

**HIGH COURT OF TRIPURA
AGARTALA
MAC APP NO.66 OF 2022**

Shri Hari Sankar Kurmi

(No.01030562-CT/DVR,E-Coy 03 Bn. TSR)
S/O. Late Bhagatbat Kurmi,
Resident of –Sonaray, P.O.- Marcharra,
P.S- Kamalpur, Dist- Dhalai-Tripura.

Present address:-

C/o. Deo Kumar Kurmi,
S/o- Lt. Laxmi Prasad Kurmi,
Vill & P.O: Paschim Champamura,
P.S. Bodhjunnagar, Dist-West Tripura,
Pin-799 008.

..... **Appellant(s)**

Vs.

1. Commandant,

130 Bn, Border Security Force, Sundarbani,
P.O- Sundarbani, Dist- Rajouri, J & K,
Pin-185 153: Email: comdt130@bsf.nic.in
(Owner of Vehicle No.TR-01-J-1661.
Bearing Model & Make- Tata 5-TONNER).

2. H/C- Naresh Kumar, (No.94005758)

S/o. Sri Kanwar Singh, 130 BSF,
130 Bn. Border Security Force, Sundarbani,
PO- Sundarbani, Dist: Rajouri, J & K,
Pin-185 153
(Driver of the Vehicle No.TR-01j-1661 TATA 5-TONNER.

3. The Inspector General of Border Security Force,

Tripura Frontier, Salbagan via Agartala,
West Tripura, Pin-799 010.
(Head of BSF, Tripura & controlling authority of the
Commandant 130 BSF-the owner of the vehicle No.TR-01-
J1661 TATA 5 TONNER.

..... **Respondent-O.P(s)**

For the Appellant(s) : Mr. P.K. Pal, Advocate.

For the Respondent(s) : Mr. B. Majumder, Deputy SGI

MAC APP NO. 6 OF 2023

1. Commandant,

130 Bn, Border Security Force, Sundarbani,
P.O- Sundarbani, Pin-185 153
Dist- Rajouri, J & K,
(Owner of Vehicle No.TR-01-J-1661.
Bearing Model & Make- Tata 5-TON).

2. H/C- Naresh Kumar, (No.94005758)

S/o. Sri Kanwar Singh, 130 BSF,
130 Bn. Border Security Force, Sundarbani,
PO- Sundarbani, Pin-185 153
Dist: Rajouri, J & K,
(Driver of the Vehicle No.TR-01j-1661 TATA 5-TON).

3. The Inspector General of Border Security Force,

Jammu Frontier, Paloura,
Jammu(Union Territory of Jammu & Kashmir), Pin-181124
(Head of BSF, Ftr HQ Jammu & Present Controlling Authority
of the Commandant 130 BSF-the owner of the vehicle
No.TR-01-J1661 TATA 5 TON).

..... **Appellant.OPs(s)**

Vs.

Shri Hari Sankar Kurmi

(No.01030562-CT/DVR,E-Coy 03 Bn. TSR)
S/O. Late Bhagatbat Kurmi,
Resident of -Sonaray, P.O.- Marcharra,
P.S- Kamalpur, Dist- Dhalai-Tripura.
Present address:-
C/o. Deo Kumar Kurmi,
S/o- It. Laxmi Prasad Kurmi,
Vill & P.O: Paschim Champamura,
P.S. Bodhjungnagar, Dist-West Tripura,
Pin-799 008.

.....**Respondent-Claimant(s)**

For the Appellant(s) : Mr. B. Majumder, Deputy SGI

For the Respondent(s) : Mr. P.K. Pal, Advocate.

Date of hearing and delivery of
Judgment & Order : 20.04.2023.

Whether fit for reporting : YES/NO.

HON'BLE MR JUSTICE T. AMARNATH GOUD

JUDGMENT AND ORDER(ORAL)

Both the appeals are heard, tagged, and taken up together for disposal since the fact of both the cases are related and the same Judgment and award as passed by the learned Tribunal below is under challenge.

2. Both the MAC appeals are filed under Section 173 of the Motor Vehicles Act, 1988(as amended upto date) against the judgment and award dated 01.06.2022 passed in T.S.(MAC) 08 of 2018 by Member, Motor Accident Claims Tribunal, West Tripura, Agartala (Court No.4).

3. The fact of the case of MAC App. No.66 of 2022 is that on 26.03.2017 at about 6.30/7.00 a.m. claimant Harisankar Kurmi was proceeding towards his workplace at 3 Bn. TSR Camp, Sukiabari by riding motor cycle bearing No. TR-04-A-

5396 from his house(Sonarai-Basti) to join his duties after enjoying leave. When he reached near the said TSR Camp he noticed that a vehicle bearing No.TR-01-J-1661 was coming from the opposite direction at a high speed in a negligent manner. Seeing the vehicle, the claimant stopped his motorcycle but unfortunately, the vehicle dashed the claimant for which he fell down and sustained severe injuries on his person. Instantly he was shifted to Kamalpur Sub-Divisional Hospital in an unconscious condition by the local people and TSR jawans wherefrom he was referred to AGMC & GBP Hospital, Agartala where after some medical tests, the attended doctors advised to shift the claimant to National Neurological Sciences, Kolkata for better management. Hence, on the same day, he was taken to National Neurosciences Centre, Kolkata and according to the advise of the doctors of said hospital, the patient was treated at Peerless Hositex Hospital and Research Centre Ltd. Kolkata where an operation of his brain was conducted and he was admitted there from 26.3.2017 to 02.04.2017 for his treatment. Thereafter as per the advice of said hospital, the claimant again went to that hospital on 17.05.2017 for follow-up treatment. Later on 09.08.2017, he had to take treatment from that hospital. It is further alleged that the accident occurred due to

reckless and irresponsible driving of the offending vehicle by its driver. It is also contended that being Rifleman GD under TSR the claimant used to draw a monthly salary of Rs.33,917/-.

3.1. Therefore, the claimant filed an application for grant of compensation of Rs.13,77,635.86/-. The claimant produced necessary documentary evidence in support of his claim and the learned Tribunal heard the of both sides and perused the evidence on record. The claimant also took a leave for 208 days from his leave account due to said accident.

3.2. Thereafter, the learned Tribunal by Judgment and Award dated 01.06.2022 passed in T.S.(MAC) 08 of 2018 awarded compensation of Rs.5,82,365.00/- to the claimant herein.

3.3. Being aggrieved with the quantum of compensation and observation of the learned Tribunal vide Judgment dated 01.06.2022, passed in T.S.(MAC)08 of 2018, the appellant-claimant preferred the appeal before the Hon'ble Court seeking the following reliefs:-

" a) Admit the appeal.

b) call for the records of T.S.(MAC) 08/2018 from the Court of Ld. Tribunal, Court No.4, Agartala, West Tripura;

c) Issue notice upon the Respondents-Ops to show cause as to why the appeal should not be allowed.

AND

e) After hearing the parties, Your Lordship would be pleased to allow the appeal and modify the award passed in the impugned Judgment dated 01.06.2022 in T.S.(MAC) 08/2018 by Member, Motor Accident Claims Tribunal(Court No.4), Agartala, West Tripura and would very kindly enhance the quantam of compensation by granting the balance amount of Rs.7,95,270.00/- only (Rupees seven lakhs ninety five thousand tow hundred seventy) only in favour of the appellant-claimant."

4. The fact of the case in MAC Appeal No.6 of 2023, is that on 26.03.2017, the claimant was driving his motorcycle while taking over his mobile and without helmet in a rash and negligent manner. The motorcycle bearing Registration No. TR-04-A-5396 collided on the front side mudguard of BSF vehicle TATA 5 Ton near the TSR camp. The claimant herein fell down on the road and sustained injuries on his head. The accident occurred due to rash and negligent driving of the motorcycle by the respondent-claimant, who was taking over his mobile phone while driving the motorcycle by holding a phone between his neck and shoulder and was not wearing helmet as the same was hanging on the handle of the motorcycle. The accident occurred due to the loss of control over the motorcycle by the respondent-claimant herein. A criminal case was initiated against the driver of the said BSF vehicle TATA 5 Ton, Sri Naresh Kumar but the same was disposed of by the learned CJM, Khowai, Tripura by its judgment dated 09.04.2019 wherein the accused-Naresh Kumar was acquitted.

4.1. The Trial Court by its Judgment and Order dated 01.06.2022 allowed the application filed under Section 166 of

the M.V. Act, 1988 and held that the claimant is entitled to a sum of Rs.5,82,365/- only as compensation and further held that the Ops are jointly and severally liable to pay the compensation amount to the claimant and accordingly directed to make the payment within 30 days from the date of award and further directed that the amount of compensation shall carry interest @ 9% per annum from the date of presentation of the claim petition before the Tribunal on 10.01.2018 till realization.

4.2. Being aggrieved and dissatisfied with the judgment dated 01.06.2022 passed in T.S.(MAC)8 of 2018, the appellants herein preferred this MAC Appeal No.6 of 2023 seeking the following reliefs:-

- " i) Admit the appeal.*
- ii) Call for the records from the Court of learned Motor Accident Claims Tribunal (Court No.4) West Tripura, Agartala.*
- iii) Issue notice upon the opposite party-respondents.*
AND
- iv) After hearing both the parties may kindly quash/set aside the impugned judgment and award dated 01.06.2022 passed in T.S.(MAC) No.08 of 2018 by the MAC Tribunal No.4, West Tripura, Agartala.*
AND
- v) Pass such other order/orders and/or direction/directions as seem fit and proper having regard to the facts and circumstances of the case."*

5. Heard Mr. P.K Pal learned counsel appearing for the claimant herein as well as Mr. B. Majumder, learned Deputy SGI appearing for the respondent-OPs in MAC App No.66 of 2022 and appellant-OPs in MAC App no.06 of 2023.

6. Mr. P.K Pal, learned counsel appearing for the claimant submits that the learned Tribunal below arbitrarily and whimsically and without applying its judicial mind came to a wrong finding. The learned Tribunal below in passing the aforesaid impugned judgment did not take into consideration the documents and failed to consider the depositions made by the P.W.-1 in respect of the income of claimants. The claimant lost due earned leave for 208 days from his credit which would have been counted for pensionary benefit at the time of his retirement for Rs.2,35,157/-. The impugned judgment dated 01.06.2022 passed by the learned Tribunal is T.S.(MAC) No.08 of 2018 is required to be modified and the compensation be enhanced by a further amount of Rs.7,95,270/-.

7. On the other hand, Mr. B. Majumder, learned Deputy SGI appearing for the Opposite-party submitted that the impugned Judgment and order passed by the learned Tribunal is bad in law and is liable to be set aside. The motor vehicle driven by the claimant collided with the BSF vehicle bearing No.TR-01-J-1661. At that time, the claimant was talking over his mobile phone and was not wearing helmet as per traffic rules, therefore, the same is liable for contributory negligence. The same is proved in the criminal proceeding as per the evidence

on P.W.-7, Sri Rajpal Singh, Inspector of BSF. Vide judgment dated 09.04.2019, passed by the learned CJM, Khowai in PRC(SP) 45 of 2017, OP No.2 who was the accused of the said case has already been acquitted from the charge leveled against him. The learned Tribunal below wrongly held that the OPs are jointly and severally liable to pay the compensation to the tune of Rs.5,82,365/- to the claimant. The claimant did not approach the learned Tribunal with clean hands and hide the fact that he had already claimed Rs.1,41,581/- from his department i.e. 3rd BN TSR as reimbursement of his medical bills and without disclosing this fact to the learned Tribunal reclaimed said amount in his claim petition. The claimant being employed with 3rd BN TSR, is entitled to make reimbursement of his medical bills from his department but ignoring the above fact, the learned Tribunal also awarded Rs.50,000/- as future medical expenses.

8. Heard both sides and perused the evidence on record.

9. As per the leave sanction memo (Exbt-11), the claimant availed leave in the following terms:-

Sanctioned 77(seventy seven) days Commuted leave w.e.f. 25.03.2017 to 09.06.2017(AN) on medical ground and 13(thirteen) days Earned Leave w.e.f. 10.06.2017 to 22.06.2017(AN) in favour of No.01030562 Rfn(GD) Hari Sankar Kurmi of 'Adm-Coy', 3rd Bn TSR at his own request vide application dated 16.04.2017. This is in cancellation of 1(one) day C/L on 25.03.2017 granted earlier.

2. He will resume duty in HQr 3rd Bn, TSR, Kachucherra on 22.06.2017(AN).

No.Pers/TSR-3/Estt/HSK/01/13888 Dated, the 22 April, 2017

EXTENSION OF LEAVE

Sanctioned 30(thirty) days Earned leave w.e.f. 22.08.2017 to 20.09.2017(AN), in favour of No.01030562 Rfn(GD) Hari Sankar Kurmi of ' Adm-Coy' 3rd Bn TSR at his own request vide application dated 16.08.2017. This is in extension of 77(seventy seven) days Commuted leave and 73(seventy three) days E/L granted earlier up to 21.09.2017.

2. He will resume his duties in HQr 3rd Bn, TSR Kachucherra on 20.09.2017(AN)."

10. So as per the record the claimant took leave for a period of 208 days and since the said leave is earned leave/commuted leave, and he is entitled to the said leave, it cannot be said that the claimant would face any loss of salary during that period. Hence, it is declared that the claimant is entitled to 208 days' salary as per procedure after considering all deductions.

11. In so far as the appeal filed by the appellant-OPs against the said impugned Judgment and Order dated 01.06.2022 is concerned, it is brought to the notice of this Court that the claimant had the benefit of future medication from his own department and he has not incurred any future medical expenditure. This Court sees force in the argument of Mr. B. Majumder, learned Deputy SGI, and accordingly, the benefit of

Rs.50,000/- towards future medical expenses awarded by the learned Tribunal is deducted.

12. Mr. B. Majumder, learned Deputy SGI appearing for the appellant-OPs in MAC Appeal No.66 of 2022 contended that as indicated by P.W.-7, Inspector Rajpal Singh in the order dated 09.04.2019 in PRC(SP) 45 of 2017 before the learned CJM, the accident occurred due to contributory negligence. He further argued that the same needs to be deducted and submitted that the said judgment of the Court below is part of the record before the Tribunal. In view of the same, he prayed to reduce the compensation, holding the principle of contributory negligence, by the respondent-claimant.

13. This Court is not inclined to consider the said contention of the learned Deputy SGI since the P.W.-7 who was a so-called eye witness before the Court below in the said PRC(SP) 45 of 2017 was not examined, before the learned MAC Tribunal. More so, when pleading on the point of contributory negligence is taken, nothing prevented the Motor Accident Claims Tribunal from examining the P.W.-7, Inspector Rajpal Singh. Though the proceedings are different before the 2(two) separate Courts arising out of the Common Criminal Case, but, before the Tribunal, the concerned party could have prayed for

an opportunity to cross-examine Inspector Rajpal Singh, P.W.7. Since no steps were taken by the Commandant and other appellants for examining P.W.-7, Mr. Rajpal Singh, so, credence could not be given to his evidence in this matter. Accordingly, the said contention stands rejected.

14. With the above observation, both appeals are allowed in part to the extent indicated herein-above. As a sequel, stay if any stands vacated. Pending application(s), if any also stand closed.

JUDGE

suhanjit



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