

**HIGH COURT OF TRIPURA
AGARTALA**

MAC.App 10 of 2022

The National Insurance Company Ltd
(To Be Represented by Senior Divisional Manager)
Agartala Division Office, 42, Akaura Road,
PO: Agartala, District: West Tripura, PIN: 799001
**---Insurer-Respondent- Appellant(s)
Versus**

- 1. Sri Biprajoy Debnath**
S/o Lt. Bimal Debnath
Of Dhaleswar Road, No.1, PO: Dhaleswar
PS: East Agartala, District: West Tripura
---Claimant-Respondent(s)
- 2. Sri Goutam Deb,**
S/o-Sri Sentu Deb
Of Chandinamura, PS; West Agartala
District: West Tripura, Owner of TR-01-E-1696 (Truck)
----Owner-Respondent(s)

CO(FA) 11 of 2022

Sri Biprajoy Debnath
S/o Late Bimal Debnath
Resident of Dhaleswar Road No.1
PO: Dhaleswar, PS: East Agartala
Dist: West Tripura
**---Cross objector Appellant(s)
Versus**

- 1. Sri Goutam Deb**
S/o Sri Sentu Deb
Chandinamura, PS: West Agartala
District: West Tripura
(Owner of the Vehicle No. TR01-E-1696, Truck)
- 2. The Divisional Manager**
National Insurance Company Limited
2 Akhura Road, Agartala
PS: West Agartala District: West Tripura
(Insurer of the Vehicle No.TR-01-E-1696, Truck)
---Respondent(s)

For MAC.App 10 of 2022

For Appellant(s)	: Mr. A. K. Deb, Advocate.
For Respondent(s)	: Mr. Alik Das, Advocate
Date of hearing and delivery of judgment and order	: 02.08.2023
Whether fit for reporting	: No.

For CO(FA) 11 of 2022

For Appellant(s)	: Mr. Alik Das, Advocate
For Respondent(s)	: Mr. A. K. Deb, Advocate.

HON'BLE MR. JUSTICE T. AMARNATH GOUD

Judgment and Order (Oral)

Heard Mr. A K Deb, learned counsel appearing for the Insurance Company as well as Mr. Alik Das, learned counsel appearing for the claimant.

[2] The brief fact of the claimant's case is that on 2.11.2017 claimant along with his brother were going to Jogendranagar Railway station by bike TR-01-AC-9468 and when reached in front of Nazrul Khalashetra due to natural call of the brother of claimant Sri Bipjoy Debnath the bike was stopped and claimant was standing near the bike and suddenly offending truck TR-01-E-1696 came to the wrong side of the road and dashed claimant and motor bike very rashly and negligently and claimant sustained severe injuries all over his body. Local people along with his brother shifted claimant to AGMC and GBP hospital and he was admitted as indoor patient till 29.11.2017. Considering the injury claimant was referred to RN Tagore hospital Kolkata by Air in a stretcher on 29.11.2017 and he was remained admitted in RN Tagore hospital till 15.12.2017 and several major operations were conducted. Claimant was further admitted in RN Tagore hospital on 23.02.2018 to 07.03.2018 and 22.04.2018 to 26.04.2018. Claimant was further admitted in GBP hospital, Agartala from 25.05.2018 to 27.05.2018. Due to the accident urine bladder of the claimant was

completed damaged. It is clearly pleaded the accident took place due to the rash and negligence driving of the truck and East Agartala PS Case No.146 of 2017 under section 279/338 of IPC and under section 184 and 187 of M.V. Act was registered. Claimant petitioner was brilliant active boy of 21 years old at the time of accident and was a student of B. Com. final year and also has completed diploma in computer and was performing job at Computer centre namely Disha Consultancy, orient Chowmuhani, Agartala and was also doing private tuition and earning Rs.10,000/- per month. Due to the accident claimant lost his earning and became permanently disable. Aggrieved thereby the claimant moved before the Member, Motor Accidents Claim Tribunal, West Tripura Court No.5 registering a case bearing No. TS(MAC) 86 of 2018.

[3] The case of the claimant is contested by OP No.1, the owner of the offending truck by filing written statement denying the plea of the claimant and interalia pleaded that on the date of accident the truck was insured with OP No.2 the National Insurance Company Limited and OP No.1 has already sold his truck to one Krishnapada Saha and ownership has been transferred the original documents are lying with the said Krishnapada Saha. OP No.1 prayed for dismissal of the claim petition.

[4] The case of claimant is contested by OP No.2, the National Insurance company Limited by filing written statement denying the plea of the claimant and interalia pleaded that the compensation claimed by the claimant highly excessive and arbitrary as claimant is required to prove accident, injury and cost

by producing documents. It is also pleaded that accident occurred due to the bike TR-01-AC-9468 and rider of the bike has no experience about riding and no driving licence. OP No.2 prayed for dismissal of the claim petition.

[5] On the basis of the pleadings and documents, following issues were framed :-

- (i) *Is the claim petition maintainable in its present form and nature?*
- (ii) *Had the claimant- petitioner sustained injuries on 22.11.2017 at about 5.15 am in front of Nazrul Kalashtra on Purbasa to Math chowmuhan Road under East Agartala PS due to rash and negligent driving of the driver of a vehicle bearing Registration No. TR-01-E-1696? If so, is the claimant petitioner entitled to get compensation as prayed for ?*
- (iii) *Who shall be liable for payment of compensation to the claimant petitioner?*

[6] After considering all these aspects and materials available in the record, the Learned Tribunal finally awarded compensation of Rs.20,15,958/- in favour of the claimant and has observed in the following manner:

"OP No.2, Cholamandalam MS General Insurance Company Ltd is directed to deposit the awarded compensation of Rs. 20,15,958/- only./- (Rupees twenty lakhs fifteen thousand nine hundred fifty eight 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 30.01.2018 to till realization of the full."

[7] Aggrieved by the said impugned order dated 08.10.2021, the insurance company, the appellant in MAC.App 10 of 2022 has approached before this court seeking the following relief:

- a) *Admit the appeal*
- b) *Call for the record of TS(MAC) 86 of 2018 from the court of Ld. Member, Motor Accident Claims Tribunal, Court No.5, Agartala, West Tripura District.*
- c) *Issue Notice upon the respondents.*

And

d) After hearing both the parties, Hon'ble Court would be pleased enough to pass necessary order to set aside impugned award dated 08.10.2021 passed by the tribunal TS(MAC) 86 of 2018

e) To pass any order/orders as the Hon'ble High Court deems fit and proper.

[8] Mr. A. K Deb, learned counsel appearing for the Insurance Company has submitted before this court that the Learned Tribunal below has awarded Rs.13,95,958/- for expenses towards treatment. But from paragraph No.24 of the impugned award it appears that claimant-respondent had exhibited Ext.8 to 17 series which are cash memos and bills only, related prescriptions are not exhibited. In that view of the matter Ld. Member could not have been granted according to the settled proposition of law referred in ***Raj Kumar Vs. Ajay Kumar & Anr*** reported in **(2011) 1 SCC 343**.

[9] On the contrary Mr. Alik Das, learned counsel appearing for the claimant has submitted before this court by way of filing a cross appeal being CO(FA) 11 of 2022 which is tagged with the instant appeal that the claimant approached to the Learned Tribunal below for claiming a compensation of Rs.45,80,000/-. But the same was not granted to him and only a sum of Rs.20,15,958/- was awarded in favour of the claimant. He further submitted that the Learned Tribunal awarded only Rs.1,00,000/- for damages pain and sufferings, but the cross objector appellant shall have to suffer throughout his life from the said injuries and as such he is entitled to get Rs.5,00,000/- The Learned Tribunal did not consider the future prospect of earnings including the multiplier of future loss of earnings.

[10] In view of the submission made the counsel for the parties and also having considered the records so placed before this court, it can be said the Learned Tribunal has rightly dealt with regard to the claimant losing his income owing to the continuous treatment from 27.11.2017 to June, 2020 after the claimant made with the accident. Thus, the claimant is entitled to get loss of income from the month of November, 2017 to the month of June, 2020 i.e. 32 months and the same stands (Rs.10,000 x 32) = Rs.3,20,000/-. The Learned Tribunal below has also rightly awarded a sum of Rs.13,95,958/- as the expenses relating to treatment, hospitalization, medicine, transportation, nourishing food and miscellaneous expenditure. Additionally, a sum of Rs.2,00,000/- towards the cost of future expenditure and Rs.1,00,000/- towards the cost of sufficient damage, pain, suffering and trauma has been awarded by the Learned Tribunal Below. This court has no hesitation to hold that the impugned order dated 08.10.2021 does not require any interference of this court as the same appears just and proper.

[11] With the above observation and direction, this present appeals stand dismissed affirming the award dated 08.10.2021 delivered in TS(MAC) 86 of 2018 passed by the Member, Motor Accidents Claim Tribunal, West Tripura Court No.5. As a sequel, stay, if any, stands vacated. Pending application(s), if any, also stands closed.

JUDGE

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