

HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

MAC. APP. No.30 of 2021

Shri Narayan Chandra Kar, S/O. Late Kshitish Chandra Kar, a resident of Matabari, Near Loknath Ashram, P.O.-Matabari, P.S.-R.K. Pur, District-Gomati Tripura.

.....Claimant-Appellant(s)

V E R S U S

1. Shri Dulal Chandra Saha, S/O. Late Ashutosh Saha, a resident of No.2 Fulkumari, Banduwar, Near Electric Office, Udaipur, P.O. R.K. Pur, P.S. R.K. Pur, District- Gomati Tripura (Owner of TR-01-G-1950, Truck).

2. Shri Ratan Sarkar, S/O. Nakul Sarkar, a resident of Chanban, Udaipur, P.O. R.K. Pur, P.S. R.K. Pur, District- Gomati Tripura. (Driver of TR-01-G-1950, Truck).

3. Shriram General Insurance Co. Ltd., B.R. Arcade, 3rd Floor, 21 Janapath, opposite Hotel Priya Palace, Ulubari, Guwahati-781007, Assam, Branch office.

..... Respondent(s)

For Appellant(s)	:	Mr. S.M. Chakraborty, Sr. Advocate, Mrs. P. Chakraborty, Advocate.
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For Respondent(s)	:	Mr. K.D. Singha, Advocate.
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HON'BLE THE CHIEF JUSTICE (ACTING)

Date of hearing and Judgment : 17th January, 2023.

JUDGMENT & ORDER(ORAL)

Heard Mr. S.M. Chakraborty, learned counsel assisted by Mrs. P. Chakraborty, learned counsel appearing for the claimant-appellant and also heard Mr. K.D. Singha, learned counsel appearing for the respondent Nos.1 and 2.

[2] The present appeal is directed against the award dated 23.03.2021 passed by the learned Member, Motor Accident Claims Tribunal No.2, Gomati Judicial District, Udaipur in T.S(MAC) No.60 of 2017 whereby the Tribunal awarded compensation of Rs.5,64,829/- in favour of the claimant with interest @ 6% per annum from the date of filing of the claim petition.

[3] It is alleged that on 30.06.2016 at about 9.30 am while the claimant-appellant was standing by the eastern side of Agartala-Sabroom Highway, a truck bearing No.TR-01-G-1950 hit the appellant. As a result, he met with a road traffic accident and sustained grievous injury over left leg with vascular injury. The accident occurred due to rash and negligent driving of the driver of the offending truck resulting which his left leg had to be amputated below the knee and he also sustained fracture distal radius and shaft of ulna on left forearm and multiple injuries on his body. Subsequently, he had undergone treatment in District Hospital, Udaipur, GBP Hospital, Agartala, Fortis Hospital, Kolkata and had to spend Rs.5,50,000/- for medical treatment. The appellant was a auto-rickshaw driver and also used to run a stationery business from which he used to earn Rs.10,500/- per month.

[4] It was alleged that the accident occurred due to rash and negligent driving of the driver of the truck bearing registration No.TR-01-

G-1950. Immediately after the accident, based on the FIR, a case was registered with the R.K. Pur Police Station vide Case No.78 of 2016 under Sections 279 and 338 of IPC. The claimant was a driver by profession and at the time of accident he was aged about 54 years. Due to the accident, he was unable to perform any work by using his legs and hands and as such, the District Disability Board preferred him 70% Permanent Disability Certificate whereas at the time of accident he used to earn Rs.350/- per day besides dealing with stationery business. Before the learned Tribunal, the claimant claimed compensation of Rs.21,57,200/- along with 15% interest from the date of accident.

[5] The respondents No.1 and 2 being the owner and driver of the vehicle bearing registration No.TR-01-G-1950(Truck) contested the claim petition by filing their joint written statement denying the averments made in the claim petition. They simply denied that neither the vehicle was involved in the alleged accident nor did the respondent No.2 drive the offending truck in rash and negligent manner. They also denied the age, occupation and monthly income of the injured as well as expenditure incurred thereon for the purpose of treatment of the injured. It was also alleged that at the time of accident the vehicle was duly insured with the respondent No.3. The respondent No.3 (insurer of the vehicle) in their written statement also denied the age, occupation and

monthly income of the injured as well as the fact of accident and further stated that in case of violation of any terms and condition of the insurance policy they would not be responsible to indemnify the owner. According to them, they were not aware of any criminal case registered concerning the alleged accident.

[6] On the basis of the pleadings and after hearing the parties, the following issues were framed :

“(i) Whether the claimant Sri Narayan Chandra Kar S/O Late Kshitish Chandra Kar met an accident involving rash and negligent driving of the vehicle bearing No.TR-01-G/1950(Truck) and if so, whether the claimant sustained injuries?

(ii) Are the claimant-petitioners entitled to any compensation? If so, what shall be the quantum of compensation and who shall be held liable to pay the same?”

[7] During trial, the claimant-appellant examined three witnesses including himself as P.W.1, Mithun Das as P.W.2, Dulal Datta as P.W.3 and Dr. Niru Mohan Jamatia as P.W.4 and exhibited the documents in support of his claim. On the other hand, the respondents adduced no OPW on their behalf, however, documents such as Driving Licence, Route Permit Certificate, Fitness Certificate, Insurance Policy Certificate and Registration Certificate were produced by them.

[8] The learned Tribunal after framing the issues and appreciating the evidence on record, awarded a sum of Rs.5,64,829/- as compensation to

the claimant. The learned Tribunal assessed the income of the claimant-appellant at Rs.8,000/- as he was a driver by profession. The Tribunal further observed that since the claimant did not pursue his normal works for the period of three months, awarded Rs.24,000/- to the claimant towards loss of future income. Subsequently, the Tribunal awarded Rs.8,000/- under the head of pain and suffering. The Tribunal also assessed the permanent disability of 70% to the claimant based on the documents exhibited for disablement and going by the age of the claimant at the time of accident, multiplier of 11 was adopted. Therefore, the compensation under the permanent disability worked out to Rs.1,84,800/-. The total compensation awarded to the claimant-appellant was Rs.5,64,829/-. The operative portion of the judgment is reproduced hereunder :

“In the result, it is hereby ordered that the claimant petitioner is entitled to get compensation of Rs.27,348.11 + Rs.2,43,467 + Rs.77,214 + Rs.8,000 + Rs.24,000 + Rs.1,84,800 = Rs.5,64,829.11 Say Rs.5,64,829/- (Rupees five lakh sixty four thousand eight hundred twenty nine) only. The OP No.3, Shriram General Insurance Company Ltd., the insurer of vehicle bearing registration No.TR-01-G-1950 (Truck) 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., from 08-12-2017 till payment/realization of the same.”

[9] Mr. S.M. Chakraborty, learned senior counsel appearing for the claimant-appellant contends that due to the accident the left leg of the appellant was amputated and as such, he is not able to perform any work

and became permanently disabled. Counsel further contends that the Tribunal ought to have considered the permanent disability to the extent of 100% instead of 70% and erred in considering the nature of injury sustained by the appellant in the accident and its impact on him as well as on his family members and passed the impugned award which is totally perfunctory, mechanical and not sustainable in the eye of law. He, therefore, prays to enhance the amount of compensation by modifying the impugned award dated 23.03.2021.

[10] On the other hand, Mr. K.D. Singha, learned counsel appearing for the respondents vehemently opposed the appeal filed by the appellant contending that the learned Tribunal has not committed any error in passing the award. The Tribunal has correctly come to the conclusion and awarded compensation in favour of the claimant after appreciating the evidence on record which calls for no interference. Accordingly, he prays for dismissal of the appeal filed by the claimant-appellant.

[11] After hearing the learned counsel for the respective parties, this Court is of the considered view that the permanent disability assessed by the learned Tribunal to the extent of 70% needs to be interfered with. The learned Tribunal could have more vigilant in determining the permanent disability since after the accident the left leg of the claimant-

appellant was amputated and for such reason, the claimant being an auto-rickshaw driver cannot drive his vehicle and unable to perform his regular work and became permanently disabled. As such, this Court treats the same to be a case of permanent functional disability and the disability assessed by the learned Tribunal to the extent of 70% is hereby enhanced to the extent of 100%.

[12] In that view of the matter, I now proceed to reassess the amount of compensation as under :

- (i) Cost of medicines and allied tests in different clinics :- Rs.27,348.11.
- (ii) The bills of Fortis Hospital :- Rs.2,43,467/-.
- (iii) Transportation cost :- Rs.77,214/-.
- (iv) Income of the appellant per month :- Rs.8,000/- only.
- (v) Since after the accident he did not perform any work for a period of 3(three) months, his loss of future income comes to Rs.[8,000 x 3] = Rs.24,000/- as awarded by the Tribunal.
- (vi) Pain and sufferings :- Rs.8,000/- as awarded by the Tribunal.
- (vii) Since after the accident the left leg of the claimant was amputated and became permanently disabled, I assess the permanent disability of the claimant-appellant to the extent of 100%.

(viii) After applying the multiplier of 11 considering the age of the claimant-appellant, the compensation under the head of permanent disability comes to Rs. $(96,000/- \times 11/4 \times 100\%) = \text{Rs.}2,64,000/-$.

(ix) The total compensation, therefore, works out to Rs. $(27,348.11 + 2,43,467 + 77,214 + 8,000 + 24,000 + 2,64,000) = \text{Rs.}6,44,029/-$.

[13] Accordingly, the award of the learned Tribunal is modified and the compensation is enhanced from Rs.5,64,829/- to **Rs.6,44,029/-**. On the amount of compensation so awarded, the claimant shall also be entitled to receive interest @ 6% per annum from the date of filing of the claim petition till payment/realization of the awarded amount. The rest of the directions/orders passed by the learned Tribunal shall remain intact.

[14] In view of the above, the appeal is allowed and disposed of to the extent as indicated above.

[15] Send down the lower court records forthwith.

Pending application(s), if any, also stands disposed of.

CHIEF JUSTICE (ACTING)

Pulak/Dipesh