

**HIGH COURT OF TRIPURA
AGARTALA**

MAC App. 31 of 2023

The Oriental Insurance Co. Ltd.,
Represented by its Divisional Manager
of H.G.B. Road, Agartala,
Near Sarkar Nursing Home
West Tripura, PIN 799009

.....**Appellant**

VERSUS

1. Sri Goutam Das

son of late Birandra Das
of South Anandanagar, P.S. Sreenagar,
District- West Tripura

..... **Claimant Respondent**

2. Sri Gopal Datta

son of late Surendra Datta
of Dasda, P.S. Kanchanpur,
District- North Tripura
(owner of commander jeep No. TR02-3947)

.....**Owner Respondent**

3. Sri Nirupam Pal

son of Sri Nirmal Paul
of Kumarghat, P.S. Kumarghat
District- North Tripura
(owner of Maruti Alto No. TR02J0482)

.....**Proforma Respondent**

For Appellant(s) : Mr. P.S. Roy, Advocate.

For Respondent(s) : Mr. TK Deb, Advocate.
Mr. DC Nath, Advocate.

Date of hearing and delivery
of judgment and order : 14.12.2023

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 against the award dated 04.11.2022 passed by the learned Motor Accidents Claims Tribunal, West Tripura, Agartala in case No. T.S. (MAC) 14 of 2018.

[2] The brief fact of the case is that on 20.09.2016 the claimant along with others boarding in the Maruti Alto Car bearing No.TR-02-J-0482 was

proceeding to Kanchanpur and at about 8 a.m. when their vehicle reached at Laljuri area on Damchara Road the commander jeep bearing No.TR-02-3947 coming from opposite direction with high speed in rash and negligent manner dashed their Alto car. As a result, the claimant sustained multiple grievous injuries on his person. Instantly he was taken to Kanchanpur hospital wherefrom he was taken at Ortho Care and Related Centre, Agartala and thereafter he was again taken at South City Hospital, Silchar for better treatment. It is also alleged that the accident occurred due to reckless and irresponsible driving of the offending commander jeep by its driver. It is further contended that the claimant used to earn Rs.30,000/- per month as Lab Technician and by cultivation but due to said unfortunate accident he became disabled and could not earn his livelihood.

[3] The O.P. No.1, owner of the offending commander jeep (respondent No.2 herein) has contested the suit by filing written statement and apart from denying all the allegations has contended that he was the owner of the offending vehicle which was driven by the driver having valid driving licence and the vehicle was insured with the O.P. No.2, the Oriental Insurance Co. Ltd. (appellant herein) on the alleged date and time of accident.

O.P. No.2 through their written statement apart from denying all the allegations put the claimant petitioner as well as the O.P. No.1 in strict proof of their respective claims.

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

“(1) Whether the claimant petitioner Sri Goutam Das sustained injury in a vehicular accident occurred on 20.9.2016 at about 8 a.m. at Laljuri area on Damchara Road under Kanchanpur P.S.

North Tripura District due to rash and negligent driving of vehicle bearing No. TR-02-3947 (commander jeep) by its driver.

(2) Whether the claimant petitioner is entitled to get compensation, if so, upto what extent and who shall be liable to pay the same."

[5] Thereafter, the claimant petitioner examined himself as PW1, one Sri Uttam Das as PW2, Sri Rakesh Paul as PW3 and Dr. Dipti Bikash Roy (Locomotor Specialist) as PW4 and has exhibited the following documents :

- 1. certified copy of ejahar – Ext.1;**
- 2. certified copy of seizure list – Ext. 2;**
- 3. certified copy of injury report and charge sheet – Ext. 3;**
- 4. prescriptions and test reports – Ext. 4 series;**
- 5. cash memos – Ext.5 series;**
- 6. voter card – Ext.6;**
- 7. Aadhar card – Ext.7;**
- 8. ration card – Ext.8;**
- 9. trade training certificate – Ext.9;**
- 10. Madhyamik admit card – Ext.10;**
- 11. Marksheet – Ext.11;**
- 12. Typewriting certificate – Ext.12;**
- 13. Employment exchange card – Ext.13;**
- 14. Caste certificate – Ext.14;**
- 15. Citizenship certificate – Ext.15;**
- 16. Madhyamik certificate – Ext.16;**
- 17. Disablement certificate – Ext.17;**
- 18. Vehicle particulars of TR-02-3947 – Ext.18;**
- 19. Disability certificate (exhibited by PW4) – Ext.19.**

On the other hand, O.P. No.1 Sri Gopal Datta examined himself as OPW1 and has exhibited the following documents:

- 1. copy of the registration certificate vide No. TR-02-397- Ext.A;**
- 2. original insurance certificate- Ext.B.**

No evidence either oral or documentary has been led on behalf of O.P. insurance company before the learned tribunal.

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

"O R D E R

12. In the result, the application under section 166 of the M.V. Act,1988 filed by the claimant, Sri Goutam Das is allowed on contest.

The claimant is entitled to a sum of Rs. 30,38,000/- (Rupees thirty lakhs thirty eight thousand) only as compensation in this case.

O.P. No.2 the Oriental Insurance Co. Ltd. being insurer of the offending vehicle bearing No. TR-02-3947 shall pay the said amount of compensation to the claimant within a period of 30 (thirty) days from the date of award in terms of Section 168(3) of the Act.

The amount of compensation shall carry interest @ 9% per annum from the date of presentation of the claim petition before the Tribunal on 19.01.2018 till realization.

The O.P. insurance company shall give notice of the deposit of the compensation amount to the claimant and shall also file a compliance report with this Tribunal within 15 days of the deposit."

[7] Aggrieved by the award delivered on 04.11.2022, the appellant herein has approached this Court seeking following reliefs:

- a) Admit the appeal;
- b) Call for the records from the Motor Accidents Claims Tribunal, Court No.4, West Tripura of the case bearing No. T.S.(MAC) 14 of 2018;
- c) Issue notice to the respondents;

[8] Mr. PS Roy, learned counsel representing the appellant insurance company contends that learned tribunal most erroneously awarded compensations under the conventional head like as future prospect and other matter which were very high and further contends that the learned tribunal

allowed @9% per annum which is very high. Learned counsel, therefore, prays that the rate of interest be reduced to @6% per annum by this Court.

[9] Mr. TK Deb, learned counsel is present on behalf of the claimant-respondent-1 and Mr. DC Nath, learned counsel is present on behalf of respondent No.3. Mr. TK Deb, learned counsel for the claimant respondent submits that the instant appeal filed by the appellant insurance company is liable to be dismissed and the order of the learned tribunal should not be interfered with.

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

[11] It is observed from the judgment and award passed by the learned tribunal dated 04.11.2022 that the learned tribunal has calculated the compensation regarding the head of disability in the present case as under:

"Now, in view of the aforesaid discussions I proceed to calculate the appropriate compensation regarding the head of disability in the present case as under:-

(I) Income per month = Rs.10,000/- only.

(II) 40% of above to be added as future prospect as self employed :- Rs.4,000/- only.

(III) Total of Sl. Nos. I and II above comes to Rs.10,000/- + Rs. 4,000/-=Rs. 14,000/- only.

(IV) compensation after applying multiplier of 16:- Rs. 14,000 x 12 x 16 = 26,88,000/- only.

So, under this head compensation amount is Rs.26,88,000/-.

10.8. (iii) Future medical expenses :

As there is permanent disability of the claimant suffered due to the road traffic accident involved in this case an amount of Rs.30,000/- is awarded towards his future medical expenses.

10.9. 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).

Let us now take up the above non-pecuniary damages under subheads at (iv) to (vi) together for convenience for award having regard to the pleadings and evidence available on record.

Under these heads an amount of Rs. 2,00,000/- can be awarded to the claimant petitioner as obviously he had to

undergo pain and sufferings due to the injury caused for such accident as well as for the disablement which is non progressive and permanent in nature and also for loss of amenities etc.

10.10. Therefore, the total compensation to which the claimant petitioner is entitled is (Rs.1,20,000 + 26,88,000 + 30,000 + 2,00,000) = Rs.30,38,000/-."

[12] Having perused the entire evidence on record and upon hearing the submissions advanced by the learned counsel appearing for the parties, this Court is of the view that, in all the similarly situated matters this Court is fixing 7.5% interest to maintain uniformity while comparing the bank rate of interest which is also much less. Thus, ends of justice would be met if the rate of interest fixed by the learned tribunal be reduced from 9% per annum to 7.5% per annum. The total compensation of award to the claimant respondent by the Court below shall remain unchanged. Consequently, the total compensation entitled by the claimant-respondent would remain **Rs.30,38,000/-** along with the modified and reduced rate of interest i.e. **7.5 % simple interest per annum** from the date of presentation of the claim petition till the date of actual payment.

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(s). The amount to be deposited within one month from the date of receipt of the copy of this order on the file of the Motor Accidents Claims Tribunal, West Tripura, Agartala and on depositing the same, the claimant(s) may file appropriate application to the satisfaction of the Court and withdraw the amount as per law.

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

Send down the LCR.

JUDGE

Sabyasachi. G.