

HIGH COURT OF TRIPURA

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Mac App No.11 of 2022

Sri Manoranjan Debnath, S/O Late Chitta Ranjan Debnath, Village-Mohanpur, P.S.-Ranirbazar, District- West Tripura.

.....Appellant(s)

V E R S U S

1. Sri. Jiban Debnath, S/O Late Jogesh Debnath, Village-Keprampara, Near Haradhan Chowmuhan, P.S. Ranirbazar, Dist. West Tripura. (Owner of the offending vehicle bearing Registration No.TR-01-U- 1770, Bolero Truck Goods vehicle).

2. Chola mandalam M/S General Insurance Company Ltd. Having its branch office at RMS Chowmuhan, P.S.- West Agartala, District- West Tripura (Insurer of the offending vehicle Registration No.TR-01-U- 1770 (Bolero Truck- Goods Vehicle)

.....Respondent(s)

For Appellant(s) : Mr. B. Nath, Advocate.

For Respondent(s) : Ms. R. Purkayastha, Advocate, vice
Mr. Rajib Saha, Advocate.

HON'BLE THE CHIEF JUSTICE (ACTING)

Date of hearing and Judgment : 4th January, 2023.

JUDGMENT & ORDER(ORAL)

Heard Mr. B. Nath, learned counsel appearing for the appellant and also heard Ms. R. Purkayastha, learned counsel appearing on behalf of Mr. Rajib Saha, learned counsel for the respondent-insurer.

[2] The present appeal is directed against the judgment and award dated 20.11.2021 passed by the learned Member, Motor Accident Claims Tribunal, West Tripura, Agartala in T.S(MAC) No. 47 of 2016 whereby the

Tribunal awarded compensation of Rs.1,31,000/- in favour of the claimant with interest @ 9% per annum from the date of filing of the claim petition.

[3] Mr. B. Nath, learned counsel appearing for the appellant has prayed for the following relief :

(i) Admit the appeal of the appellant claimant petitioner

(ii) Call for the records relevant to the subject matters;

(iii) Issue usual notice upon the respondents and after hearing to interfere with the judgment and award dated 20/11/2021 passed in T.S.(MAC) 47 of 2016 and enhanced the award by granting adequate compensation with interest 12% per annum from the date of the filing the claim petition i.e. on 08.03.2016.”

[4] It is alleged that on 14.09.2014 in an accident near Lembucherra School Chowmuhan on Mohanpur-Pulakona Road, Manoranjan Debnath sustained injuries on his legs, chest, head, joe, hands and face. At the time of accident, he was working as a daily labourer. Immediately after the occurrence, he was taken to GBP hospital, Agartala where he had undergone major surgery in his right leg on 26.09.2014. After discharge from the said hospital, he was bed ridden for seven days. Subsequently, the claimant again was admitted in the said hospital from 09.10.2014 to 11.10.2014 and during that period he once again undergone a major surgery in his right leg on 11.10.2014. It was alleged that the accident took place due to rash and negligence driving of the driver of the offending vehicle (truck) bearing registration No.TR01-U-1770.

[5] The respondent No.1, owner of the offending vehicle submitted his written statement and denied all the allegations *inter alia* contending that he was the registered owner of the offending vehicle and it was duly insured with the insurance company (respondent No.2). It was further stated that at the time of accident, the vehicle was driving by his driver having valid driving license and there was no rash and negligent driving on part of the driver. The respondent No.1, therefore, prayed for fixing the liability on the insurer to pay the compensation. On the other hand, the respondent No.2 denied all the allegations and put the claimant as well as the respondent No.1 in strict proof of their respective claim.

[6] On the basis of the pleadings and after hearing the parties, the following issues were framed :

(i) Whether the claimant petitioner namely, Manoranjan Debnath sustained any kind of injury in a vehicular accident occurred on 14.09.2014 at about 7 pm near Lembucherra School Chowmuhan on Mohanpur-Pulakona Road under Ranirbazar police station due to rash and negligent driving of the motor vehicle bearing No.TR01-U-1770(Truck) by its driver?

(ii) Whether the claimant petitioner is entitle to get ay compensation due to the said injury, f so what would be quantum of compensation and who shall be held liable to pay of the same?

(iii) What other relief/reliefs are the parties entitled to?

[7] To establish the claim, the claimant examined two witnesses including the petitioner himself as P.W.1 and Dr. D.B. Roy as P.W.2 and proved the documents produced by him. On the other hand, the respondent

No.1 examined himself as a sole witness. He also proved the certificate of registration of the truck, driving license of Swapan Debnath, insurance policy etc. No evidence was adduced by the respondent No.2.

[8] The learned Tribunal after framing the issues and appreciating the evidence on record, awarded a sum of Rs.1,31,000/- as compensation to the claimant. He observed that since the claimant was admitted in GBP hospital for about 20 days, Rs.10,000/- was awarded towards medical expenditure. Since there was no evidence to substantiate that the claimant has lost his working capacity, the Tribunal further awarded a sum of Rs.40,000/- to the claimant for disability sustained in the accident. The learned Tribunal found no cogent evidence with regard to income of the claimant. Hence, he awarded to the claimant a sum of Rs.6,000/- per month as an unskilled labourer. A further sum of Rs.36,000/- was awarded towards loss of income and a lump sum amount of Rs.30,000/- was awarded towards pain and suffering. He further added a sum of Rs.10,000/- towards transportation, fooding, lodging and Rs. 5,000/- each was also awarded towards medical attendant and litigation cost. The operative portion of the judgment is reproduced hereunder :

“The claimant petitioner has proved documents showing expenditure towards medical treatment only to the extent of Rs. 1,463/- vide Exhibit 4 series. He also stated to have undergone surgery of his right leg and thereby became disabled to the extent of 20%. The Disability Certificate was also proved by the PW 2 Dr. D.B. Roy. So, considering the above circumstances including the fact that the claimant

petitioner was admitted to hospital for about 20 days I find it appropriate to award a sum of Rs. 10,000/- towards medical expenditure. 20% disability cannot be taken to be disability to the extent of 100%. That apart, there is nothing in the evidence on record to indicate that the claimant petitioner has lost his working capability. In view of this matter, a sum of Rs. 40,000/- is found to be reasonable for becoming disabled. In the circumstances pertaining to suffering injuries and the period of admission in the hospital it can be said that the claimant petitioner could not have attend his normal duties for six months. There is no cogent evidence in regard to the income of the claimant petitioner. So, we find it appropriate to hold the income of the claimant petitioner Rs. 6000/- per month as an unskilled labourer. So, a sum of Rs. 36,000/- is also found to be reasonable towards loss of income. A lump sum amount of Rs. 30,000/- is also found appropriate towards pain and sufferings. I also find it appropriate to award a sum of Rs. 10,000/- towards transportation, fooding, lodging etc. A sum of Rs. 5,000/- each towards medical attendant and litigation cost is also found to be reasonable.

In view of the discussion the total compensation comes to Rs.10,000/- + 40,000/- + 36,000/- + 30,000/- + 10,000/- + 5,000/- = Rs.1,31,000/-.

Now coming to the question of liability, it appears from the record that the offending vehicle involved in the accident was duly insured with the OP No.2 (Cholamnadalam MS General Insurance Company Ltd.) vide Ext. D to D(i). It follows therefore, the OP No.2 being the insurer is liable to pay the compensation to the claimant petitioner.

All the issues accordingly stand answered to the context as indicated herein above. In the result, claim is awarded in following terms:-

Claimant petitioner is entitled to get the award of Rs.1,31,000/- (Rupees one lac thirty one thousand) only with 9% Simple interest per annum from the date of registration of claim i.e. w.e.f. 08.03.2016 till the date of realization thereof.

The OP No.2, Cholamandalam MS General Insurance Company Ltd. 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.”

[9] Mr. B. Nath, learned counsel appearing for the appellant submits that the impugned judgment and award suffers from serious

illegality as the learned Tribunal erred in calculating the monthly income of the injured amounting to Rs.6,000/- per month as a skilled labourer. The learned Tribunal ought to have awarded the income of the claimant at Rs.15,000/- per month and also the Tribunal failed to appreciate the fact that the appellant herein has become permanently disabled insofar as his occupation is concerned. The Tribunal also did not consider the decision of the Apex Court reported in 1976 ACJ 141 (SC). He further contends that the compensation awarded in favour of the claimant is not just proper. Subsequently, he prays for enhancement of compensation awarded by the learned Member, Motor Accident Claims Tribunal, West Tripura, Agartala dated 20.11.2021 in T.S.(MAC) 47 of 2016.

[10] On the other hand, Ms. R. Purkayastha, learned counsel appearing on behalf of Mr. Rajib Saha, learned counsel for the respondent-insurer strongly opposed the appeal contending that the learned Tribunal did not commit any error in passing the award. The learned Tribunal passed the award after appreciating the evidence on record. Accordingly, she prays for dismissal of the appeal filed by the appellant.

[11] After hearing the learned counsel for the respective parties, this Court is of the considered view that the learned Tribunal did not commit any error in passing the award. The learned Tribunal has correctly come to the conclusion and awarded the compensation in favour of the

claimant after appreciating evidence on record and no interference is required in the award passed by the learned Tribunal.

[12] Accordingly, the present appeal filed by the appellant is dismissed and the award dated 20.11.2021 passed by the learned Member, Motor Accident Claims Tribunal, West Tripura, Agartala in T.S(MAC) No. 47 of 2016 is affirmed. Send down the LCRs forthwith.

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

CHIEF JUSTICE (ACTING)

Dipesh



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