

**HIGH COURT OF TRIPURA
AGARTALA
MAC APP NO.19 OF 2023**

Sri Babulal Sarkar

Vs.

Sri Kushan Chandra Debnath and ors.

HON'BLE THE CHIEF JUSTICE (ACTING)

Present:

For the Appellant(s) : Mr. T. Chakraborty, Advocate.

For the Respondent(s) : None.

22.03.2023

Order

This instant appeal has been filed under Section 173 of the Motor Vehicle Act, 1988 against the Judgment and award dated 12.01.2023 passed by the learned Member, Motor Accident Claims Tribunal, Court No.1, Agartala, West Tripura in Case No.T.S.(MAC) No.229 of 2019 for enhancement of the awarded compensation.

Facts of the case of the case, in brief, is that on 15.04.2017 at about 6 p.m. the claimant-petitioner was going to Teliamura from Agartala along with some other passengers by driving the vehicle bearing registration No. TR-01-B-2812 (Mahindra Max) through Assam Agartala road keeping the left side of the road. On the way at about 7.30 p.m. when he reached near Baramura ECO Park, at that time, another

vehicle bearing registration No.TR-01-B-1511 (*Tata Truck*) coming from the opposite direction at high speed and in a rash and negligent manner dashed his vehicle and the accident occurred. As a result, both vehicles were badly damaged. Soon after the accident, the claimant petitioner and other injured passengers were brought to the Teliamura Rural Hospital by the local people wherefrom they were referred to the AGMC & GBP Hospital, Agartala wherein they got admitted to the said hospital as an indoor patients forthwith. In the hospital on examination, it was detected that the claimant petitioner sustained severe injuries. However, on 26.04.2017 he was discharged but he continued his treatment. Concerning the said accident a police case was registered at Teliamura Police Station vide Teliamura P.S. Case No.16 of 2017 under Sections 279/338 I.P.C. and police after investigation submitted charge sheet against the driver of the Tata Truck. The claimant petitioner in his claim petition stated that at the time of accident, he was a driver by profession having a monthly income of Rs.15,000/- and was 45 years old at that time. Thus, this application is filed claiming compensation to the tune of Rs.14,95,000/-

The case was proceed ex-parte against the opposite party No.1(Owner of the Truck) and Respondent Noticee No.3.

The Proforma Opposite Party No.2 by filing a written statement stating that sustaining of grievous injuries out of a vehicular accident allegedly occurred on 15.04.2017 at about 7.30 p.m. near ECO Park at Baramura under Teliamura Police Station is not known to the answering opposite party. In their written statement they also stated that the age, occupation, employment, and monthly income of the claimant petitioner is not known to the answering opposite party. Hence, they denied and disputed the same. In their written statement they denied the place, date, and time of the accident and the claimant petitioner is to prove the same by adducing evidence. In their written statement they also stated that regarding Police Station and the police case are matters of record and the claimant petitioner is to prove the same by adducing evidence and as such they denied and disputed the same. In their written statement they further stated that the Mahindra Max was not the offending vehicle in the said accident and the answering opposite party has been made party unnecessarily. In their written statement they prayed for direction upon the claimant petitioner to furnish the original copy of the valid policy, driving license, permit, fitness, tax token, registration certificate etc., otherwise, the

claim petition of the claimant petitioner is liable to be dismissed.

Based on pleadings of the parties, the following issues were framed:-

(1) Did petitioner Shri Babulal Sarkar sustain injuries in a road traffic accident occurred on 15.04.2017 at about 7.30 p.m. near Eco Park at Baramura on Assam Agartala Road under Teliamura P.S. while he was going to Teliamura from Agartala by driving his vehicle bearing registration No. TR-01-B-2812 (Mahindra Max) along with some passengers, out of use of his aforesaid vehicle and the vehicle bearing No. TR-01-B-1511 (Tata Truck) due to rash and negligent driving by the driver of aforesaid Truck vehicle ?

(2) Is the petitioner entitled to get compensation? If so, to what amount and who is liable to pay the same ?

(3) To what other reliefs the parties are entitled

During the hearing, the claimant petitioner examined himself as PW.1 and proved certain documents into evidence which were marked as Exbt.1 to Exbt.14/2.

After hearing both the parties and perusing the evidence on record, the learned Tribunal vide Judgment and award dated 21.01.2023 holding the present appellant entitled to compensation and thus awarded compensation to the tune of Rs.2,11,000/- on the following counts:-

- i. Cost of attendant-12,000/-
- ii. Conveyance charges- 15,000/-
- iii. Cost of medicines- 23,000/-
- iv. For sufferings and pain-30,000/-
- v. For future treatment- 20,000/-
- vi. For loss of income- 90,000/-
- vii. For loss of amenities of life- 20,000/-

By the said judgment, the learned Tribunal also directed the Opposite Party No.1 to pay the said amount of compensation together with the interest @ 7% per annum from the date of filling of the claim petition i.e. 22.11.2019 till the date of payment within a period of 30(thirty) days for the date of the award.

Being aggravated with the said judgment and award dated 12.01.2023, the appellant has filed this instant appeal praying for the following reliefs:-

- " i. Admit this appeal.*
- ii. Call for the records appertaining to T.S.(MAC)229 of 2019.*
- iii. Issue Notice upon the respondents and*
- iv. After hearing may pleased to allow this appeal setting aside the impugned judgment and award passed by the learned Member, Motor Accident Claims, Tribunal, Agartala in T.S.(MAC)229 of 2019.*

May be pleased to enhance compensation to the tune of Rs.12,84,000/- only as compensation in favour of the Appellant.

AND

And other order or orders as your Lordship deem fit and proper."

Heard Mr. T. Chakraborty, learned counsel appearing for the appellant, and perused the evidence on record in detail.

Mr. T. Chakaraborty, learned counsel submits that the insurance company is liable to satisfy the award. However, it would be open for the insurance company to recover such amount from the owner by way of filing a separate proceeding for such purpose and without considering the said submission

of the learned Tribunal imposed the liability of payment upon the owner of the vehicle.

No insurance policy or other documents have been submitted or exhibited by the appellant herein to substantiate his claims and this Court after hearing the party and perusing the evidence on record is of the opinion that the learned Tribunal has not erred in any manner in awarding the compensation to the appellant herein as the same is based on the evidence. Accordingly, the judgment and award dated 12.01.2023 passed by the learned Motor Accident Claims Tribunal Court No.1, Agartala, West Tripura, in case No.T.S.(MAC)229 of 2019 is upheld and this instant appeal is dismissed.

Accordingly, pending application(s), if any stands closed.

CHIEF JUSTICE (ACTING)

suhanjit