

**HIGH COURT OF TRIPURA
AGARTALA**

MAC.App 35 of 2022

Sri Kundan Pal @ Paul,
S/o Sri Kalidas Pal @ Paul,
Of Vill: East Pratapgarh, PO: Pratapgarh,
PS: East Agartala, District: West Tripura.

---Appellant(s)

Versus

- 1. Sri Joybrata Majumder,**
S/o Late Jatra Mohan Majumder,
Of vill: Kumaritilla, PO: Abhoynagar,
PS: NCC, District: West Tripura
(Owner of the offending vehicle bearing
registration TR-01-AL-0406, Bolero ZLX)
- 2. Sri Nirmal Pal,**
S/o Sri Narayan Pal
Resident of Village: East Pratapgarh, Near Takroi Chowmuhani,
PO: Pratapgarh, PS: East Agartala, District: West Tripura
(Owner of motor bike bearing registration No.TR-01-N-9696)
- 3. Choramandalam Ms General Insurance Company Ltd.**
Mantri Bari Road, Akhaura Road,
Old RMS Chowmuhani PO: Agartala,
PS: West Agartala, District: West Tripura
(Insurer of vehicle bearing registration No. TR-01-AL-0406, Bolero ZLX)
- 4. The Divisional Manager,**
The Oriental Insurance Company Ltd.
HGB road, near Sarkar Nursing Home, Agartala
PO: Agartala, PS: West Agartala,
District: West Tripura
(Insurer of motor bike bearing registration No. TR-01-N-9696)

---Respondent(s)

For Appellant(s)	: Mr. DC Roy, Adv. Mr. A.K. Pal, Adv.
For Respondent(s)	: Mr. D. C. Saha, Adv.
Date of hearing & date of delivery of judgment and order	: 24.07.2023
Whether fit for reporting	: No

HON'BLE MR. JUSTICE T. AMARNATH GOUD

Judgment & order (Oral)

Heard Mr. A. K. Pal, learned counsel appearing for the
appellant as well as Mr. D. C. learned counsel appearing for the
respondent No.4.

[2] This is an appeal under Section 173 of the Motor Vehicles Act, 1988 against the judgment and award dated 20.01.2022 passed by the learned Member, Motor Accident Claims Tribunal, Court No.1 Agartala, West Tripura in connection with TS(MAC) 269 of 2016 for enhancing the amount of Rs.90,45,000/- from awarded amount of Rs.6,70,000/- as just and appropriate compensation.

[3] According to the petitioner, on 06.12.2015 at about 2045 hours he was going to Amtali from Battala by a motor cycle bearing no. TR-01- N-9696 rider being one Sujit Saha and near Bordowali Fire Service Station, another vehicle bearing no. TR-01-AL-0406 (Bolero ZLX) coming in rash and negligent manner collided with their motor cycle. The petitioner sustained fracture of right leg with other injuries on his person. He was first taken to GBP Hospital wherein he was admitted for 3 days and then he was shifted to AMRI Hospital, Kolkata wherefrom he was discharged on 16.12.2015 i.e. after 7 days of his admission therein. He alleged that the Bolero ZLX vehicle was responsible for the accident. According to him, at that time his monthly income was Rs.20,000/- from his business of sweets and diary milk and his age was 23 years. Concerning the said accident, AD Nagar PS Case No. 01 of 2016 was registered u/s 279/338 IPC. He further asserted that due to such accident, he has been rendered income less being a disabled person and finally he prayed for compensation of Rs. 90,45,000/- in total on different counts.

[4] The owner of the Bolero ZLX vehicle i.e. O.P. no.1 in his written statement stated that the motor cycle was solely responsible for the accident and there was no rash and negligent driving on the part of driver of Bolero ZLX Vehicle. According to him, his vehicle at the relevant period was insured with Cholamandalam MS General Insurance Co. Ltd. (OP no.3) and all the vehicular documents were also valid.

[5] The owner of the motor cycle i.e. O.P. no.2 in his written statement however controverted asserting that his vehicle was not at all at the fault in said accident, rather said Bolero vehicle was solely responsible for the same. Further, according to him, his motor cycle was duly insured with Oriental Insurance Co. Ltd and the driver of said Motor cycle namely Sujit Saha had valid driving licence and other vehicular documents were also valid.

[6] The O.P. no.3, Cholamandalam MS General Insurance Co. Ltd. in their written statement did not admit age, occupation, monthly income of the petitioner and urged for calling for the related records of the connected police case and also for a direction to the owner of the Bolero vehicle to produce all the necessary vehicular documents before the Tribunal including the driving licence of the driver. They also did not admit any insurance policy.

[7] The O.P. no.4, Oriental Insurance Co. Ltd. in their written objection denied the accident as well as involvement of the motor cycle therein. They further grieved that the owner of the motor cycle did not inform them about any such accident remaining in collusion with the petitioner. They however urged for proof of valid fitness certificate, road permit, driving licence of the vehicle and the insurance policy as well as production of copy of FIR, Medical prescription before the Tribunal.

[8] The learned tribunal framed the following issues for consideration:-

ISSUES

i) Whether the claimant Kundan Paul sustained injuries in a vehicular accident on 06/12/15 due to rash and negligent driving of TR-01- AL 0406 and TR-01-N-9696.

ii) Whether the claimant is entitled to compensation, if so, what should be the quantum of compensation and who shall be held liable for payment of the same

[9] After considering all these aspects and materials available in the record, this Tribunal finally awarded compensation of Rs.6,70,000/- in

favour of the petitioner directing the O.P. No.1 Sri Joybrata Majumder, owner of the Bolero ZLX bearing No. TR-01-AL-0406 to make payment of compensation with interest @ 6% per annum from 06.12.2016 till payment.

[10] Being aggrieved thereby, the petitioner preferred an appeal before the Hon'ble High Court vide MAC APP No.01 of 2021 and the Hon'ble High Court by order dated 05.03.2021 was pleased to remand the matter with the following directions :-

"(i) The appellant shall pay cost of Rs.25,000/- to respondent No.1 claimant.

(ii) The proceedings are remitted back to the Claims Tribunal to enable the claimant to produce the insurance policy of the vehicle on record and to verify whether the policy was valid. The remand is thus limited to the question of subsistence of a valid insurance policy and consequently the liability of the insurer to satisfy the award. No other issues would be allowed to be reopened by either side. The Claims Tribunal shall pass a fresh award specifically deciding the question of subsistence of valid insurance policy and whether the insurance company is liable to satisfy the award.

(iii) By way of interim measure, the appellant shall pay a sum of Rs.1,00,000/- to the opponent No.1 claimant. The amount of Rs.25,000/- deposited by the appellant before the Registry while filing the Appeal shall

also be paid over to the opponent No.1 claimant.

(iv) This amount of Rs.1,25,000/- which the claimant shall receive from the appellant owner, would be towards the payment of compensation as decided by the Claims Tribunal. If eventually it is found that there was a subsisting valid insurance policy and that the insurance company is liable to satisfy the award, the insurance company shall pay over the said sum of Rs.1,25,000/- to the owner and pay the rest of the compensation to the claimant. On the other hand, if upon passing further award, the Claims Tribunal still holds that the owner alone is liable to satisfy the award. This amount would be adjusted towards his liability.

(v) The Claims Tribunal shall confirm the payment of cost and part compensation by the owner to the claimant as per this order before proceeding further."

[11] Once the matter was remanded back, the learned tribunal by the order dated 20.01.2022 has observed in the following manner:

"It is, therefore, held that the petitioner namely Sri Kundan Pal is entitled to get compensation of Rs.6,70,000/- (Rupees six lakh seventy thousand only) with 6% interest thereupon from the date of filing of the petition i.e. from 06.12.2016 till payment.

As per order dated 05.03.2021 of the Hon'ble High Court of Tripura passed in MAC APP No.01 of 2021, the O.P. No.1 deposited a Demand Draft bearing No.503157 dated 06.05.2021 amounting to Rs.1,00,000/- to this Tribunal on 10.05.2021 which was already paid to the petitioner on 15.07.2021 in compliance with the order dated 12.07.2021 of this Tribunal. On perusal of the said order dated 05.03.2021 of the Hon'ble High Court of Tripura, it is found that the appellant i.e. the owner of the vehicle,

deposited Rs.25,000/- to the Registry of the Hon'ble High Court which shall be paid to the opponent No.1 claimant.

Out of the awarded amount of Rs.6,70,000/-, the O.P. no.3 Choramandalam MS General Insurance Co. Ltd. is directed to make the payment of Rs.5,45,000/- to the petitioner and Rs.1,25,000/- to the owner of the vehicle within 30 days from today with 6% interest thereupon from the date of filing of the petition i.e. from 06.12.2016 till payment.

60% of the total compensation inclusive of proportionate interest will be deposited in fixed deposit scheme in any nationalised Bank for 05 years in the name of petitioner and he will be entitled to receive periodical interest therefrom. Rest 40% including proportionate interest will be released in favour of the petitioner through his bank account."

[12] Aggrieved by the award delivered on 20.01.2022, the appellant herein has approached this court seeking the following reliefs:

- (i) Admit the appeal
- (ii) Issue notice upon the respondents
- (iii) Call for the case records of vide TS(MAC) 269 of 2016 from the court of learned Member, Motor Accident Claims Tribunal, Court No1, Agartala, West Tripura
- (iv) After hearing both the sides Your Lordship be kind enough to pass compensation of award Rs.90,45,000/- only being just and appropriate compensation and modify the judgment and order dated 20.01.2022 passed by Learned Member, Motor Accident Claims Tribunal, Court No.1, Agartala, West Tripura in connection with TS(MAC) 269 of 2016 by way enhancement of the award in view of cost of medical expenditure, sufferings, pain both mentally and physically, future treatment costs, future income of the appellant and others amenities and also pass an award of Rs.90,45,000/- along with 13% interest from the date of accident till the date of realization of the amount.

[13] Mr. A.K Pal, learned counsel appearing for the appellant has submitted before this court that the learned Tribunal ought to have not considered that the appellant was admitted in the AGMC & GBP hospital from 06.12.2015 to 09.12.2015 and thereafter the appellant was shifted to AMRI hospital, Kolkata on 09.12.2015 and he took admission in the said hospital on 09.12.2015 and he was discharged from the hospital on 16.12.2015 and thereafter the appellant on several occasions visited the AMRI hospital, Kolkata for his further treatment and expenditure was occurred in this regards Rs.4,30,000/- But the Ld. Tribunal did not paid the cost of Rs.4,30,000/- to the appellant and the Ld. Tribunal also did not consider the to and fro journey cost between Kolkata to Agartala.

[14] It is further submitted by the counsel for the appellant that during treatment period at Kolkata in AMRI hospital there was made a major operation in his right leg and after the operation done by the doctor

the appellant has not cured as before accident and as a result the appellant has suffered 20% disablement of his body i.e. on the right leg, but the Ld. Tribunal did not consider the cost of operation and other expenditure of this treatment and also did not consider the future medical treatment cost of the appellant.

[15] In course of his submission, learned counsel for the appellant has also submitted that the Ld. Tribunal also did not consider the future loss in respect of business and work of the appellant for Rs.78,15,000/- but the Ld. Tribunal while passing the judgment and award only consider a lump sum amount of compensation only Rs.6,70,000/-. It is too much lower award of compensation then he actual incurred the expenditure during his medical treatment due to vehicular accident.

[16] In view of the above discussion, this court is of the view that the monthly income of the appellant be set as Rs.10,000/- in the light of **Ramachandrappa's** case instead of Rs.6250/- as set by the Ld. Tribunal. In this regard, the principles as laid down in a case of **Ramchandrapa v. Manager, Royal Sundaram Alliance Insurance Company Limited** reported in **(2011) 13 SCC 236**, is extracted herein below for ready reference:

13. In the instant case, it is not in dispute that the appellant was aged about 35 years and was working as a Coolie and was earning `4500/- per month at the time of accident. This claim is reduced by the Tribunal to a sum of `3000/- only on the assumption that wages of the labourer during the relevant period viz. in the year 2004, was `100/- per day. This assumption in our view has no basis. Before the Tribunal, though Insurance Company was served, it did not choose to appear before the Court nor did it repudiated the claim of the claimant. Therefore, there was no reason for the Tribunal to have reduced the claim of the claimant and determined the monthly earning a sum of `3000/- per month. Secondly, the appellant was working as a Coolie and therefore, we cannot expect him to produce any documentary evidence to substantiate his claim. In the absence of any other evidence contrary to the claim made by the claimant, in our view, in the facts of the present case, the Tribunal should have accepted the claim of the claimant. We hasten to add that in all cases and in all circumstances, the Tribunal need not accept the claim of the claimant in the absence of supporting material. It depends on the facts of each case. In a given case, if the claim made is so exorbitant or if the claim made is contrary to ground realities, the Tribunal may not accept the claim and may proceed to determine the possible income by resorting to some guess work, which may include the ground realities prevailing at the relevant point of time. In the present case, appellant was working as a Coolie and in and around the date of the accident, the wage of the labourer was between `100/- to 150/- per day or `4500/- per month. In our view, the claim was

honest and bonafide and, therefore, there was no reason for the Tribunal to have reduced the monthly earning of the appellant from `4500/- to `3000/- per month. We, therefore, accept his statement that his monthly earning was `4500/-.

[17] It is evident from the record that the Motor Accident Claims Tribunal (Court No.1), West Tripura, Agartala, awarded the appellant a sum Rs.6,70,000/- under various heads. As this courts decides Rs.10,000/- as monthly income of the appellant, the award of compensation would be raised as in the following manner:

*"A sum of Rs.10,000/- as monthly income + 40% is added with monthly income as future income which would come to Rs.14,000/-. Multiplier 18 will be applied in terms of **Sarala Verma & Ors.** Therefore, in case of 100% disability, future loss of income will be Rs.14,000/- x 12 x 18 = Rs.30,24,000/-. In case of 20% disability, the loss of future income comes to Rs.30,24,000/- x 20% = Rs.6,04,800. A sum of Rs.25,000/- is awarded as damages for pain and suffering. Therefore, the total compensation is assessed at Rs.2,60,500 (cost of treatment) + Rs.10000 (monthly salary) + Rs.6,04,800 (the loss of future income with 20% disability) + Rs.25,000/- (damages for pain and sufferings) = Rs.9,00,300."*

[18] It is therefore held that the appellant is entitled to get compensation of Rs.9,00,300/- (Rupees nine lakh three hundred) only with 6% interest thereupon from the date of filing of the petition i.e. from 06.12.2016 till payment. It is needless to mention here that apart from the observation as made above by this court, the rest part of the order dated 20.01.2022 as made by the Ld. Tribunal, Court No.1, West Tripura, Agartala in TS(MAC) 269 of 2016 is not interfered by this court.

[19] In view of the above, the present appeal is allowed to extent as indicated above. As a sequel, stay, if any, stands vacated. Pending application(s), if any also stands closed.

JUDGE

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