

HIGH COURT OF TRIPURA

A_G_A_R_T_A_L_A

MAC. App. No.24 of 2022

1. The National Insurance Company Ltd. (to be represented by Senior Divisional Manager) Agartala Divisional Office, 42 Akhaura Road, P.O. Agartala, District: West Tripura, PIN-799001.

.....Noticee-insurer-appellant

-VERSUS-

1. Sri Biplab Debnath, son of Sri Sunil Debnath, Village & P.O. East Nalchar (School Para), P.S. Melaghar, District: Sepahijala

.....Claimant-respondent

2. Sri Sunil Sarkar, son of late Nitish Kanta Sarkar of South Nalchar, P.S. Melaghar, District: Sepahijala.

Owner of Motor Bike No. TR-01-AD (Tem)-2351.

.....O.P. Owner-respondent

3. Sri Sankar Sarkar, son of Sri Sunil Sarkar of South Nalchar, P.S. Melaghar, District: Sepahijala.

Rider of Motor Bike No. TR-01-AD (Tem)-2351.

.....O.P. Rider-respondent.

B_E_F_O_R_E

HON'BLE MR. JUSTICE T. AMARNATH GOUD

For Appellant(s)	:	Mr. A. K. Deb, Advocate.
For Respondent(s)	:	Mr. S. Lodh, Advocate.
Whether fit for reporting	:	YES/NO

Judgment and order dated 2nd May, 2023

JUDGMENT & ORDER [ORAL]

Heard Mr. A. K. Deb, learned counsel appearing for the appellant and Mr. S. Lodh, learned counsel appearing for the respondents.

[2] This appeal has been filed under Section-173 of the Motor Vehicles Act, 1988 against the judgment and award dated 15.09.2021 passed in T.S. (MAC) 29 of 2018 by the learned Member, Motor Accident Claims Tribunal, Court No.5, Agartala, West Tripura for modification towards just and proper compensation.

[3] The brief fact of the claimant-respondent's case, inter-alia, is that on 28.11.2016 at 9.30 am while claimant was talking with his friend in front of shop of one Chandan Das of Nalchar in the Western side of Agartala-Sonamura Road under Melaghar PS, Sepahijala District at that time rider of the motor bike TR-01-AD(TEM)2351(Hero Hunk) came towards south from North side with very high speed in rash and negligent manner and dashed claimant. Due to accident claimant sustained grievous injury and got treatment in four hospitals for long time and ultimately lost his vision and became blind and also permanently paralyzed his legs and lower body and sustained huge cost for treatment. It is also pleaded that in connection with the accident Melaghar PS Case No.83/2016 dated 29.11.2016 under section 279/338 of IPC was registered against the rider of the motor bike Sri Sankar Sarkar. It is further pleaded that claimant was 29 years old on the date of accident and self employed having own shop and electronic goods business and was earning Rs.25,000/- per month and due to the accident lost his 100% income.

[4] The owner-respondent and the rider-respondent of the motor bike No. TR-01-AD (Tem)-2351 by filing joint written statement contested the case of claimant by denying all the contents of the claimant and, inter alia, pleaded that the offending bike was insured with OP No.3 (Noticee), the National Insurance Company Limited. The OP No.1 and 2 denied the fact of accident, income of claimant, sustaining cost and expense for treatment by claimant and injury of the claimant including disability of claimant. Thus, OP No.1 and 2 prayed for dismissal of the case of the claimant.

[5] After lodging the claim petition, it was registered vide case No. T.S (MAC) 170 of 2019 and notices had been served upon the opposite parties of the case. The OP No.1 owner of the offending vehicle has contested the suit by filing written statement and denied all the allegations of the claimants and also stated that on the date and time of accident the involved vehicle was duly insured with the opposite party No.2. OP No.3 (Noticee), the National Insurance Company contested the case of claimant by filing written statement denying the plea of the claimant and, inter alia, pleaded that the claim of the

claimant is highly exorbitant and put the petitioner in strict proof of accident, injury, treatment, expenses, valid driving licence, permit and insurance policy etc. It is pleaded that claimant failed to furnish full particulars and therefore, the case of the claimant is liable to be dismissed.

[6] The learned Tribunal after hearing the parties and on perusal of the material evidence on record has observed as under:

“OP No.3, National Insurance Company Ltd. is directed to deposit the awarded compensation of Rs.81,40,000/- (Rupees Eighty one lakhs forty thousand) only within 30 days from today with interest thereon at the rate of 8% per annum with effect from date of filing of the claim application i.e., from 20.02.2018 to till realization of the full.

Considering the expenditure sustained for treatment and disability of claimant 50% of the amount of claimant to be fixed deposited for five years. The remaining amount of compensation are to be released in favour of the claimants in his bank account. The interest on the fixed deposit can be withdrawn by claimant. However, in case of necessity, the Tribunal can be approached for withdrawal of fixed deposited amount. On maturity of the fixed deposits the Banker shall credit the amounts to the sole SB Accounts of claimants without any further order from the Tribunal”

[7] Being aggrieved by and dissatisfied with the judgment and award dated 15.09.2021 passed in T.S. (MAC) 29 of 2018 by the learned Member, Motor Accident Claims Tribunal, Court No.5, Agartala, West Tripura, the present appeal has been preferred by the appellant-insurance company.

[8] Mr. A. K. Deb, learned counsel appearing for the appellant-insurance company has submitted that the learned tribunal has committed wrong in considering the facts as well as oral and documentary evidence and principles as held by the Apex Court. Though the Motor Accident Act is a beneficial social legislation, but it not a bonanza or for the purpose of benefit. Thus, as per principle held in **(2011) SCC 343, Raj Kumar v. Ajay Kumar and another** by the Apex Court, the learned tribunal in order to award just and proper compensation, the learned tribunal ought to have made summary enquiry properly to remove any doubt arising out of the facts of the case and presiding officer of a Court should not simply sit as a mere umpire at a contest between two parties and declare at the end of the combat between two parties

and declare at the end who has lost and that there is a legal duty of his won, independent of the parties to take an active role in the proceedings in finding the truth and administering justice.

[9] There creates doubt as to genuineness of the claim petition filed by the claimant since it appears that FIR/written complaint filed by the father of the claimant-respondent was registered under Sections-326/34 IPC vide Melaghar P.S. Case No.2016 MLG.083 and the OP No.1 and OP No.2 being the owner and rider of the motor bike also stated in their joint written statement that claimant respondent being a literate person, has filed the claim petition by putting his thumb impression instead of putting signature and moreover, in respect of lodging FIR, the IO stated in the charge sheet that informant inadvertently lodged the FIR under Sections-326/34 of IPC.

[10] In the impugned award, OPW Sri Arup Kumar Dey, as Senior Manager, National Insurance Co. Ltd., in support of judgment of trial of criminal case deposed that evidence given by the PW-1 and 2 in the present claim petition is not believable since the said witnesses in their evidence of criminal case did not depose anything about the rash and negligent driving except deposing that offending bike was driven with high speed.

[11] He has further contended that the learned tribunal awarded total medical cost Rs.6,88,244/- on the basis of some undated unsigned and unsealed bills and only on the basis of receipts showing purchase of medicine which have not been supported with prescriptions of the alleged four hospitals. The learned tribunal has awarded Rs.5,00,000/- as future medical expenses where in support of this aspect there is no evidence of the medical witness i.e. PW.5 and thus, the learned tribunal ought not to have considered any amount for future treatment as per principle held by the Apex Court.

[12] The learned tribunal has also wrongly allowed Rs.1,00,000/- to the effect that claimant may not have kept receipts. The appellant insurer also raised objection stating that it is not believable that in ILS hospital any food can be supplied for any patient from outside the hospital, but claimant-

respondent submitted bill dated 24.12.2016 of Saha Food Center claiming as cost of purchase of apples for a quantity of 2 Kgs. per day.

[13] The learned tribunal held that income certificate issued by the Dy. Collector and Magistrate, Melaghar showing monthly income of Rs.23,654/- as owner of shop of electrical goods is not believable as no material is placed before the tribunal i.e. to say that income certificate was issued on the basis of proper particulars and materials in support of decisions passed by this Court. Without supporting of any cogent document and only by guess work and on the basis of Exbt.3 document showing that injured had a business of electrical goods, wrongly held that a shop owner can earn Rs.20,000/- per month. But, said Exbt.3 document/registration certificate of business also cannot be taken into consideration since the said document has been taken into evidence without examination of either the issuing authority or any staff of that authority. Moreover, the monthly income as assessed by the learned tribunal by guess work may not be the actual income without deducting professional tax, taxable income and day to day establishment cost.

[14] In view of above, let us discuss the core issue once again. PW.1 Sri Biplab Debnath deposed that on 28.01.2016 at 9.30 am he was talking with his friend Sri Govinda Debnath(PW.2) in front of shop of Chandan Das of Nalchar Bazar situated in the western side of Agartala- Sonamura Road under Melaghar PS and at that time the offending motor bike TR-01-AD-(TEM)2351 (Hero Hunk) came towards South from North side and dashed him with very high speed in rash and negligent manner. PW.1 also deposed that in connection with the accident a criminal case vide Melaghar PS Case No.216/MLG/083 dated 29.11.2016 was registered against the rider of the bike Sri Sankar Sarkar for offence under section 279/338 of IPC and after completion of investigation I.O. submitted charge sheet against the rider of the offending bike for offence under section 279/338 of IPC. PW.1 also deposed that due to the accident he sustained grievous injury and got treatment in four hospital and ultimately due to the accident he became blind and his leg and lower body were paralyzed and doctor issued disability certificate.

[15] PW.2 Sri Govinda Debnath, the eye witness of the accident corroborated the evidence of PW.1 on material particulars by deposing that on 28.11.2016 at 9.30 am while he was talking with his friend Biplab Debnath(Claimant/PW.1) in front of the shop of Chandan Das of Nalchar Bazar situated in the west side of Agartala-Sonamura Road under Melaghar PS at that time all on a sudden the offending motor bike TR01AD (TEM) 2351(Hero Hunk) came towards south from North side and dashed claimant with a very high speed in rash and negligent manner and the accident occurred due to the rash and negligent driving of the rider of the offending motor bike and, accordingly, a criminal case was registered under Melaghar PS vide case No. 2016/MLG/083 dated 29.11.2016 against the rider of the offending motor bike. PW.2 also deposed that due to the accident claimant suffered physical discomfort, pain, mental agony and ultimately became a permanent physical disable person by lossing his eye vision and became blind and his two legs and lower body became paralyzed and doctor issued disability certificate.

[16] Thus, considering the above mentioned evidence, this Court feels the evidence of PWs about the rash and negligent driving of the offending bike is believable being corroborative and cogent. As regards the point of acquittal in criminal case, I am of the view that in criminal cases allegation is required to be proved beyond reasonable doubt. In cases of claim of compensation under M.V. Act rash and negligent driving is not required to be proved strictly and beyond reasonable doubt. Thus, acquittal in a criminal cannot be a ground to say that there was no rash and negligent driving in respect of claim case for compensation under M.V. Act.

[17] That apart, from Ext.1 series, the FIR and charge sheet, I find, police filed charge sheet after investigation against the rider of the offending bike for rash and negligent driving. Hence, rash and negligent driving can be said to be proved as evidence of PW.1 and 2 are corroborated by FIR and charge sheet. From Ext. 1 series, the injury report it can be found that claimant sustained head injury and grievous injury due to road traffic accident. From Ext.5, the disability certificate, it can be found that claimant sustained 100% injury on his both eyes and 80% injury on his spine and claimant was

paralyzed. From Ext.6 to 11 series, it can be found that claimant sustained multiple injuries and got treatment in various hospitals. Where such kind of multiple injury is sustained by the claimant requiring long treatment in various hospitals, it can be said that the accident occurred due to the rash and negligent driving with the help of maxim *res ipsa loquitur* (the thing speaks for itself) unless contrary is proved.

[18] In this context, Ld. Counsel for the respondent submitted that from the evidence of PWs and from documentary evidence, it is proved that claimant, the respondent herein sustained huge expenditure for treatment and became disable person having 100% disability of both eyes and 80% disability of spine and paralyzed. It is also submitted that where disability is more than 70 percent the same is to be treated as 100% loss of income and relied on the decision of the Hon'ble Supreme Court in **Anand son of Sidheshwar Dukre v. Pratap son of Zhamnnappa lamzane and Anr**, whereby, it is held that where driver sustained 75% permanent disability and as a result, being not able to drive lost his job as arriver and monthly salary, the driver is entitled to compensation of 100% loss of income. Thus, it is submitted that claimant-respondent is entitled to get compensation of Rs.1,22,80,000/- as claimed.

[19] It is further submitted that final bill was only Rs.4 lakh and something and not more and claimant claimed excessive bill. It is also submitted that claimant submitted bill of Saha Food Center dated 24.12.2016 and claimed bills of apple per day 2 kg and the same is not believable specially as outside food is not allowed in the ILS hospital. It is further submitted that accident occurred on 28.11.2016 and claimant was discharged on 22.12.2016 and, therefore, six months bill for 2 kg apple each day is not believable. It is submitted that some undated, unsigned and unsealed bills are filed and, therefore, the same are not reliable. It is lastly submitted that plane tickets are shown twice and another set of plane tickets of other persons are filed but not accompanied with claimant as claimant came to Agartala earlier and, therefore, claimants are not entitled to such amount.

[20] Moreover, in this case the rider of the offending bike (OP No.1) has failed to give evidence to prove the fact that there was no rash and negligent driving on his part. OP.2, the rider of the offending bike is the best person to say about his driving but he withheld himself from giving evidence. Thus, adverse inference goes against him. Neither OP No.1, the owner nor OP No.3(Insurance Company), the Noticee prayed for adducing OP No.2 as a witness to prove the fact that there was no rash and negligent driving. That apart, Op No.1 and 2 filed joint written statement but failed to disclose the true occurrence of the accident as to how and why the accident occurred. The same goes against them. No witnesses of the accident are produced by Ops to prove the fact that there was no rash and negligent driving of the offending motor bike. Thus, negligence on the part of the rider of the offending bike can be inferred.

[21] In this respect, the Hon'ble Supreme Court in ***Pushpabai Parshottam Udeshi and Others v. M/s. Ranjit Ginning and Pressing Co. Pvt. Ltd. And another***, AIR 1977 SC 1735 = (1977) 2 SCC 745 held as under:

“6. The normal rule is that it is for the plaintiff to prove negligence but as in some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying the principle of *res ipsa loquitur*. The general purport of the words *res ipsa loquitur* is that the accident "speaks for itself" or tells its own story. There are cases in which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more. It will then be for the defendant to establish that the accident happened due to some other cause than his own negligence.”

[22] Therefore, considering all this aspect, this Court is of the view that the claimant-petitioner, the respondent herein got injured as a result of accident on 28.11.2016 at about 0930 hours at Nalchar Bazar in front of shop of one Chandan Das situated west side of Agartala- Sonamura road under Melaghar PS, Sepahijala District due to rash and negligent driving of rider of the Motor Bike bearing No.TR-01-AD(Tem)-2351.

[23] This Court finds that the Hon'ble Apex Court in *Raj Kumar vs Ajay Kumar & Anr*, dated 18.10.2010 in *Civil Appeal No..8981 of 2010* (Arising out of *SLP (C) No. 10383 of 2007*), reported in *(2011) 1 SCC 343* laid down method of determination of compensation in injury cases and held as follows:

“5. The heads under which compensation is awarded in personal injury cases are the following : Pecuniary damages (Special Damages) (i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure. (ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising : (a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability. (iii) Future medical expenses. Non-pecuniary damages (General Damages) (iv) Damages for pain, suffering and trauma as a consequence of the injuries. (v) Loss of amenities (and/or loss of prospects of marriage). (vi) Loss of expectation of life (shortening of normal longevity). In routine personal injury cases, compensation will be awarded only under heads (i), (ii) (a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life. Assessment of pecuniary damages under item (i) and under item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses - item (iii) -depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages - items (iv), (v) and (vi) involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant. Decision of this Court and High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on account of permanent disability - item (ii)(a). We are concerned with that assessment in this case. Assessment of future loss of earnings due to permanent disability

9. Therefore, the Tribunal has to first decide whether there is any permanent disability and if so the extent of such permanent disability. This means that the tribunal should consider and decide with reference to the evidence: (i) whether the disablement is permanent or temporary; (ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement, (iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such

disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person. If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

10. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent ability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may.

13. We may now summarise the principles discussed above: (i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity. (ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability). (iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety. (iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.”

[24] Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure In this connection, PW.1, the claimant and PW.2, the friend of claimant deposed that due to the accident claimant sustained multiple injuries and got treatment in four hospitals at Nalchar PHC, Sepahijala, Tripura; TMC and Dr. B. R. hospital, Hapania, AGMC and GBP Hospital, Agartala; and ILS hospital, Agartala and due to the accident claimant lost his eyes and became blind and both legs and lower of body of claimant became paralyzed permanently. After observing the findings of the learned Court below regarding the compensation on different heads, I am of the opinion that the compensation as assessed by the Court below is just and proper and there should not be any inference.

[25] In this case, from the evidence of PWs and from the medical documents especially from disability certificate marked Ext.5 and especially from evidence of PW.5 Dr. Dipti Bikash Roy, I find, claimant sustained permanent disability to the extent of 100% to his eyes and claimant became 100% blind and claimant lost of walking capacity for his whole life and his disability of spine is 80% and he is paralyzed. From the evidence of PWs and from Ext.3, I find, claimant had a business of electronic shops. In my opinion, the disability of the claimant caused his 100% loss of income. A blind and unable to walk shop owner cannot run his business. Thus, claimant lost 100% income due to the disability from the accident dated 28.11.2016.

[26] Earlier, the learned Single Judge in MAC. App. No.02 of 2010 regarding proof of income has held as under:

“[10] I have highlighted all these pointes to emphasize the fact that in a Court of law, even before a Tribunal no reliance can be placed on such a certificate because such certificate has no statutory backing to it. Such a certificate is not issued to under any authority of law and as such no Court should blindly follow the certificate and the income must be assessed on the basis of the evidence led by the parties and not on the basis of such certificates.

[11] As far as the present case is concerned, the claimant was aged about 59 years at the time of the accident. He no doubt was running a ration shop and he may have invested money in a rubber plantation but I do not feel that he could have been earning any amount from the rubber plantation because the same was only about one year. Be that as it may, keeping in view the fact that the claimant was almost 60 years of age, it could reasonably be expected that he would be earning about Rs.10,000/- per month from such ration shop.”

[27] The income certificate issued by Dy. Collector and Magistrate, Melaghar showing income of claimant as Rs.23,654/- per month is accepted in the light of the certificate issued by the Revenue Department. In this regard I have interacted with Government Advocate for his assistance; in reply to this he has submitted that he is the competent authority to cause an inquiry through Taluka Officials/Revenue Officer to issue certificate regarding proof of income and since it is statutory power vested upon them, this Court accepts the same. However, this Court is not inclined to alter the monthly income of the claimant as assessed by the learned tribunal.

[28] Now, this Court has to decide who will take the liability of compensation. In this context, from Ext. B, the Insurance Certificate, I find, the offending bike Engine No.KC13EGGHK00221, Chassis No.MBLKC13ELGHK00-070 was insured with the OP No.3, the National Insurance Company Ltd from 25.10.2016 to 24.10.2017 covering the date of accident on 28.11.2016. From Ext. D, the Registration certificate, I find, the offending vehicle TR-07A-7089, Engine No.KC13EGGHK00221 and Chassis No.MBLKC13ELGHK00070 was registered. From Ext. A, the temporary registration certificate, it can be said that offending bike was registered on the

date of accident. Thus, as the offending vehicle was insured with the OP No.3, the National Insurance Company Ltd., I am of the view that Insurance Company (OP No.3) is liable to pay compensation.

[29] Regarding the interest @8% though normally, this Court is fixing the interest @7.5%, having special consideration to the facts and circumstances of the case in view of 100% disability of both eyes and 80% disability of spine and paralysis, the interest @8% stands confirmed. The learned Court below has awarded Rs.5,00,000/- for future medical expenses which, according to this Court, is not justifiable. Thus, this Court is of the opinion that for future medication and medical attendance facility, it would be just and proper if the amount is reduced from Rs.5,00,000/- to Rs.1,00,000/- and accordingly the same is ordered. The argument on the point of FIR, complaint and charge-sheet to say that it is not a case of accident but it is a case of personal grudge and fight between the claimant and the respondent-owner, is not accepted and on the point that the claimant is literate but put his thumb impression, it cannot be a reason for rejecting the claim and allowed the appeal on that ground.

[30] In the light of the above, this Court is of the view that the learned Court below has assessed the compensation in a reasonable and justifiable way. But towards the head of future medical expenses, the claimant would be entitled to get Rs.1,00,000/- instead of Rs.5,00,000/- as awarded by the learned tribunal and rest of the award shall remain unchanged. In view of above discussion and observation, the present appeal stands allowed and disposed of to the extent as indicated above. The insurance company shall deposit the awarded amount within one month from the date of receipt of the copy of this order and on such deposit; the claimant is at liberty to withdraw the same unconditionally. As a sequel, miscellaneous applications pending, if any, shall stand closed. Draw the decree accordingly and thereafter, send down the LCRs.

JUDGE