

**HIGH COURT OF TRIPURA
AGARTALA**

MAC App. 05 of 2023

The Oriental Insurance Company Limited

Represented by the Assistant Manager,
Agartala, Division Office,
H.G.B. Road (Near Sarkar Nursing Home)
Agartala, West Tripura
(Insurer of the vehicle bearing No. TR-01-AG-0782,
Maruti Wagoner)

.....Appellant

VERSUS

1. Sri. Amal Saha

son of late Jadu Gopal Saha
of Khosh Bagan, Near Smriti Club
P.S.- West Agartala, District- West Tripura

.....Claimant-Respondent

2. Sri Chandan Roy

son of late Surendra Ch. Roy
of Vill- Gandhigram,
P.S.- Airport, District- West Tripura.
(Owner of the vehicle bearing No. TR-01-AG-
0782, Maruti Wagoner)

.....Respondent

For Appellant(s)	: Mr. Biswanath Majumder, Advocate.
For Respondent(s)	: Mr. S. Lodh, Advocate.
Date of hearing and delivery of judgment and order	: 21.11.2023
Whether fit for reporting	: No.

HON'BLE MR. JUSTICE T. AMARNATH GOUD

JUDGMENT & ORDER (ORAL)

This is an appeal under Section 173 of the Motor Vehicles Act., 1988 along-with its up to date amendments against the impugned judgment and award dated 15.07.2022 passed by the learned Member, Motor Accident Claims Tribunal, Court No.2, West Tripura, Agartala in case No. T.S. (MAC) 17 of 2019.

[2] Brief facts leading to this case is that on 29.08.2018 at about 10.00 hrs. the claimant petitioner (Respondent No.1 herein) was standing at Battala near Rickshaw stand in front of one Betel shop, at that time one vehicle bearing registration No.TR-01-AG-0782 (Maruti Wagoner)(hereinafter

referred as the offending vehicle) which was proceeding towards Joynagar came with excessive speed in a rash and negligent manner driven by its driver and dashed the claimant petitioner as a result, claimant petitioner sustained severe bodily injury on his persons. Immediately after the accident, claimant petitioner was taken to AGMC & GBP Hospital where he was admitted as an indoor patient w.e.f. 29.08.2018 to 09.11.2018 for his treatment. During treatment, claimant petitioner undergone surgery on his both legs. It is also stated in the claim petition before the learned Motor Accidents Claims Tribunal, West Tripura Agartala that at the time of accident claimant petitioner was a tailor by profession and he used to earn Rs. 16,000/- per month from his profession. In this connection a specific case vide West Agartala PS Case No. 202 of 2018 dated u/s 279/338 IPC and Section 184/187 of the MV Act was also registered.

[3] The Claimant- petitioner (claimant-respondent herein) quantified his claim to the tune of Rs.34,95,000/- before the Court below.

[4] The OP No.1, owner of the offending vehicle (Respondent No.2 herein) through his written statement apart from denying all the allegations in the claim petition contended, inter alia, that he is the registered owner of the said offending vehicle and it was duly insured with the OP No.2 (Oriental Insurance Co. Ltd.) who is the appellant in the instant appeal. Therefore, the owner of the vehicle urged for fixing the liability of his insurer to pay the compensation, if any. The case of OP No.2 is also of total denial and thereby put the claimant petitioner in strict proof thereof.

[5] With a view to decide the claim of the claimant petitioner following issues were framed by the Motor Accidents Claims Tribunal, West Tripura, Agartala:-

"I S S U E S

I) Whether the claimant petitioner namely, Sri Amal Saha sustained any kind of injury in a vehicular accident occurred on 29.08.2018 at about 10:00 hours

at Battala near Rickshaw stand under West Agartala PS due to rash and negligent driving of the driver of the vehicle bearing No. TR01-AG-0782?

II) Whether the claimant petitioner is entitled to get any compensation due to the said injury,? If so, what would be quantum of compensation and who shall be held liable to pay the same?"

[6] Learned Tribunal on consideration of all the facts and circumstances and on perusal of materials available on record, observed in the following manner:

"O R D E R

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

Claimant petitioner is entitled to get the award of Rs. 23,35,000/- (Rupees twenty three lacs thirty five thousand) only with 9% Simple interest per annum from the date of registration of claim i.e, w.e.f. 21.01.2019 till the date of realization thereof.

The OP No.2, Oriental Insurance Co. Ltd., insurer of the offending vehicle bearing registration No.TR-01-AG-0782 shall, within 30 days of the date of this award, deposit the entire amount as awarded, in favour of the Motor Accident Claims Tribunal, West Tripura, Agartala.

25% of the amount of award shall be invested by purchasing a fixed deposit certificate from a Nationalized Bank for a period of at least five years with auto renewal facility and no loan or advance or pre-mature withdrawal shall be permitted without sanction of this Tribunal."

[7] Aggrieved by the award delivered on 15.07.2022, the appellant herein has approached this Court seeking following reliefs:

- i. Admit this appeal.
- ii. Issue notice upon the Respondents.
- iii. Call for the records of the case from the learned Member, Motor Accident Claims Tribunal, Court No.2, West Tripura, Agartala in Case No. T.S. (MAC) 17 of 2019.
- iv. Stay the operation of the impugned judgment and award dated 15.07.2022, passed by the learned Member, Motor Accident Claims Tribunal, Court No.2, West Tripura, Agartala in case No. T.S. (MAC) 17 of 2019.

[8] Mr. Biswanath Majumder, learned counsel representing the appellant insurance company contends that learned Tribunal did not apply its judicious mind and with flagrant disregard of law and justice or in a pervasive

manner, has imposed the liability of payment of compensation of Rs.23,35,000/- (Rs. Twenty-Three Lakh and Thirty-Five Thousand) only upon the appellant insurance company and as such, it is not sustainable and tenable in the eye of law.

[9] Learned counsel further contends that the disability suffered by the claimant to the extent of 60% but, the learned Tribunal has perversely assessed the disability to the extent of 100% which defies all logics.

[10] It is also contended by the learned counsel representing the appellant insurance company that awarding any amount under the head of litigation cost of Rs.5,000/- is all extraneous consideration, which has not been contemplated under the statute and as such, the learned Tribunal has committed gross illegality in awarding litigation cost which should be quashed.

[11] Mr. Majumder, learned counsel submits that the Court below has fixed a very high rate of interest @ Rs.9% p.a. on the awarded sum wherein, the Hon'ble Apex Court held that with a change in economy and the policy of Reserve Bank of India, the interest is required to be lowered. He, therefore, prays to reduce the interest rate from 9% p.a. to 5. p.a.

[12] On the other hand, Mr. S. Lodh, learned counsel for the respondents submits before this Court that the order dated 15.07.2022 passed by the learned Tribunal is just and proper and needs no interference from this Court. In the order passed by the learned Tribunal, it has been mentioned that in the certificate of disability it is shown to the extent of 60% but it can be taken to the disability to the extent of 100% which is considered as functional disability and permanent in nature. Due to the accident claimant petitioner also lost his working capacity fully due to his paralytic condition of his both legs.

[13] Heard learned counsel appearing for both the parties. Perused the record.

[14] Learned Trial court observing all the facts and circumstances of the case of the claimant, has calculated the compensation regarding the head of disability in the case, as under:

“(I) Income per month = Rs.9,000/- only.

(II) 25% of above to be added as future prospect :- Rs.2,250/- only.

(III) Total of SI Nos. I and II above comes to Rs.2,250/- + Rs. 9,000/-=Rs. 11,250/- only.

(IV) compensation after applying multiplier of 14:- Rs. 11,250 x 12 x 14=18,90,000/- only.

In view of the discussion the total compensation comes to Rs. 2,00,000/- + Rs. 2,00,000/- + Rs. 5,000/- + Rs. 40,000/- + 18,90,000 = 23,35,000/-.”

[15] Having perused the entire record and upon hearing the submissions advanced by the learned counsel appearing for the parties, this Court is of the view that the litigation cost of Rs.5,000/- which is awarded to the claimant petitioner (Respondent No.1 herein) is extraneous and hence the same head has to be removed from the awarded amount. Thus, the claimant is entitled to get the award of Rs. 23,30,000/- (Rupees Twenty three lakh thirty thousand only) [Rs.(23,35,000 – 5,000)/- = Rs.23,30,000/-].

[16] This Court in all the similarly situated matters is fixing 7.5% interest and to maintain uniformity while comparing the bank rate of interest which is also much less. This Court is of the view that ends of justice would be made if the rate of interest fixed by the learned tribunal be reduced from 9% per annum to 7.5%. per annum. Consequently, the total compensation entitled by the claimant-respondent would be Rs. 23,30,000/- (Rupees Twenty three lakh thirty thousand only) along with 7.5 % simple interest per annum from the date of presentation of the claim petition till the date of actual payment.

[17] In view of the above, the instant appeal is allowed to the extent as indicated above. Thus, the appellant insurance company i.e. the Oriental Insurance Co. Ltd., is liable to pay the total amount as awarded above to the claimant-respondent. The amount to be deposited within one month from

today on the file of the Motor Accidents Claims Tribunal, West Tripura, Agartala and on depositing the same, the claimant or his legal representative(s)(if not survived) may file appropriate application to the satisfaction of the Court and withdraw the amount unconditionally.

As a sequel miscellaneous application(s) pending if any, shall stand closed.

JUDGE

Sabyasachi. G.

**SABYASACHI
GHOSH**

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