarma (appellant No. 1) deposed that on 4.10.2006 while her husband was coming from the side of Teliamura to their house at Mograi Sadhu Para, Jirania in a motor cycle and reached at Lake Point, Baramura on 44, NH Road, the offending vehicle bearing registration No. AS-01-K-8076 dashed her husband from the back side at high speed because of the negligent driving of the offending vehicle and as a result of that vehicular accident, her husband sustained headlajury and other injuries and died on the spot. For that accident, Teliamura PS. Case No. 62/2006 dated 4.10.2006 u/s 279/304A of IPC was registered and after completion of the post mortem examination of the dead body of her husband, the dead body was handed over to them. The respondent No. 2 was the insurer of the offending vehicle (Truck) bearing registration No. AS-01-K-8076. P.W. No. 1 further deposed that on last September 2006, the her deceased husband Dilip Debbarma had drawn pay - Rs. 7,300, D.A. - Rs. 4,307, K.R. - Rs. 600, CA - Rs. 150, Other, Rs. 130; and the remaining service period of her husband was 16 years and he, was in the panel for further promotion. The contesting respondent/opposite party No. 2 - insurer of the offending vehicle declined to cross-examine the P.W. No. 1, thereby admitting the statement of P.W. No. 1. P.W. No. 1 also exhibited the certified copies of the FIR, complaint petition, post mortem examination report, final report, death certificate of the deceased in original, certificate issued by the Headmaster, Birendranagar U.S. School, Jirania reflecting the date of birth of the deceased and also the salary certificate of the deceased Dilip Debbarma. The contesting respondent/opposite party No. 2 did not examine any witness in support of their case. The P.W. Nos. 2 and 3 also corroborated the statement of the P.W. No. 1.

8. Learned Member, Motor Accident Claims Tribunal had framed the following two issues in the suit, i.e., T.S.(MAC) 23 OF 2006:

(i) Whether the deceased, the husband, father and son of the claimant-petitioners died in a vehicular accident which occurred on 4.10.2006 at about 1615 hours at Baramura on Assam-Agartala Road due to rash and negligent driving of the vehicle bearing No. AS-01-K-8076 (TATA Truck) by its driver.

(ii) Whether the claimant-petitioners are entitled to get any compensation as prayed for. If so, what would be the quantum of compensation and which of the OPs shall be held liable to pay the same.

The learned Member, Motor Accident Claims Tribunal, West Tripura, Khowai, while deciding the Issue No. 1 had made out a new case, which was neither the case of the appellants nor the case of the respondents/opposite parties nor pleaded in the pleadings of the parties, that in the vehicular accident on 4.10.2006, the deceased Dilip Debbarma had also contributory negligence and equally responsible for his death. For making out the said new case, the learned Member, Motor Accident Claims Tribunal had invented some facts which were not mentioned in the pleadings of the respondent No. 2 and/or the appellants-claimants and made some hypothesis that in the turning point the bike (driven by the deceased Dilip Debbarma) should not over-take the Truck (offending vehicle) and, thus, the motor bike rider, i.e., the deceased was also in fault in overtaking the Truck in that particular moment. It is not known as to how the learned Member, Motor Accident Claims Tribunal came to the finding, when there is no evidence on record, that both the offending Truck and Max vehicle were just crossing each other and that was also in a turning point of road when the deceased was overtaking the Truck with his bike and naturally the bike was in front of the Max vehicle and to give side to the Max vehicle, motor bike had to move left and, thus, was dashed by the Truck that was coming behind the motor bike due to overtaking. These facts are not pleaded in the claim petition of the suit, i.e., T.S.(MAC) No. 23 of 2006 nor mentioned in the statements of the PWs. Over and above, the respondent No. 2 had declined to cross-examine the PWs who stated clearly that the vehicular accident was due to dashing the motor cycle of the deceased Dilip Debbarmd from back side because of negligent driving of the offending vehicle at a very high speed.

9. The learned Tribunal had completely lost sight of the Importance of the pleadings, the settled law that the party cannot adduce evidence in absence of the pleadings in the suit of civil nature and also the related provision of the Code of Civil Procedure. The Apex Court in Bangalore Metropolitan Transport Corpn. Vs. Padma and Others, held that in the absence of any pleading and evidence to substantiate the stand there was no scope for accepting the plea that the negligent act of the deceased himself had resulted in the accident and there was no negligent act on the part of the driver of the Bus. In that case, the plea of the appellant before the High Court as well as the Apex Court was that there was negligence on the part of the

deceased himself as he was in an intoxicated state by consumption of alcohol, as a consequence of which he imbalanced himself and fell without involvement of the Bus. By such a fall, he suffered injuries and succumbed to the same. But, these facts were not pleaded by the appellants in the pleadings. As such, the Apex Court as well as the High Court, in absence of the pleading and the evidence to substantiate these pleadings, did not accept the plea of the appellant that the negligent act of the deceased himself resulted in the accident Para Nos. 4, 5, 6 and 7 of the SCC in Bangalore Metropolitan Transport Corporation''s case (supra) read as follows:

4. The claim was resisted by BMTC contending that the vehicle in question was not involved in the accident and also contending that the deceased was in an intoxicated state by consumption of alcohol as a consequence of which he imbalanced himself and fell without involvement of the bus. By such a fall, he suffered injuries and succumbed to the same. In short, BMTC disputed involvement of the bus as a primary cause for the accident in question and, thus, sought to absolve itself of the noxious liability to pay compensation.

5. Considering the evidence adduced, MACT fixed the loss of dependency of Rs. 10,77,032 to which certain amounts were added towards conventional heads to arrive at the amount of Rs. 11,04,032. The stand of the appellant was that the negligent act of the deceased himself had resulted in the accident and there was ho negligence on the part of the driver of the bus. Before the High Court it was submitted that the deceased was in an intoxicated state and, therefore, because of his negligence the accident occurred. The High Court noticed that there was no averment in the written statement and no evidence was led in that regard. The High Court also did not find any substance in the plea that the multiplier of 12 as adopted was in the higher side. Accordingly, the appeal was dismissed.

6. In support of the appeal the stands taken before the High Court were reiterated. No one appeared on behalf of the respondent in spite of service of notice on the respondent.

7. So far as the stand that the accident occurred because the deceased was in an intoxicated state is concerned, the High Court has rightly noted that in the absence of any pleading and evidence to substantiate the stand there was no scope for accepting the plea.

10. The Apex Court in Bondar Singh and Others Vs. Nihal Singh and Others, held that in the absence of a plea, no amount of evidence led in relation thereto can be looked into, Para No. 7 of the SCC in Bondar Singh''s case (supra) reads as follows:

7. As regards the plea of sub-tenancy (shikmi) argued on behalf of the defendants by their learned Counsel first we may note that this plea was never taken in the written statement the way it has-been put forth now. The written statement is totally vague and lacking in material particulars on this aspect. There is nothing to support this plea except some alleged revenue entries. It is settled law that in the absence of a

plea no amount of evidence led in relation thereto can be looked into. Therefore, in the absence of a clear plea regarding sub-tenancy (shikmi), the defendants cannot be allowed to build up a case of sub-tenancy (shikmi). Had the defendants taken such a plea it would have found place as an issue in the suit we have perused the issues framed in the suit. There is no issue on the point.

The Apex Court in Rajgopal (Dead) by Lrs. Vs. Kishan Gopal and Another, , held that in the absence of specific pleading in the plaint, the courts are precluded from taking cognizance on mere evidence. Para-9 of the SCC in Rajgopal''s case (supra) reads as follows:

9. Thus, we proceed to consider the question whether the finding recorded by the first appellate court that Goverdhan Das was given in adoption by his natural father Moti Lal suffered from any legal infirmity. At this stage, it may be relevant to state that as Goverdhan Das was given in adoption much before the coming into force of the Hindu Adoptions and Maintenance Act, 1956, the parties will be governed by the law which was in force at the time of adoption. According to paragraph 474 of Mulla''s Hindu Law, 18th edn., "the only persons who can lawfully give a boy in adoption are his father and his mother". This shows that Goverdhan Das could have been given in adoption by his father Moti Lal and not his brother Krishan Lal. From the pleadings, it becomes clear that the plaintiffs had nowhere averred in the plaint that Goverdhan Das was not given in adoption by his father Moti Lal but by his brother Kishan Lal. It was simply pleaded that the adoption was in "dwyamushyayana" form. As such a case was never pleaded in the plaint, there was no occasion for the defendants to plead in the written statement as to who gave Goverdhan Das in adoption and accordingly, the defendants in the written statement only denied that adoption was in "dwyamushyayana" form and according to them, the same was in ordinary form. In the absence of any pleading whatsoever on the question as to whether Goverdhan Das was given in adoption by his father Moti Lal or brother Kishan Lal, there was no lis between the parties on this question, as such courts could not have gone into the same even if some evidence was adduced and the lower appellate court rightly decided this question against the plaintiffs. Reference in this connection may be made to a decision pf the Privy Council in the case of AIR 1930 57 (Privy Council) in which it was held (AIR p.57) that "where a claim has been never made in the defence presented no amount of evidence can be looked into upon a plea which was never put forward". The said case has been referred to by this Court with approval in the case of Bhagat Singh v. Janwant Sinah AIR 1966 SC 1861 . In that case, some evidence was led but the High Court refused to go into the question observing that where no plea was taken, it cannot be said that there was any lis between the parties thereon. This Court upheld the decision of the High Court observing that the same was supported by a decision of the Judicial Committee in the case of AIR 1930 57 (Privy Council) Thus, we do not find any error in the findings recorded by the first appellate court on this point.

The Apex Court in para No. 5 of Mohammad Mustafa Vs. Sri Abu Bakar and Others, , held that-

...This finding having been reached without proper pleadings and necessary issues the same cannot bind any of the parties to the suit though it does indicate the serious injustice that is likely to happen to the appellant because of his defective pleadings.

11. For the foregoing discussions, this Court is of the considered view that the findings of the learned Member, Motor Accident Claims Tribunal, Khowai, West Tripura in the impugned judgment and order dated 17.3.2007 passed in T.S.(MAC) No. 23 of 2006 that the deceased Dilip Debbarma had also contributory negligence and equally responsible for his death, is perverse and is, accordingly, set aside.

12. Justice and justness emanate from equality in treatment, consistency and thoroughness in adjudication, and fairness and uniformity in the decision making process and the decisions. While it may not be possible to have mathematical precision or identical awards in assessing compensation, same or similar facts should lead to awards in the same range. When the factors/inputs are the same, and the formula/legal principles are the same, consistency and uniformity, and not divergence and freakiness, should be the result of adjudication to arrive at just compensation. Therefore, if different. Tribunals calculate compensation differently on the same facts, the claimant, the litigant, the common man will be confused, perplexed and bewildered. If there is significant divergence among the Tribunals in determining the quantum of compensation on similar facts, it will lead to dissatisfaction and distrust in the system. Basically only three facts need to be established by the claimants for assessing compensation in the case of death, i.e., (a) age of the deceased; (b) income of the deceased; and (c) the number of dependants. Further, the issues to be determined by the Tribunal to arrive at the loss of dependency are; (i) additions/deductions to be made for arriving at the income of the deceased; (ii) the deduction to be made towards the personal living expenses of the deceased and (iii) the multiplier to be applied with reference to the age of the deceased. It these determinants are standardized, there will be uniformity and consistency in the decisions. There will be lesser need for detailed evidence. It will also be easier for the insurance companies to settle accident claims without delay Ref. Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another,

13. Admittedly, in the present case, the deceased Dilip Debbarma was working as Deputy Inspector of Schools in the Government of Tripura and was only 42 years at the time of his death. The learned Member, Motor Accident Claims Tribunal, West Tripura, Khowai in the impugned judgment and order dated 17.3.2007, clearly made a finding that at the time of death of Dilip Debbarma, the deceased was working as Deputy Inspector of Schools at Bara Maidan and the salary certificate issued by the Head of Office and D.D.O., Education Inspectorate Harepkuwer, Khowai, Tripura,

TTAADC, which was exhibited as Exbt-4 in support of the monthly income of the deceased Dilip Debbarma, reveals that the total monthly emolument was Rs. 12,487 and the total deduction from the said total emolument was Rs. 4,809 and after such deduction, the net amount drawn by the deceased Dilip Debbarma was Rs. 7,678.

14. The Apex Court had considered the issue "Addition to income for future prospects" in Sarla Verma''s case (supra), held that where the annual income is in the taxable range, the words "actual salary" should be read as "actual salary less tax". The addition should be only 30% if the age of the deceased was 40 to 50 years. Para Nos. 21, 22, 23 and 24 of the SCC in Sarla Verma''s case (supra) read as follows:

21. In General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, this Court held that the future prospects of advancement in life and career should also be sounded in terms of money to augment the multiplicand (annual contribution to the dependants); and that where the deceased had a stable job, the court can take note of the prospects of the future and it will be unreasonable to estimate the loss of dependency on the actual income of the deceased at the time of death. In that case, the salary of the deceased, aged 39 years at the time of death, was Rs. 1,032 per month. Having regard to the evidence in regard to future prospects, this Court was of the view that the higher estimate of monthly income could be made at Rs. 2,000 as gross income before deducting the personal living expenses.

22. The decision in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, was followed in Smt. Sarla Dixit and another Vs. Balwant Yadav and others, where the deceased was getting a gross salary of Rs. 1,543 per month. Having regard to the future prospects of promotions and increases, this Court assumed that by the time he retired, his earning would have nearly doubled, say Rs. 3,000. This Court took the average of the actual income at the time of death and the projected income if he had lived a normal life period, and determined the monthly income as Rs. 2,200 per month.

23. In Abati Bezbaruah v. Geological Survey of India (2003)2 SCC 148, as against the actual salary income of Rs. 42,000 per annum (Rs. 3,500 per month) at the time of the accident, this Court assume the income as Rs. 45,000 per annum, having regard to the future prospects and career advancement of the deceased who was 40 years of age.

24. In General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, this Court increased the income by nearly 100%, in Smt. Sarla Dixit and another Vs. Balwant Yadav and others, the income was increased only by 50% and in Abati Bezbaruah v. Geological Survey of India (2003)2 SCC 148 the income was increased by a mere 7%. In view of the imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased

towards future prospects, where the deceased had a permanent job and was below 40 years. (Where the annual income is in the taxable range, the words "actual salary" should be read as "actual salary less tax"). The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of the deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardize the addition to avoid different yardsticks being applied or different methods of calculation being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments, etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances.

The Apex Court in Sarla Verma''s case (supra) further held that deduction towards personal and living expenses of the deceased would be one fourth where the number of the dependants of the deceased is 4 to 6. Conventional amount would be in the range of Rs. 5,000 to Rs. 10,000 and where the deceased is survived by his widow, another conventional amount in the range of Rs. 5,000 to Rs. 10,000 should also be added under the head of loss of consortium. Para Nos. 19 and 30 of the SCC in Sarla Verma''s case (supra) read as follows:

19. To have uniformity and consistency, the Tribunals should determine compensation in cases of death, by the following well-settled steps:

Step 1 (Ascertaining the multiplicand)

The income of the deceased per annum should be determined. Out of the said income a deduction should be made in regard to the amount which the deceased would have spent en himself by way of personal and living expenses. The balance, which is considered to be the contribution to the defendant family, constitutes the multiplicand.

Step 2 (Ascertaining the multiplier)

Having regard to the age of the deceased and period of active career, the appropriate multiplier should be selected. This does not mean ascertaining the number of years he would have lived or worked but for the accident. Having regard to several imponderables in life and economic factors, a table of multipliers with reference to the age has been identified by this Court. The multiplier should be chosen from the said table with reference to the age of the deceased.

Step 3 (Actual calculation)

The annual contribution to the family (multiplicand) when multiplied by such multiplier gives the "loss of dependency" to the family.

Thereafter, a conventional amount in the range of Rs. 5,000 to Rs. 10,000 may be added as loss of estate. Where the deceased is survived by has widow, another

conventional amount in the range of 5,000 to 10,000 should be added under the head of loss of consortium. But no amount is to be awarded under the head of pain, suffering or hardship caused to the legal heirs of the deceased.

The funeral expenses, cost of transportation of the body (if incurred) and cost of any medical treatment of the deceased before death (if incurred) should also be added.

30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, the general practice is to apply standardized deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.

Since, the deceased Dilip Debbarma was aged about 42 years at the time of his death, the multiplier would be 15.

15. For the foregoing reasons, the compensation amount awarded for the said vehicular accident to the appellants are as follows:

(i) Total loss of income comes to Rs. 7,678 - (-) 1/4th, i.e., Rs. 1,919.50 = Rs. 5,758.50. Now, Rs. 5,758.50 x 12 x 15 (multiplier as provided under 2nd Schedule to the Motor Vehicles Act, 1988) = Rs. 10,36,530;

(ii) Addition to income for future prospects, i.e., 30% of the total loss of income - Rs. 10,36,530 = Rs. 3,10,959;

(iii) Consortium Rs. 10,000 as the deceased is survived by his wife;

(iv) along with this amount interest @ 6% per annum from the date of filing the suit/petition, i.e., 5.12.2006 till the date of payment.

As such, the total amount comes to Rs. (10,36,530 + 3,10,959 + 10,000) = Rs. 13,57,489 (Rupees Thirteen lakhs fifty-seven thousand four hundred eighty-nine) only. In the giver case, in the interest of justice, the said amount of compensation of Rs. 13,57,489 (Rupees Thirteen lakhs fifty-seven thousand four hundred eighty-nine) only shall be distributed among the appellants in equal shares. However, 50% of the share including the interest of each of the appellants shall be kept in long term fixed deposit for at least 6 (six) years in the Tripura Gramin Bank, Khowai Branch.

16. Accordingly, the appellants-claimants are entitled to get the enhanced amount, i.e., Rs. 13,57,489 (-) Rs. 4,64,180 (awarded under the impugned judgment and award dated 17.3.2007) = Rs. 8,93,309 (Rupees eight lakhs ninety-three thousand three hundred and nine) only. As the respondent/opposite party No. 1 did not contest the suit by filing the written statement, she (respondent/opposite party No.

1) had accepted the case of the appellant-claimants that the respondent/opposite party No. 1 is the owner of the offending vehicle and the respondent/opposite party No. 2 is the insurer of the offending vehicle Ref.: Bir Singh Chauhan Vs. State of Haryana and Another,

17. As discussed above, the respondent/opposite party No. 2 - Insurartf the offending vehicle bearing registration No. AS-01-K-8076, did not deny the categorically pleaded case of the claimants in the suit, i.e., T.S.(MAC) No. 23 of 2006 that the respondent/opposite party No. 2 is the insurer of the offending vehicle. This Court, keeping in view of the principle of pleadings and the decisions of the Apex Court discussed above, has no hesitation to come to the conclusion that the respondent No. 2 is the insurer of the offending vehicle. Accordingly, the total amount of compensation awarded above, i.e., Rs. 13,57,489 (Rupees thirteen lakhs fifty-seven thousand four hundred eighty-nine) only excluding the amount of compensation if paid earlier, shall be paid by the respondent Nos. 1 and 2 to the extent of half and half to the appellants-claimants.

18. This appeal is allowed, and in the result the impugned judgment and award is interfered and modified in the manner indicated above.