

HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_
MAC. App. No.59 of 2022

Sri Parimal Ghosh

.....Appellant

V_E_R_S_U_S

Sri Mithan Roy & Another

.....Respondents

For Appellant(s)	:	Mr. S. Lodh, Advocate.
For Respondent(s)	:	Mr. P. Shil 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. S. Lodh, learned counsel appearing for the appellant also heard Mr. P. Shil, learned counsel appearing for the respondents.

[2] This appeal has been filed under Section-173 of the Motor Vehicles Act, 1988 against the impugned judgment & award dated 11.02.2022 passed by the learned Member, Motor Accident Claims Tribunal, Court No.2, Gomati Judicial District, Udaipur in connection with TS (MAC) 36 of 2017 for enhancement of the compensation.

[3] The brief facts of the claimant-petitioner, the appellant's case are that on 29.02.2016 at about 1600 hours while the appellant was talking to one Parimal Dey at Bagma near the School Boarding on the roadside of Udaipur-Agartala National Highway, that time one Maruti van bearing No. TR-03G-0742 coming from Udaipur side with an abnormal high speed and in rash and negligent manner dashed upon the appellant. As a result the claimant received injuries over chin, right ear, right thigh, left knee, left foot and on other parts of his body. Immediately the claimant was taken to District Hospital at Tepania but considering the gravity of injuries he was referred to Tripura Medical College & Dr. B.R.Ambedkar Memorial & Teaching Hospital, Hapania, Agartala wherein he received treatment as an indoor patient up to 06.04.2016 and discharged on that date with an advice to attend the OPD. On 09.04.2016 the claimant again admitted in the said hospital and treated there up to 11.05.2016. On 12.05.2016 he again admitted in the said hospital and treated there up to 23.05.2016 and discharged with an advice to attend the OPD regularly. It is also stated by the claimant that after prolong treatment also he did not recover fully from the injuries and became disabled due to such injuries. It is alleged by the claimant that such accident was

occurred due to rash and negligent driving by the driver of the offending vehicle bearing No. TR-03G-0742.

[4] Due to such RTA a written complaint was lodged to the O/C of R. K. Pur PS on that date itself which was registered vide R. K. Pur PS Case No. 18 of 2016 under Section 279/338 of IPC and u/s 184/187 of MV Act against the driver of the offending vehicle bearing registration No. TR-03G-0742.

[5] The owner of the vehicle bearing Registration No. TR-03G-0742 (Maruti Van) contested the case by filing written statement denying the averments made in the claim petition and denied the facts that on 29.02.2016 at about 1600 hours the accident was occurred on Udaipur-Agartala road near School Boarding at Bagma by the vehicle bearing No. TR-03G-0742 (Maruti Van) which was coming from Agartala to Udaipur with an abnormal high speed and in rash and negligent manner dashed the claimant for which the claimant sustained grievous injuries on various parts of his body. It is also denied that immediately after the accident the claimant was taken to District Hospital at Tepania and considering the gravity of injuries he was referred to Tripura Medical College & Dr. B. R. Ambedkar Memorial & Teaching Hospital, Hapania, Agartala wherein he received treatment as an indoor patient from 29.02.2016 to 06.04.2016. It is admitted by the OP No.1 that the vehicle bearing Registration No. TR 03 G 0742 (Maruti Van) is owned by him and it was duly insured with the Oriental Insurance Company Limited covering the period from 16.12.2015 to 15.12.2016 and one Narayan Debnath, S/O Jadu Gopal Debnath of Baspadia, PS Belonia, South Tripura drove the said vehicle having a valid driving licence as such if the prayer of claimant is allowed that should be indemnify by the Oriental Insurance Company Limited.

[6] 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, it is hereby ordered that the claimant petitioner is entitled to get compensation of Rs.4,90,291 (Rupees four lac ninety thousand two hundred ninety one) only. The OP No. 2 Oriental Insurance Company Ltd., the insurer of the offending vehicle bearing Registration No. TR-03G-0742 (Maruti van) is directed to make the payment of compensation to the claimant petitioner within 30 (thirty) days from today along with interest thereon @ 6% per annum from the date of filing of claim petition, i.e. 29.07.2017 till payment/realization of the same.”

[7] Mr. S. Lodh, learned counsel appearing for the appellant has submitted that at the time of computing future loss, the learned tribunal below assessed compensation holding that the disability is only for 5 years. It is most

humbly submitted that the learned tribunal has failed to consider the disablement certificate and the nature of disability of the appellant. The disability of the appellant is not curable and the same should be increased day to day. PW-3, Dr. Snehasish Datta never said that after five years his disability would be curable. On the contrary, he said that the disability of the appellant may or may not be increased and his working capacity would be reduced. The learned tribunal below failed to consider the same and hence, assessing compensation for loss of income for five years is not tenable in law and thus, the impugned judgment and award is liable to be interfered with.

[8] He has further contended that the learned tribunal has committed serious error in not awarding any compensation towards future treatment, transportation charges, diet, nutrition charge and cost of escort. On perusal of the record, it is revealed that the appellant was a resident of Bagma and he was admitted in hospital at Agartala. Thus, the appellant has incurred huge expenditure as transportation charges to attend hospital. Apart from this, when the appellant was in hospital, two persons must be in the hospital along with him as escorts, but the learned tribunal below did not award anything towards cost of escorts.

[9] The learned tribunal also committed serious mistake in not awarding anything towards diet and nutrition charge. On perusal of the record, it revealed that on three occasions the appellant was admitted in the hospital as an indoor patient and one operation was done. It is common place knowledge that if any operation is done to any patient, doctors must advise for special diet to the patient. In the present case the learned tribunal has failed to consider the same and did not award anything towards diet and nutrition charges and hence, the impugned judgment and award is liable to be interfered with. The learned tribunal has committed serious mistake in awarding Rs.20,000/- as pain and sufferings of the appellant. After the accident, within six months he was in the hospital in three occasions as indoor patient.

[10] This fact clearly demonstrates that how much suffering the appellant has faced but, the learned tribunal below failed to consider the same and awarded a meager amount of Rs.20,000/-. It is most humbly submitted that as the patient suffered huge mental and physical strain, so the learned tribunal ought to have awarded Rs.1,00,000/- under the head of pain and sufferings. Thus, the impugned judgment and award is liable to be interfered with.

[11] The Oriental Insurance Company Limited, the insurer of the offending vehicle bearing Registration No.TR-03G-0742 (Maruti Van) in their

written statement denied the narration made in the claim petition the manner in which the accident was described to have taken place. They also denied the age, income and avocation as well as the health condition of the injured at the time of accident and further stated that in case of violation of any terms and conditions of the insurance policy they would not be responsible to indemnify the owner. According to the insurance company they were not aware of any criminal case registered relating to the alleged accident. Further, the owner as well as the driver of the offending vehicle did not inform them anything about the accident.

[12] Learned Counsel for the appellant submits for adequate compensation on the materials available with the record. Learned Counsel further submitted that at the time of alleged accident the injured was a businessman having monthly income of Rs.10,000/- and due to such accident the injured could not pursue his normal activities for long time. PW.3 Dr. Snehashish Datta was one of the members of the District Disability Board, Gomati District, Udaipur who identified his signature as Exhibit – 6/1 in the disabled certificate of appellant. Except denial and suggestions no material aspects has been elucidated by the respondent side during the cross-examination of PW.1, PW.2 and PW.3.

[13] As the evidence of PW.1 and PW.2 shows that the accident was occurred due to rash and negligent driving by the driver of vehicle bearing Registration No. TR-03G-0742 (Maruti van). So, it is clear that on 29.02.2016 at about 16.00 hours the injured Parimal Ghosh got injuries following the RTA at Bagma near School Boarding on NH-44, Udaipur due to the rash and negligent driving by the driver of offending vehicle bearing Registration No. TR-03G-0742 (Maruti van).

[14] It is established that the accident occurred due to the fault on the part of the driver of the vehicle bearing Registration No. TR-03G-0742 (Maruti van), owned by OP No. 1 which is insured with OP No. 2, covering the period from 16.12.2015 to 15.12.2016. The alleged accident was occurred on 29.02.2016 i.e., at the time of accident the vehicle bearing registration No.TR-03G-0742 (Maruti van) was under insurance coverage and on that day the vehicle bearing Registration No. TR-03G-0742 (Maruti van) was driven by the driver of OP No. 1 having valid driving licence, so the liability for payment of compensation is fixed upon the OP No. 2 Oriental Insurance Company Ltd., the insurer of the offending vehicle bearing Registration No. TR-03G-0742 (Maruti van).

[15] In view of the evidence of PW-3 and the medical report Exbt.6, it is a permanent disability of 33% is considered and accordingly, under the head of

disability the amount is increased. Due to pain and sufferings as a result of the accident, the learned tribunal has awarded Rs.20,000/-. Since there is no hard and fast rule or specific yardstick with regard to the pain sufferings, this Court feels that the amount can be increased to Rs.50,000/- instead Rs.20,000/- as awarded by the learned tribunal because for number of times he was underwent surgery and Rs.10,000/- is more added to the total award as assessed by the tribunal for the transportation.

[16] 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 and the modified amount as discussed above 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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by ANJAN GHOSH
Date: 2023.07.25
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