

**HIGH COURT OF TRIPURA
AGARTALA**

MAC.App 67 of 2022

Sri Khokan Debnath

---Appellant(s)

Versus

Sri Sushil Ch Majumder and Anr.

---Respondent(s)

For Appellant(s)	: Mr. A. Acharjee, Adv.
For Respondent(s)	: Mrs. S Deb (Gupta), Adv.

HON'BLE MR. JUSTICE T. AMARNATH GOUD

Judgment & Order (Oral)

17.07.2023

Heard Mr. A. Acharjee, learned counsel appearing for the appellant as well as Mrs. S. Deb (Gupta), learned counsel appearing for the respondents.

[2] This is an appeal filed by the appellant under Section 173(1) of the Motor Vehicle Act, 1908 against the impugned judgment and award dated 01.03.2021 passed by the Ld. Motor Accident Claims Tribunal (Court No.2) West Tripura, Agartala in case No.TS(MAC) 209 of 2016 whereby the Ld Tribunal below fixed the liability to pay compensation of Rs.57,000/- with 9% interest per annum from the date of presentation of the suit i.e. 23.09.2016 till the date of realization upon the respondent No.2, the New India Insurance Company also most arbitrarily directed the respondent No.2 to recover the said amount of award from the Opposite party appellant.

[3] Brief facts leading to this case is that on 20.02.2016 the claimant-respondent along with others were proceeding towards Nidaya boarding on a Commander jeep bearing registration No. TR-01-B-2483 and when they reached at Kathaliabari at that time the said jeep fell down on a deep trance(lunga) due to rash and negligent driving of the driver of the said vehicle as a result of which claimant-respondent and others sustained grievous injuries on their persons. The claimant-respondent got injury on his right lower limb and waist. Immediately after the accident claimant-respondent was shifted to Kathalia CHC where-from he was referred to AGMC & GBP hospital for treatment and he was admitted there as an indoor patient w.e.f. 21.02.2016 to 27.02.2016. Thereafter, he took treatment from the OPD of ILS Hospitals. Subsequently, he also took treatment from AGMC & GBP Hospital as an outdoor patient and also from private doctors

and till now his treatment is continuing. In this connection a specific case vide Jatrapur PS Case No.10 of 2016, u/s 279/337/338,IPC was also registered.

[4] The claimant-respondent claimed to have incurred an amount of Rs. 1,80,000/- towards treatment. The respondent No.1 in this appeal, therefore, quantified his claim to the tune of Rs. 10,00,000/- towards mental pain and sufferings, loss of income, future treatment etc including the cost of treatment.

[5] The OP No.1, (the appellant herein) owner of the Commander jeep through his written statement apart from denying all the allegations in the claim petition contended, inter alia, that he is the registered owner of the commander jeep and the said jeep was duly insured with the OP No.2(New India Assurance Co. Ltd.). It is further stated that at the relevant date and time the commander jeep was driving by his driver Sri Gopal Ch Saha having valid driving license and there was no rash and negligent driving on the part of his driver. OP No.1, (the appellant herein) therefore, urged for fixing the liability of his insurer to pay the compensation, if any.

[6] OP No.2 (Divisional Manager, New India Assurance Co. Ltd.) through written statement has denied all the allegations and thereby put the claimant-respondent as well as the OP No.1 (the appellant herein) in strict proof of their respective claim. They further vide their additional written statement has contended that the police case which was registered at Jatrapur Police station was resulted in final report wherein it has been revealed that another Truck was involved in the accident and as such the owner of said Truck is a necessary party to this case and the owner of said Truck being not made party, this case stands bad for non-joinder of necessary party. It is further case of OP No.2 if any compensation is awarded the proportionate liability of owners of both the vehicle may be fixed.

[7] With a view to decide the claim of the claimant-respondent, following issues were framed :-

ISSUES

I) Whether claimant Sushil Ch Majumder sustained bodily injury in a vehicular accident which alleged to have been occurred on 20.02.2016 on Kathalia-Nidaya Road under the Jatrapur P.S., due to rash and negligent driving of commander jeep bearing registration No.TR-01-B-2483 by its driver ?

II) Whether the claimant is entitled to compensation as prayed for ,if so, up to what extent and who shall be held liable to pay the same ?

[8] The Ld. tribunal after dealing with the issues has observed that the claimant-respondent has proved documents showing expenditure towards medical treatment only to the extent of Rs. 5,642/-. So, considering the above circumstances including the fact that the claimant-respondent was admitted to hospital for about 7 days, The Ld. Tribunal found it appropriate to award a sum of Rs. 20,000/- towards medical expenditure. In the circumstances pertaining to suffering injuries and the period of admission in the hospital it can be said that the claimant-respondent could not have attended his normal duties for at least two months. There is no cogent evidence in regards to the income of the claimant petitioner. So, the Ld. Tribunal found it appropriate to hold the income of the claimant petitioner Rs.6,000/- per month as an unskilled labourer. So, a sum of Rs. 12,000/- is also found to be reasonable towards loss of income. A lump sum amount of Rs. 10,000/- is also found appropriate towards pain and sufferings. The Ld. Tribunal found it appropriate to award a sum of Rs.5,000/- towards transportation, fooding, lodging etc. A sum of Rs. 5,000/- each towards medical attendant and litigation cost is also found to be reasonable. In view of the discussion the total compensation comes to Rs. 20,000/-+ 12,000/- + 10,000/- + 5,000/- + 5,000/- + 5,000 = Rs. 57,000/-.

[9] Now coming to the question of liability, it appears that the OP No.1 (the appellant herein) being owner of the offending vehicle though claimed that his vehicle was insured with the OP No.2 but he did not adduce any evidence either oral or documentary to substantiate his claim. However, there is no evidence on record to show that the offending vehicle was not insured with the OP No.2 or that any condition of the policy was violated. It is also not the case of OP No.2 that the offending vehicle was not insured with it. Having regard to such circumstances, the Ld. Tribunal found it appropriate to apply the principles of "pay and recover" as held by Hon'ble Supreme Court in the case of Manoara Khatun & Others vs. Rajesh Kumar Singh & others(AIR 2017 SC 1204). In the above circumstances the judgments reported in AIR 2012 SC 1918 (Surinder Kumar Arora & Another vs Dr. Manoj Bisla & others) and the judgment reported in (2013) 2 TLR 917 (Bani Biswas vs Juthika Bhowmik & others) are found to be distinguishable with the facts and circumstances of this case. It follows therefore, the OP No.2 shall satisfy the award as passed herein below and to recover the

same from the OP No.1 in accordance with law. All the issues accordingly stood answered to the extent as indicated herein above.

[10] Learned Tribunal after considering the written statement of the parties, considering the document as submitted by the parties and after taking evidence from both the side passed the judgment and award dated 01.03.2021 in the following terms:-

"Claimant petitioner is entitled to get the award of Rs.57,000/- (Rupees fifty seven thousand) only with 9% Simple interest per annum from the date of registration of claim i.e, w.e.f. 23.09.2016 till the date of realization thereof.

The OP No.2 ,New India Assurance 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.

The OP No.2 is at liberty to recover the amount of award to be satisfied by him from the OP No.1 in accordance with law."

[11] Being aggrieved with the Judgment and award dated 01.03.2021, passed by the Learned Motor Accident Claims Tribunal, the appellant herein has filed this present appeal to set aside the impugned Judgment and Award dated 01.03.2021 passed in case No. T.S.(MAC) No.209 of 2016.

[12] Mr. A. Acharjee, learned counsel appearing for the appellant has submitted before this court that the vehicle was fully covered by the insurance policy at the time of accident along with valid driving license of the driver and hence the appellant is not liable to pay the compensation. The insurance company is liable to pay the compensation.

[13] On bare perusal of the impugned judgment & award dated 01.03.2021, this court is of the opinion that firstly it needs to be ascertained whether the offending vehicle was duly covered under the valid insurance on the date of accident. Today during the course of argument, the counsel for the appellant has drawn the attention of this court towards an interlocutory application filed by the appellant, being IA No. 02 of 2023 arising out of the instant appeal for adducing evidence at this stage. This court is not inclined to entertain the said plea as the policy premium receipt needs to be ascertained with the concerned insurance company with regard to its authenticity. Hence, the same cannot be treated at this stage of appeal. It is further noticed by this court that having sufficient period before the Ld. Tribunal, the owner of the vehicle (the appellant herein) has not taken any steps for placing this evidence on record regarding the vehicle being insured on the date of accident. Therefore, the prayer made for adducing the said certificate cannot be entertained at this stage.

[14] In view of the discussion made above, this court is of the view that the judgment and award dated 01.03.2021 passed by the Ld.Motor Accident Claims Tribunal (Court No.2) West Tripura, Agartala in case No.TS(MAC) 209 of 2016 appears just and proper therefore it does not require any interference from this court. However, it is also made clear that while dealing with the interest rate to be paid along with the award, this court has already set 7.5% simple interest per annum in all Motor Accident Claims. Therefore, the amount of award of Rs.57,000/- is to be paid to the claimant-respondent with 7.5% simple interest per annum from the date of registration of claim i.e. w.e.f. 29.09.2016 till the date of realization thereof.

[15] With the above observation, the instant appeal is allowed to the extent as indicted above. As a sequel, stay if any stands vacated. Pending application(s), if any also stands closed.

JUDGE



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