

**HIGH COURT OF TRIPURA
AGARTALA**

MAC.App 85 of 2022

Cholamandalam Ms General Insurance Co. Ltd.

---Appellant(s)

Versus

Miss Ankita Saha and Anr.

---Respondent(s)

For Appellant(s)	: Mr. Rajib Saha, Adv.
For Respondent(s)	: Mr. A. Sengupta, Adv.

HON'BLE MR. JUSTICE T. AMARNATH GOUD

Judgment & order (Oral)

13.07.2023

Heard Mr. Rajib Saha, learned counsel appearing for the appellant as well as Mr. A. Sengupta, learned counsel appearing for the respondents.

[2] This is an appeal under Section 173 of the Motor Vehicles Act, 1988 read with Section 168 of the Act, filed by the appellant, insurance company, challenging the judgment and award dated 15.06.2022 passed by the Learned Motor Accident Claims Tribunal, No.2, West Tripura, Agartala, in Case No.T.S.(MAC) 26 of 2017.

[3] Brief facts leading to this case is that on 02.07.2016 at about 1015 hrs. the claimant-respondent was returning home from school towards her house and when reached at Bishalgarh South Market bridge by walking along the left side of the road at that time one bus bearing registration No. TR01-7-1234 (herein-after called the offending vehicle) came with excessive speed in a very rash and negligent manner and dashed the claimant respondent as a result of which claimant respondent sustained grievous injuries to her right leg and other parts of her body. Immediately after the accident claimant respondent was brought to Bishalgarh Hospital from where she was shifted to AGMC & GBP Hospital where she took admission as an indoor patient from 02.07.2016 to 04.07.2016. As the condition of the claimant respondent was deteriorating so she was referred to Appollo Hospital, Chennai for better treatment and accordingly she was taken to Chennai on 04.07.2016 treated there w.e.f. 04.07.2016 to 31.08.2016. She was also operated there and plastic surgery was also done on the right leg of the claimant respondent and after completion of treatment claimant respondent returned to Agartala from Chennai on 15.12.2016. She was

further referred to CMC, Vellore on 16.04.2018. Due to such accident claimant respondent has become disabled to the extent of 50%. The mother of the claimant respondent has to spend a huge amount for her treatment. In this connection a specific case vide 2016 BLG 071 dated 02.07.2016 u/s 279/338 IPC was also registered. The claimant respondent quantified her claim to the tune of Rs. 18,63,742/-.

[4] The OP No.1, owner of the offending vehicle 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 said offending vehicle and it was duly insured with the OP No.2 (Cholamandalam MS GIC Ltd.). OP No.1, therefore, urged for fixing the liability of his insurer to pay the compensation, if any. The case of OP No.2 is also of total denial and thereby put the claimant respondent in strict proof thereof.

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

ISSUES

I) Whether Ms Ankita Saha, minor daughter of the claimant sustained bodily injury in a vehicular accident which alleged to have been occurred on 02.07.2016 at Bishalgarh bazar near the bridge, due to rash and negligent driving of bus bearing registration No. TR-07-1234 by its driver ?

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

[6] The tribunal below 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. 8,12,912/. It is a natural phenomena that when a person met with accident and thereby admitted to hospital the injured remains under treatment and his/her family members, if any, remains busy in connection thereto and as such it is not possible for them to preserve all the cash memos and other treatment related papers showing expenditure towards treatment. Having regard to such circumstances the learned tribunal found it appropriate to award a sum of Rs. 9,00,000/- towards cost of treatment.

[7] So, considering the above circumstances including the fact that the claimant respondent was admitted to AGMC & GBP hospital for about two days and subsequently at Appollo Hospital, Chennai for about 27 days, the learned tribunal found it appropriate to award a sum of Rs. 5,00,000/- towards pain and

sufferings. Claimant respondent incurred a sum of Rs. 1,55,430/- as transportation charge and Rs. 95,400/- for fooding and lodging. Hence, a sum of Rs. 2,60,000/- is awarded for transportation as well as fooding and lodging purposes. A sum of Rs. 5,000/- towards litigation cost and a sum of Rs.3,00,000/- is also found to be reasonable towards the cost of medical attendant. A further sum of Rs. 5,00,000/- is awarded towards future treatment.

[8] Evidence on record further reveals that the claimant respondent has suffered disability to the extent of 50% due to deformity RT lower limb and left thigh with gross wasting of muscle. The disability to the extent of 50% though cannot be taken to be disability to the extent of 100% but the nature of disability so suffered by the claimant respondent it can be said that she had lost her working capability. So, a sum of Rs. 10,00,000/- is awarded. A sum of Rs. 2,00,000/- is also awarded towards loss of marriage prospects.

[9] In view of the discussion the total compensation comes to Rs. 9,00,000/- + Rs. 5,00,000/- + Rs. 2,60,000/- + Rs. 5,000/- + Rs. 3,00,000/- + Rs. 5,00,000/- + Rs. 10,00,000/- + Rs. 2,00,000/- = Rs. 36,65,000/-.

[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 15.06.2022 in the following terms:-

Claimant respondent is entitled to get the award of Rs. 36,65,000/- (Rupees thirty six lacs sixty five thousand) only with 9% Simple interest per annum from the date of registration of claim i.e, w.e.f. 31.01.2017 till the date of realization thereof.

The OP No.2, Cholamandalam General Insurance Co. Ltd., insurer of the offending vehicle bearing registration No. TR-07-1234 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.

75% of the awarded amount including interest shall be invested by purchasing a fixed deposit certificate from any Nationalized bank at least for a period of five years and no loan or advance or payment shall be granted without prior permission of this Tribunal. The claimant respondent shall be allowed to draw monthly interest from the fixed deposit. Remaining 25% shall be released in favour of the claimant respondent by crediting the amount in her individual bank account. Needless to say the amount of award and interest so ordered to be paid shall be incurred only for the benefit of the claimant respondent.

[11] Being aggrieved with the Judgment and award dated 15.06.2022, passed by the Learned Motor Accident Claims Tribunal, the appellant-Insurance Company has filed this present appeal to set aside the impugned Judgment and Award dated 15.06.2022 passed in case No.T.S.(MAC) No.26 of 2017.

[12] Mr. Rajib Saha, learned counsel appearing for the appellant-Insurance Company has submitted before this court that compensation as awarded by the learned tribunal was way higher. He has categorically pointed out several headings (viz; treatment, transportation as well as fooding and lodging, medical attendant) under which compensation was awarded exorbitantly. As far as other headings are concerned under which the compensation is awarded to the claimant-respondents, counsel for the appellant has not disputed them.

[13] Mr. A. Sengupta, learned counsel appearing for the respondents submitted that the Judgment and Award as passed by the learned Tribunal is a reasoned one and needs no interference.

[14] On bare perusal of the impugned judgment dated 15.06.2022, this court is of the opinion that the award of compensation as fixed by the learned tribunal is way higher under the headings as projected by the counsel for the appellant. Therefore, this court is of the view that Rs.8,12,912/-, Rs.2,50,830/-, Rs. 1,00,000/- is reasonable under the headings of treatment, transportation as well as fooding and lodging and medical treatment respectively.

[15] Accordingly, the compensation of Rs.36,65,000/- as awarded by the learned tribunal comes down to Rs. 8,12,912/- +Rs. 5,00,000/- + Rs.2,50,830/- + Rs.5000/- + Rs.1,00,000/- + Rs.5,00,000/- + Rs. 10,00,000/- + Rs.2,00,000 = Rs.33,63,742/- (Rupees thirty three lacs sixty three thousand seven hundred and forty two) only. This amount shall be deposited with 7.5 simple interest per annum from the date of registration of claim. It is made absolutely clear that there shall be no alteration of award of compensation under the other headings.

[16] The amount to be deposited within one month from today, if not already deposited. On depositing of the same, the claimants are permitted to withdraw the same unconditionally. The differential amount of award, if deposited in excess, the insurance company is at liberty to withdraw the same.

[17] The insurance company is also permitted to withdraw, as per procedure, the statutory amount of Rs.25,000/- deposited at the time of appeal.

[18] 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