

HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_
MAC. App. No.60 of 2022

The Oriental Insurance Company Limited

.....Appellant

V_E_R_S_U_S

Smti. Namita Sarkar & Another

.....Respondents

For Appellant(s)	:	Mr. B. Majumder, Advocate.
For Respondent(s)	:	Mr. P. S. Roy, Advocate.
Date of hearing and delivery		
Of judgment and order	:	19.07.2023
Whether fit for reporting	:	YES/NO

HON'BLE MR. JUSTICE T. AMARNATH GOUD
_F_I_N_A_L_O_R_D_E_R_

Heard Mr. B. Majumder, learned counsel appearing for the appellant
also heard Mr. P.S. Roy, learned counsel appearing for the respondents.

[2] This application has been filed under Section-173 of the Motor Vehicles Act, 1988 along with its up to date amendments against the impugned judgment and award dated 17.12.2021, passed by the learned Member Motor Accident Claims Tribunal, Court No.2, West Tripura, Agartala rendering in case No.T.S.(MAC) 146 of 2016.

[3] Brief facts leading to this case are that on 16.01.2012 at about 5.30/6.00 pm Smti. Namita Sarkar, the claimant respondent herein was going by the left side on the road towards Bhati Abhoynagar near Mailakhala Bridge. At that time, suddenly an Auto Truck bearing registration no. TR01J(TEM)3786 which was renumbered as TR01T1585 hereinafter mentioned as offending vehicle dashed her from the backside and as a result the claimant fell down on the road and sustained injuries in her person including legs, waist, chest, head, backbone. Allegedly, her left leg was totally broken. As such, she is now unable to move without an attendant. The claimant immediately after the occurrence was shifted to the GBP Hospital, Agartala where she undergone treatment as an indoor patient from the date of accident till 25.01.2012 and thereafter also she undergone treatment as an outdoor patient. Allegedly, the claimant is the only earning member of her family and she used to earn Rs.10,000/ per month by rearing cows and selling milk. Her whole family is dependent upon her. In fine, the claimant quantified her claim to the tune of Rs.11,50,000/ under various heads.

[4] Due to such accident claimant became permanently disabled to the extent of 50%. In this connection with the aforesaid accident, a specific case vide West Agartala PS case No. 381/2013, u/s 279/337 of the IPC was also registered.

[5] After hearing the learned counsel appearing for the parties and having gone through the material evidence on record, the learned Court below has observed as under:

In the result, claim is awarded in following terms:

Claimant petitioner is entitled to get the award of Rs.2,30,000/- (rupees two lacs thirty thousand) only with 6% Simple interest per annum from the date of registration of claim i.e, w.e.f. 21.07.2016 till the date of realization thereof.

The OP No. 2, The Oriental Insurance Company Limited 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.”

[6] Mr. B. Majumder, learned counsel appearing for the appellant-insurance company has submitted that the learned tribunal did not apply its judicious mind and with flagrant disregard of law and justice and in a pervasive manner has imposed the liability of payment of compensation of Rs.2,30,000/- only upon the appellant insurance company and as such, it is not only sustainable and tenable in the eye of the law but of excessive and harsh and as such, it is liable to be dismissed.

[7] The learned tribunal believed the deposition of PW-1 i.e. the claimant-respondent, who relied the charge sheet dated 28.02.2015 but, solely basing on their depositions has awarded the liability of payment of compensation upon the appellant. In this regard, there is no whisper in the impugned judgment and award under what manner and what is the basis of such belief. The learned tribunal has been inspired to rely upon the deposition rendered by the witnesses without any corroboration of any other witnesses and what had been stated in her affidavit that has been vividly accepted and appreciated as a real truth.

[8] It has been further contended that the learned tribunal has perversely determined a sum of Rs.1,00,000/- since the claimant-respondent was a milk seller as well as she become disable to the extent of 50% wherein she neither produced the precise income of herself, but a milk seller by profession by way of documentary evidence nor locomotor regarding her disability to the extent of 50% was examined and as such, the award to the effect is superfluous and therefore, it requires for interference. The learned tribunal below has miserably failed to appreciate the documentary evidence that FIR is the motion of any incident and the charge sheet is the integral part of the said FIR and both were exhibited and

relied by the respondent and since the contents of the document was proved by the claimant as well as the appellant, it ought to go in favour of the appellant.

[9] By awarding any amount under the head of litigation cost of Rs.5,000/- is all extraneous consideration not contemplated under the statute and as such, the learned tribunal has committed gross illegality in awarding litigation cost and that should be quashed. The tribunal most erroneously awarded compensation under the conventional heads like as future treatment of Rs.50,000/- and any interest on this amount are against the terms of the decision of the Apex Court's judgment of Pranay Shetty's case.

[10] Ignoring the existence of valid driving license inspite of the pleading in the WS in fixing liability upon the insurance company and the owner as OPW in his deposition has failed to disclose the name of the driver and also failed to produce driving license. The owner of the offending vehicle has deposed in his cross-examination that he did not know the date and time of accident, even though he could not say who drove the offending vehicle at the relevant time of the alleged accident.

[11] The learned tribunal ought to have considered that the facts involving thereto, wherein, the alleged accident was not established by cogent evidence at all, basing on the claim petition wherein, the claimant respondent intentionally described her story after two years of the alleged accident in order to get compensation for wrongful gain as a source of profit but not just compensation. The tribunal below ought to have understood that in the facts as well as the law involved thereto having appreciated the evidence; it is only the owner of the offending vehicle, who is liable to make the compensation amount awarded by the learned tribunal.

[12] Mr. Majumder, learned counsel has further contended that the tribunal below has erred in law with defiance of guidelines as enunciated by the Apex Court in 2009 AIR SCW allowed the compensation as a source of profit and a punitive one which is not at all a just compensation as decided by the Apex Court wherein, it has been held that the expression which appears to be just in Section-168 vests a wide discretion in the tribunal in the matter of determination of compensation. Nevertheless, the wide amplitude of such power does not empower the tribunal to determine the compensation arbitrarily, or to ignore settled principles relating to determination of compensation.

[13] The learned tribunal has passed the judgment by awarding compensation to be paid by the insurance company to the claimant basing on sympathy, compassion and pity, a total disregard of decision of the Apex Court in the said judgment categorically decided that the ratio that a misplaced sympathy generosity and benevolence cannot be the guiding factor for determining the compensation.

[14] In view of above discussions and having gone through the evidence on record, it would be apposite to revisit the evidence once again. The claimant has proved documents showing expenditure towards medical treatment only to the extent of Rs. 7,636/- vide Exbt.6 series. It is a natural phenomena that when a person met with accident and thereby admitted to hospital the injured remains under treatment and his/her family members, if any, remains busy in connection thereto and as such it is not possible for them to preserve all the cash memos and other treatment related papers showing expenditure towards treatment. Having regard to such circumstances I find it appropriate to award a sum of Rs. 20,000/ towards cost of treatment.

[15] Considering the above circumstances including the fact that the claimant was admitted to hospital at Agartala and undergone treatment as an indoor patient for about 10 days and thereafter as an outdoor patient. It has been further proved from the evidence on record that the claimant became disable to the extent of 50% (Exhibit4). The claimant, as appears from the oral evidence, was a milk seller and used to rear her cows and since she became disable she is unable to perform her regular works.

[16] Now coming to the question of liability, it appears that the accident occurred due to rash and negligent driving on the part of the driver of offending vehicle which was insured with the appellant vide Ext.C (the insurance policy). It follows therefore, the appellant being the insurer of the offending vehicle is liable to satisfy the award. However, by awarding any amount under the head of litigation cost of Rs.5,000/-, according to this Court, is not justifiable as such, the same be deducted from the total amount as awarded by the learned tribunal except this, the remaining order shall remain unaltered.

[17] In view of above modification, the present appeal stands partly allowed. The insurance company shall deposit the awarded amount as assessed by the learned tribunal within a period of one month, from the date of receipt of the copy of this order, if not already deposited. Consequently, the claimant is at liberty to withdraw the same as per procedure. As a sequel, miscellaneous applications

pending, if any, shall stand closed. Draw the award accordingly and thereafter, send down the LCRs forthwith.

JUDGE

A. Ghosh

ANJAN
GHOSH

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Date: 2023.07.25
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