

HIGH COURT OF TRIPURA

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MAC. App. No. 74 of 2022

Sri Surajit Das.

.....Appellant(s)

VERSUS

Sri Ranjit Kumar Paul and Others.

.....Respondent(s)

For Appellant(s) : Mr. D. C. Nath, Advocate.

For Respondent(s) : Mr. S. Lodh, Advocate.

Mr. B. Majumder, Advocate.

HON'BLE MR. JUSTICE T. AMARNATH GOUD

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25/04/2023

Heard Mr. D. C. Nath, learned counsel appearing for the appellant. Also heard Mr. S. Lodh, learned counsel and Mr. B. Majumder, learned counsel appearing for the respondents.

[2] This is an appeal filed under Section-173 of the Motor Vehicles Act, 1988 against the award dated 27.02.2019 passed by the learned Motor Accident Claims Tribunal, Court No.1, West Tripura, Agartala in T.S. (MAC) 158 of 2015.

[3] The fact of the case as couched in the claim petition is that on 20.04.2015 at about 7.30pm she was going towards Durga Chowmuhani on foot and suddenly the motorcycle bearing No. TR-01-C-4749 being driven by the O.P. No.3 dashed her causing fracture on her both neck and leg for which she was admitted in ILS Hospital, Agartala from 21.04.2015 to 25.04.2015 wherein she had to undergo a major surgery. The accident occurred due to rash and negligent driving of O.P. No.3 and concerning the said accident, West Agartala P.S. Case No.68 of 2015 was registered. As stated, she was a house wife aged about 60 years contributing her service of value at least Rs.6,000/- per month towards her family.

[4] 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:

“It is, therefore, held that the petitioner Smti. Alpana Paul is entitled to get compensation of Rs.1,70,000/- (Rupees one lakh seventy thousand) only with interest @6% per annum from 22.06.2015 i.e. the date of filing of the case till the date of actual payment. O.P. No.1 Sri Surjit Das, S/O Surjya Kanta Das, resident of Birendranagar, P.O. Ranir Bazar, District West Tripura, will pay the amount of compensation with interest within 30 days from today.

Supply copy of this award free of cost to the parties.

The claim petition stands disposed of on contest.”

[5] Mr. D. C. Nath, learned counsel appearing for the appellant has submitted that claimant-appellant examined himself as the PW-1 and proved several documents in support of his claim and those documents were marked as Exbt.1 to 4. Apart from that the respondent No.1 also filed examination-in-chief on affidavit of another witness namely Surajit Paul but he did not appear to face the cross-examination and therefore the learned Tribunal did not consider the evidence of said witness. But the appellant, respondent No.2 and 3 did not adduce any evidence whatsoever either oral or documentary in support of their pleadings. Since, the appellant herein during the proceeding did not submit the insurance policy and other vital documents and therefore liability for payment of compensation shifted upon him.

[6] He has further submitted that the Court below has erred both in law and fact while holding that the appellant is liable to pay the compensation as awarded by the learned tribunal. The learned tribunal has failed to consider the appellant was not the registered owner of the vehicle at the time of alleged accident. The respondent No.1 wrongly arrayed the appellant in the case being No.T.S. (MAC)158 of 2015 and as such the award is liable to be set aside. He has further contended that the respondent No.1 made false statements and also suppressed the material fact before the learned tribunal below and therefore, the award is liable to be interfered.

[7] Mr. Lodh, learned counsel appearing for the respondents has submitted that all these submission as made by the learned counsel for the appellant has not been pleaded before the learned tribunal below and as per principle laid by the Hon'ble Apex Court if there is no pleadings, no document can be treated as evidence. He has further contended that whether any document can be looked into when there is no pleadings. When reasonable opportunity is given, notice is served but the appellant remained ex-parte. No steps were taken. A review has been filed and the same was dismissed. At this juncture also appeal entertained and no additional evidence be looked into. Appellant was not diligent all-through

[8] In view of above submission made by the learned counsel appearing for the appellant this Court finds force in the arguments of the respondents and further this Court is of the view that it would be appropriate to relook into the material evidence once again. As per copy of the FIR the same was lodged by Surajit Paul i.e. the son of the respondent stating similar facts. The respondent has also submitted charge sheet of said case wherefrom it appears that police during investigation also found the allegation of said incident to be true and at the time of accident motor cycle rider was said Kartik Bhowmik who did not have any driving license at that time and the accident occurred due to rash and negligent driving of said Kartik Bhowmik.

[9] From the discharge summary of ILS Hospital, it appears that the victim suffered fracture of neck of humerus and fracture of distal tibia and fibula. She was admitted in the said hospital on 21.04.2015 and was discharge on 25.04.2015 and one surgery was also done upon her during such hospitalization. She has submitted total cash memos and vouchers of Rs.1,22,410/-. She is a local inhabitant of Agartala, still for said 4 days of hospitalization certainly some miscellaneous expenses had to be borne by her attendants. Considering thus, the learned tribunal below has rightly awarded a sum of Rs.1,24,000/- i.e. [Rs.1,22,410+1590/-] is allowed as cost of treatment.

she has suffered fracture both on her neck and leg and considering thus, further Rs.40,000/- is allowed as pain and sufferings.

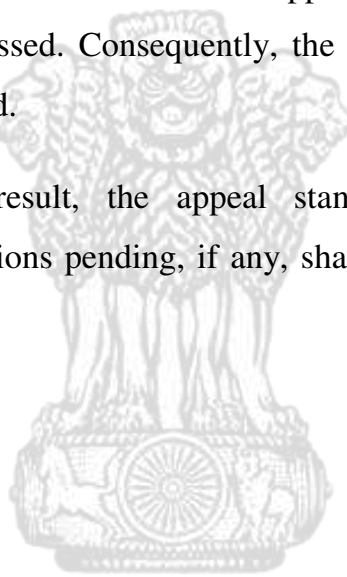
[10] Her age was 60 years as per medical record. Thus, it can be presumed that at least for five years more she could assist her family members in domestic works and her such contribution would be at least Rs.100/- per day i.e. Rs.3,000/- per month. For such fracture injuries at least for two months she had to remain on bed. Considering thus, further Rs.6,000/- is allowed as loss of income. Thus, total compensation comes to Rs.1,70,000/-.

[11] In view of above discussion and after hearing the argument of the learned counsel appearing for the parties, this Court is of the view that no case has been made out by the learned counsel appearing for the appellant and thus, the same stands dismissed. Consequently, the finding of the learned tribunal below stands confirmed.

[12] In the result, the appeal stands dismissed. As a sequel, miscellaneous applications pending, if any, shall stand closed. Send down the LCRs forthwith.

JUDGE

A. Ghosh



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