

HIGH COURT OF TRIPURA

A_G_A_R_T_A_L_A

MAC. App. No.27 of 2022

1. Smti. Sangita Rani Kar, daughter of Shri Ajit Kumar Kar of village-Naraifung, P.S. Santirbazar, at present residing at C/O Late Sudhir Dey of town Fulkumari, P.S. R. K, Pur, Udaipur, Gomati Tripura.

.....Appellant

-VERSUS-

1. Shir Pradip Saha, son of Shri Makhan Saha of Santirbazar near Sugar Mill, P.S. Santirbazar, South Tripura.
[Owner of TR-01-2803 Commander Jeep]
2. Shri Parimal Banik, son of late Sukhendu Banik of West Charakbai, P.S. Baikhora, Santirbazar, South Tripura.
[Driver of TR-01-2803 Commander Jeep]
3. Shriram General Insurance Company Ltd., having its Branch Office at Agartala, Working Capital Loan Road, P.S. West Agartala, District- West Tripura.
[Insurer of TR-01-2803 Commander Jeep]

..... Respondent

B_E_F_O_R_E

HON'BLE THE CHIEF JUSTICE (ACTING)

For Appellant(s)	:	Mr. A. Acharjee, Advocate.
For Respondent(s)	:	Mr. S. Lodh, Advocate. Mr. K. De, Advocate.
Date of hearing & delivery of Whether fit for reporting	:	NO

Judgment and order dated 16th January, 2023.

JUDGMENT & ORDER [ORAL]

Heard Mr. A. Acharjee, learned counsel appearing for the appellant. Also heard Mr. S. Lodh, learned counsel and Mr. K. De, learned counsel appearing for the respondents.

[2] This appeal has been filed under Section-173(1) of the Motor Vehicles Act, 1988 for enhancement of the awarded amount of Rs.1,01,824/- (Rupees One lakh one thousand eight hundred twenty-four) against the

judgment and award dated 06.01.2021 by the learned Member Motor Accident Claims Tribunal No.2, Gomati Judicial District, Udaipur in T.S.(MAC) 62 of 2017 to the extent of Rs.9,00,000/- or more as this Court seems adequate compensation on the fact and circumstances of the instant appeal along with prevailing market rate of interest.

[3] The facts in brief are that, on the fateful day of accident, i.e., on 27-09-2014 at around 14-30 hours the claimant-appellant Smti. Sangita Rani Kar got down from a Commander Jeep in front of her house at Naraifung over on NH-44 after coming from Santirbazar at that time the vehicle bearing registration No. TR-01-2803 (Commander Jeep) running in abnormal high speed and in rash and negligent manner hit the claimant-appellant, as a result she received grievous fracture on her head, left parietal region, left shoulder back, left buttock, left 4th and 5th knuckles and left 5th toe and multiple bleeding injuries all over the body. Soon after the accident the claimant-appellant was taken to Santirbazar PHC and the attending doctor after considering the gravity of the injuries referred the claimant-appellant to AGMC and GBP Hospital, Agartala wherein, she was admitted on 27-09-2014.

[4] Then on 29-09-2014 the claimant-appellant was referred to ILS Hospitals, Agartala wherein she was admitted and treated upto 06-10-2014 as indoor patient. Several Xrays, medical examinations and NCCT of head were done which showed Bifrontal Haemorrhagic Contusions. On 06-10-2014 the claimant-appellant was discharged from the ILS Hospitals, Agartala with advice to take rest for 10 days and to visit NSOPD. Accordingly, the claimant-appellant visited NSOPD for long period and also received treatment as a private patient. But after pro-long treatment also she did not recover from her injuries and her treatment is still continuing.

[5] The claimant-appellant had already been spent about Rs.2,00,000/- for the purpose of her treatment including cost of medicine, medical examinations, fees of doctors, fooding, lodging and transportation, etc. with expectation for future treatment for an amount of Rs.1,00,000/-. The claimant-appellant is suffering from severe pain from the injuries and the

accident damaged her future life including lost of working capacity and longevity of life. The claimant-appellant was an young, energetic, stout and healthy woman of about 23 years of age, used to work as a teacher in the Sun Flower English Medium School and also used to do private tuition from which she used to earn about Rs.10,000/- per month. But due to this accident the claimant-appellant is not in a position to continue with her normal work like before. It is alleged by the claimant-appellant that the accident was occurred due to rash and negligent driving by the driver of the vehicle bearing registration No. TR-01-2803 (Commander Jeep).

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

“10. In the result, it is hereby ordered that the claimant petitioner is entitled to get compensation of **Rs.1,01,824/- (Rupees one lakh one thousand eight hundred and twenty four)** only. The OP No.3 Shriram General Insurance Company Ltd., the insurer of vehicle bearing registration No. TR-01-2803 (Commander Jeep) is directed to make the payment of compensation to the claimant petitioner within 30(thirty) days from today along with interest thereon @ 9% per annum from the date of filing of claim petition, i.e., from 21-12-2017 till payment / realisation of the same.”

[7] Being aggrieved by and dissatisfied with the judgment and award passed by the learned Member Motor Accident Claims Tribunal No.2, Gomati Judicial District, Udaipur in T.S.(MAC) 62 of 2017, the present appeal has been preferred by the appellant herein.

[8] Mr. Acharjee, learned counsel appearing for the claimant-appellant has submitted that the learned tribunal has failed to appreciate the evidences and depositions of PWs and expenditure incurred by the claimant appellant due to his said road traffic accident. The Court below ought to award compensation as prayed by the appellant in the claim petition and the awarded compensation is abnormally low and as such, interference by this Court is required for enhancement of the same.

[9] He has further submitted that the appellant was the only earning member in her family and other family members are depending upon the income of the appellant for their livelihood. Due to this sudden accident, the appellant lost her earning capacity as she was only bread earner in their family. The learned tribunal ought to consider that the Motor Vehicles Act is a beneficial legislation and the claim case under the provisions of this act should not prove like civil and criminal cases. The appellant in her claim petition as well as in her deposition has stated that she was a teacher and she used to work as a teacher in the Sun Flower English Medium School and also used to do private tuition from which she used to earn about 10,000/- per month and her monthly income was Rs.10,000/-. But the tribunal has failed to appreciate the same and decided the claim as her monthly income Rs.6,000/- per month.

[10] The learned Court below did not award a singly farthing for future treatment of the appellant as the appellant is unfit person and she has not fully cured till today and at present she is unable to do any work. But the appellant is legally entitled to get the said amount as a part of compensation i.e. Rs.1,00,000/- for future treatment.

[11] Mr. Acharjee, learned counsel has further contended that the Court below ought to award Rs.2,00,000/- under the head of pain and sufferings. But, the Court below has awarded Rs.8,000/- only to the appellant for the same. So, the compensation as well as interest as awarded by the learned Court below is abnormally low and it may be enhanced to the extent as prayed for.

[12] Mr. Acharjee, learned counsel appearing for the appellant has urged before this Court to enhance the amount mainly on one count. According to him a very meager amount of Rs.8,000/- was awarded in favour of the appellant for pain and sufferings. According to the learned counsel for the appellant, she had suffered unbearable pain and suffering

during her treatment and even thereafter. As such, I am inclined to enhance the award for pain and suffering and accordingly, I award another sum of Rs.20,000/- in addition to Rs.8,000/- as awarded by the learned tribunal. Therefore, the claimant appellant shall be entitled to get Rs.28,000/- [Rs.20,000+8,000/- = 28,000/-] against pain and sufferings.

[13] Learned counsel appearing for the insurance company has tried to defend the award and has submitted that the case laws as relied upon by the learned counsel for the appellant are not relevant to the facts and circumstances of the case. I have considered the submission of the learned counsel appearing for the parties.

[14] In the above backdrop, the instant appeal stands allowed to the extent as indicated above. The respondent-insurance company i.e. Shriram General Insurance Company Ltd., is directed to pay the enhanced amount i.e. Rs.20,000/- for pain and sufferings within a period of one month from the date of receipt of the copy of the judgment and order. It is further clarified that rest of the award shall remain intact, as awarded by the learned tribunal.

[15] With the aforesaid terms the present appeal stands allowed. Send down the LCRs forthwith.

CHIEF JUSTICE (ACTING)

सत्यमेव जयते

A.Ghash