

HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A
MAC. App. No.77 of 2022

1. The National Insurance Company Limited, represented by its Divisional Manager, Agartala, Divisional Office, A. K. Road, Agartala, P.O. & P.S. West Agartala, District: West Tripura.
[Insurer of the vehicle bearing No.TR-01-L-1631 (Bolero Maxi)]
..... Appellant

-VERSUS-

1. Sri Sribastab Sinha, son of Sri Milan Sinha, resident of village-Gopinagar, P.O. & P.S. Bishalgarh, District: Sepahijala Tripura.
.....Claimant-respondent.
2. Jahangir Hossain, son of Sandu Miah, resident of village Latiachhara, P.O. & P.S. Bishalgarh, District: Sepahijala Tripura.
[Owner of vehicle bearing No. TR-01-L-1631 (Bolero Maxi)]
.....Owner-respondent

B_E_F_O_R_E
HON'BLE MR. JUSTICE T. AMARNATH GOUD

For Appellant(s)	:	Mr. S. Debnath, Advocate.
For Respondent(s)	:	Mr. Alik Das, Advocate.
Whether fit for reporting	:	YES/NO

Judgment and order dated 13th July, 2023

JUDGMENT & ORDER [ORAL]

Heard Mr. S. Debnath, learned counsel appearing for the appellant insurance company also heard Mr. Alik Das, 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 and award dated 07.04.2022 passed by the learned Motor Accident Claims Tribunal, Sepahijala District, Bishalgarh, in connection with T.S. (MAC) 206 of 2015.

[3] The case in brief is that the claimant petitioner, the claimant-respondent herein, is on 17.06.2015 at about 1800 to 1830 hours at Gopinagar, on Bishalgarh-Nabasantiganj Road, when the victim was in front of his house at Nabasantiganj on Bishalgarh road left out from his residence and in front of his house at Nabasantiganj, at that time one Mahindra Max bearing registration no. TR-01-L-1631 coming from Nabasaktiganj market side towards Bishalgarh dashed the claimant respondent by going into extreme outside of the road and thereafter lost control of the vehicle and fell in a road side tank. After the accident the driver of the Max vehicle fled away from the spot and the local people

including TS MAC 206 of 2015 the family members of the claimant shifted him to Bishalgarh hospital and he was referred to AGMC & GBP Hospital on the same date i.e. 17.06.2015 and admitted there as an indoor patient. On the next date he was referred to ILS Hospital. But for better treatment, the family members of the injured person shifted him to Kolkata in Flemming Hospital where he was admitted in the hospital on 18.04.2015 to 02.07.2015 as an indoor patient. Due to the said accident the claimant received injuries on his person especially on his head and eyes. At the time of discharge he was not totally cured and he was advised to attend Flemming hospital after one month and till that day his treatment is continuing.

[4] It is also claimed that the victim Sri Sribastab Sinha is an able bodied active man of 26 years and he was an electrician by profession and also completed Diploma course in ITI. He was performing his various works throughout the area including some Govt. works. His monthly income is Rs.15,000/- and he was contributing earning towards his family members. He was also a job seeker in Electric Department and it was expected that he would make more and more contribution towards his family had he not injured due to the said accident. In all, the claimant has prayed for compensation to the tune of Rs.20 lacs.

[5] In reply, the owner of the vehicle has contested the case by filing written statement stating that the claim of the claimant-respondent regarding treatment in various hospitals due to the accident and the accident taking place due to negligent driving by the driver of the vehicle No.TR-01-L-1631 Maxi is strongly denied and disputed by OP No. 1. The OP No. 1 has also denied the averment of the claimant regarding his age, the monthly income of Rs.50,000/- as an Electrician by occupation and thus asserted that the claim of the claimant is also exorbitant.

[6] The learned Tribunal after hearing the parties and on perusal of the material evidence on record has observed as under:

“11. In the result, the application u/s 166 of the Motor Vehicles Act is allowed.

11.1. The claimant petitioner(victim) namely Sri Sribastab Sinha is awarded a sum of Rs. Rs.17,75,100/(Rupees seventeen lacs seventy five thousand one hundred) only along with a simple interest @ 6% per annum on the above amount from the date of filing this claim case (i.e. 11.08.2015) until realization, as compensation in this case. The OP No.2, the National Insurance Company Ltd. being the insurer of the offending vehicle bearing No. TR-01-L-1631(Bolero Maxi Truck) is hereby directed to pay the said amount of compensation to the claimant within a period of 30 (thirty) days from today. The awarded amount be transferred by the OP Insurance Company by way of

RTGS/NEFT directly to the CD account of this Tribunal bearing No. 8105050326247 with IFSC Code -PUNBORRBTGB held with the Tripura Gramin Bank, Office Tilla Branch, Bishalgarh.

11.2. The OP National Insurance Company Ltd. shall give notice of the deposit of the compensation amount to the claimant and shall also file a compliance report with this Tribunal within 15 days of the deposit.

11.3. Since future loss of income is awarded and the compensation awarded also includes the bulk amount regarding the already incurred expenses by the claimant petitioner who is a literate person, keeping in mind the settled law in Kerala SRTC Vs Susamma Thomas (1994) 2SCC 176, as well as case law in Smt. Rupa Roy Vs TSLSA and others in WPC No. 142 of 2013 decided by the Hon'ble High Court of Tripura, etc., in regard to disbursement of the compensation award, it is directed that 50% of the awarded amount shall be kept in fixed deposit for at least 5 years and the rest 50% with the accrued interest thereon shall be paid immediately to the claimant petitioner through his individual Savings Bank Account held with any nationalised Bank.

11.4. The claimant petitioner is directed to produce the savings Bank Pass Book as well as Aadhaar Card and PAN Card and 2 passport size photographs and specimen signature of herself before this Tribunal on the next date fixed for report of compliance of the award by the OP Insurance Company.

11.5. Furnish a copy of this Award expeditiously and not later than 15 days from today to the claimant petitioner (hard copy) as well as to the OP No. 2, the National Insurance Company Ltd. through their email (soft copy).

11.6. Also send a copy of this Award to the concerned Trial Court of the Magistrate in which the criminal case for rash or negligent driving against the driver of the offending vehicle may be pending, if any.”

[7] Being aggrieved by and dissatisfied with the impugned judgment and award dated 07.04.2022 passed by the learned Motor Accident Claims Tribunal, in connection with T.S. (MAC) 206 of 2015, the present appeal has been preferred by the appellant-insurance company.

[8] Mr. S. Debnath, learned counsel appearing for the appellant-insurance company has stated that the tribunal below committed grave error of law and in defiance of the settled proposition of law as decided by the Apex Court as well as this Court and most illegally and in a perverse manner passed a punitive and exorbitant award against the insurance company which is not sustainable in the eye of law. Without any definite proof of income and documentary evidence determined the monthly income of the claimant-respondent to the extent of Rs.10,000/-pm.

[9] The tribunal below without applying his judicious mind most illegally and in a perverse manner without any definite proof of income and without any supporting evidence whimsically decided the monthly income of the claimant respondent to the extent of Rs.10,000/- pm which is liable to be set aside. The learned tribunal in flagrant disregard of law and failure of justice and in defiance of settled proposition of law in an arbitrary and perverse manner by his

own whims most illegally and beyond his jurisdiction accepted 40% functional disability, in contrary to the disability certificate issued by the District Disability Medical Board, West Tripura Agartala wherein, it has been mentioned that the claimant-respondent sustained low vision disability to his single eye to the extent of 30%.

[10] The learned tribunal committed a grave error of law while assessing and determining the loss of earning capacity of the claimant-respondent resulted from 30% partial disability of his one eye to the 40% is perverse and arbitrary and unsustainable in the eye of law and in this way vitiated the entire approach of the judgment and award ad is liable to be set aside. The learned tribunal ought to have considered that the disability certificate issued by the District Disability Board West Tripura recommended assessment after 5 years but, the Court below considering the contradicted statement of the doctor who adduced his evidence as PW-2 decided the functional disability to the extent of 40%.

[11] The appellant insurance company denied the assertions of the claimant regarding age, injury, lodging of criminal case with the Bishalgarh PS, nature and injury sustained by the claimant and submitted that the claimant have to prove all these facts. It has been further stated that the owner of the vehicle has to produce all documents of the vehicle including the Driving Licence of the driver and the valid Insurance Policy in original for the vehicle No. TR-01-L-1631. The appellant stated that that they are liable to pay any compensation to the claimant and the contention of the claimant is baseless having no ground at all and so the appeal may be allowed. However, their last stated that if this Tribunal fixes any liability against the Insurance Company, the rate of interest should be below 6%.

[12] On perusal of the documentary evidence, namely, Exhibit-1 to Exhibit 4 it is very clear that the said victim Sribastab Sinha had sustained injuries on 17.06.2015 due to vehicular accident caused by the driver of the vehicle bearing No. TR-01-L-1631(Mahindra Maxi) on Bishalgarh-Naba Saktiganj road for which Bishalgarh PS case No. 68 of 2015 under Sections-279/338 of IPC and Section-187 of MV Act was registered on the written ejahar filed by the brother of the claimant-respondent Sri Sibeswar Sinha vide Exhibit-1 and final report/charge sheet No. 90 of 2015 dated 27.08.2015 of Bishalgarh PS for offence under Sections-279/338 of IPC along with section 183/187 of MV Act against the driver namely Sasankar Shil alias Sankar alias Subhas Shil was filed vide Exhibit-2.

[13] From Exhibit-6, injury report of the victim issued from Bishalgarh S.D. Hospital , it appears that the claimant Sribastab Sinha was taken to that

hospital on 17.06.2015 with multiple trauma following RTA and 3 numbers of injuries on his person have been noted in this injury report. From Exhibit-5, another medical injury report issued from AGMC & GBP Hospital it appears that Sribastab Sinha was admitted in that hospital on 17.06.2015 at 8.34 p.m. in MS I Ward after referred from Bishalgarh SD Hospital and a lacerated wound on left front parietal area of scalp which was grievous in nature was sustained by Sribastab Sinha and he was referred to ILS Hospital on 18.06.2015 for further treatment.

[14] The Court has to make a judicious attempt to award damages, so as to compensate the claimant for the loss suffered by him. Such compensation is what is termed as just compensation. The compensation should not be assessed very conservatively, but on the other hand, compensation should not be assessed in so liberal a fashion to make it a bounty to the claimant. The Court while assessing the compensation should have regard to the degree of deprivation and the loss caused by such deprivation.

[15] During argument learned counsel for the claimant respondent urged that proper compensation be awarded to the claimant based on his monthly income as he was an electrician at the time of accident and that his family consists of his parents including the claimant-respondent. Broadly speaking, while fixing the amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculation in terms of money.

[16] From the Exhibit 6, it appears that just after the accident the claimant was attended to Bishalgarh Sub Divisional Hospital on 17.06.2015 and after some treatment there he was referred to AGMC for further management. From Exhibit 5, it appears that the claimant was admitted in AGMC & GBP Hospital on 17.06.2015 at 8.34 p.m. and he was referred to ILS Hospital, Agartala on 18.06.2015 for further treatment. Considering the gravity of the injury and for the purpose of better treatment his family members shifted him to Kolkata Flemming Hospital and he was admitted in the Flemming Hospital on 18.06.2015 and treated there till 02.07.2015 as an indoor patient and in course of treatment in that hospital a major operation was conducted. He also stated that even after discharge he was still continuing his treatment and plastic surgery was conducted on his face and head. For the purpose of treatment near about Rs. 4 lacs has already been spent.

[17] The claimant-respondent in his pleadings as well as oral evidence claimed that when the accident happened he was earning Rs.15,000/- per month by way of his occupation as an Electrician and that he is a Diploma from ITI. However, he has not produced any documentary evidence regarding his monthly earning. It is not in dispute that at the time of accident the claimant was about 25 years old (his date of birth was on 01.06.1989) as recorded in Exhibit-8 and also as per his Admit Card of his Madhymik Examination in 2007 which is found on record. So in absence of any documentary evidence regarding his monthly income, the tribunal has to make an assessment, mostly by way of guess work. Having regard to the age and educational qualification and the oral evidence of the claimant, this Court is of the opinion that the amount as assessed by the tribunal below is just and proper. In this regard, the principle as laid down in a case of ***Ramchandrapp v. Manager, Royal Sundaram Alliance Insurance Company Limited***, reported in (2011) 13 SCC 236, wherein, the Court held thus:

“13. In the instant case, it is not in dispute that the appellant was aged about 35 years and was working as a Coolie and was earning `4500/- per month at the time of accident. This claim is reduced by the Tribunal to a sum of `3000/- only on the assumption that wages of the labourer during the relevant period viz. in the year 2004, was `100/- per day. This assumption in our view has no basis. Before the Tribunal, though Insurance Company was served, it did not choose to appear before the Court nor did it repudiated the claim of the claimant. Therefore, there was no reason for the Tribunal to have reduced the claim of the claimant and determined the monthly earning a sum of `3000/- per month. Secondly, the appellant was working as a Coolie and therefore, we cannot expect him to produce any documentary evidence to substantiate his claim. In the absence of any other evidence contrary to the claim made by the claimant, in our view, in the facts of the present case, the Tribunal should have accepted the claim of the claimant. We hasten to add that in all cases and in all circumstances, the Tribunal need not accept the claim of the claimant in the absence of supporting material. It depends on the facts of each case. In a given case, if the claim made is so exorbitant or if the claim made is contrary to ground realities, the Tribunal may not accept the claim and may proceed to determine the possible income by resorting to some guess work, which may include the ground realities prevailing at the relevant point of time. In the present case, appellant was working as a Coolie and in and around the date of the accident, the wage of the labourer was between `100/- to 150/- per day or `4500/- per month. In our view, the claim was honest and bonafide and, therefore, there was no reason for the Tribunal to have reduced the monthly earning of the appellant from `4500/- to `3000/- per month. We, therefore, accept his statement that his monthly earning was `4500/-.”

[18] On consideration of all the facts and circumstances including the fact that the claimant is still capable of earning by way of doing any other suitable job/work even if he cannot effectively do the work of Electrician after the accident and also it might be that the claimant is in a position to undertake the work of Electrician but he may not be able to produce the amount of work which he could do before the accident.

[19] In the light of the above, this Court is of the view that the learned Court below has assessed the compensation in a reasonable and justifiable way. In view of above discussion and observation, the present appeal stands dismissed consequently, the award of compensation as assessed by the learned tribunal stands affirmed. The insurance company shall deposit the awarded amount within one month from the date of receipt of the copy of this order, if not already deposited and on such deposit; the claimant-respondent is at liberty to withdraw the same unconditionally. As a sequel, miscellaneous applications pending, if any, shall stand closed. Draw the decree accordingly and thereafter, send down the LCRs.

JUDGE

A.Ghash

ANJAN
GHOSH

Digitally signed
by ANJAN GHOSH
Date: 2023.07.25
12:57:32 +05'30'



सत्यमेव जयते