

**HIGH COURT OF TRIPURA
AGARTALA
MAC APP NO.88 OF 2022**

Sri Panku Miah Kazi
Vs.
Sri Sadananda Dey and ors.

HON'BLE THE CHIEF JUSTICE (ACTING)

Present:

For the Petitioner(s) : Mr. J. Ghosh, Advocate.
For the Respondent(s) : Mr. A.K. Deb, Advocate.
Ms. V. Poddar, Advocate.

29.03.2023

Order

This appeal has been filed before this Court under Section 173 of the Motor Vehicle Act, 1988, for enhancement of the awarded compensation of Rs.68,320/- passed on 04.10.2018 by learned Member, Motor Accident Claims Tribunal No.1, Gomati Judicial District, Udaipur in T.S.(MAC)51/2016, to the extent of Rs.3,00,000/- or more.

The case of the appellant in short is that on 01.05.2015 at about 3 p.m. the petitioner Panku Miah Kazi was returning to Khilpara by riding his bicycle. On the way when he reached Rajdharnagar near one brick field, a vehicle bearing no. TR-03-D-1917 (Bolero Maxi Truck) coming from Rajdharnagar at high speed dashed the petitioner and caused an accident. As a result, the petitioner sustained grievous injuries on his person and immediately he was taken to the Gomati District Hospital where he was treated as an indoor patient w.e.f.

01.05.2014 to 14.05.2014. Due to the accident, the appellant suffered fracture in his right leg, trauma in head, lacerated injury over the right foot, and other multiple injuries on his person. During treatment in the said hospital, he underwent an operation on his right leg. After discharge from the hospital, the appellant continued his treatment by attending OPD of the hospital and also by attending private chamber of doctors. It is alleged that the accident took place due to rash and negligent driving of the vehicle bearing no. TR-03-D-1917 (Bolero Maxi Truck) by its driver. At the time of the accident, the petitioner was aged about 26 years and his earnings was Rs.9,000/- from doing work as day labourer. For the purpose of treatment, he already has incurred a sum of Rs.1,00,000/-. In total finally, he claimed compensation to the tune of Rs.3,00,000/-. Concerning the accident, Kakraban PS case no. 38 of 2015 was registered under Sections 279/338 of IPC

The Opposite Party Nos.1, 2, and 3 therein being previous owner, driver, and present owner of vehicle no. TR-03-D-1917 (Bolero Maxi Truck) in their joint written statement formally denied the age, occupation, monthly income of the petitioner, the accident, the injuries of the petitioner and the treatment and expenditure therefore met by him. They, however, asserted that at the time of accident, the vehicle was driven by an experienced driver having his a valid driving licence and that the vehicle was duly insured with opposite party No.4 National Insurance Co. Ltd.

Opposite party No.4 in their written statement also denied the age, occupation, accident, and injuries of the petitioner as alleged by him and urged for necessary proof of the insurance policy and production of related vehicular documents

Based on the pleadings of the parties, the learned Tribunal framed three issues of determination which are as follows:-

1) Did the petitioner Panku Miah Kazi sustain injuries in a road traffic accident occurred on 01.05.2015 at about 3 p.m. at Rajdharnagar near brick field of Samir Das on Rajdharnagar-Khilpara Road under Kakraban P.S. out of use of the vehicles bearing No.TR-03-D-1917 (Bolero Maxi Truck) due to rash and negligent driving of its driver ?

2) Is the petitioner entitled to get any compensation, if so, to what amount and who is/are liable to pay the same?

3) To what other relief/reliefs are the parties entitled?

To prove his case, the appellant-petitioner examined himself as P.W.-1 and submitted certified copy of FIR, Ejahar, Seizure List, discharge certificate, Injury report, cash memos and charge sheet which were marked as exhibits and another witness also gave evidence in support of his claim.

Learned Tribunal after hearing both the parties awarded compensation of Rs.68,320/- in the following terms:-

In the result, the claim is allowed. It is ordered that, the petitioner, Sri Panku Miah Kazi is entitled to compensation of Rs. Rs.68,320/- (Rupees Sixty-eight Thousand Three Hundred Twenty only) in total. The O.P. No.1, Sri Sadananda Dey and OP No.3 Sri Kamal Das, previous and present owner of the vehicle bearing no.TR-03-D- 1917 (Bolero Maxi Truck) are directed to equally make the payment of compensation within two months from today along with interest @ 6% per annum thereupon from the date of filing of claim petition i.e. from 12.09.2016 till payment/realization of the same.

Being aggrieved and dissatisfied with the impugned judgment and award passed on 04.10.2018, by the learned Member, Motor Accident Claims Tribunal, Gomati Judicial District, Udaipur in T.S.(MAC)51 of 2016, the appellant has filed this present appeal praying for the following reliefs:-

- below;
- " 1) Admit the appeal.
 - 2) Call for the records from the Ld. Tribunal
 - 3) issue notice upon the respondents and
 - 4) after hearing the parties would further be pleased enough to modify the impugned judgment and award dated 04.10.2018 by way of enhancing the compensation of Rs.68,320/- awarded by the Ld. Motor Accident Claims Tribunal, Gomati Judicial District, Udaipur in case No.T.S.(MAC)51 of 2016 to the extent prayed by the appellant before the Ld. Tribunal otherwise the appellant would be highly prejudiced."

Heard Mr. J. Ghosh, learned counsel, and Mr. A. Acharjee, learned counsel appearing for the appellant as well as Mr. A.K. Deb, learned counsel appearing on behalf of respondent No.4, and Ms. V. Poddar, learned counsel appearing for respondents No.2 & 3 and perused the evidence on record.

In the impugned award dated 04.10.2018. The learned Tribunal while considering the case of the appellant-petitioner has discussed all the issues and awarded Rs. 68,320/- towards his claim. The learned Tribunal has awarded Rs.4,200/- towards the cost of attendant. The petitioner submitted cash memos of Rs.28,115/- which he incurred during treatment towards the costs of medicines etc., and the learned Tribunal has awarded Rs.28,115/ towards the same. A lump sum amount of

Rs.6,000/- has been awarded towards the conveyance charge. An amount of Rs.7,500/- has been awarded towards pain and suffering and considering the nature of injuries, Rs.7,500/- for 3 months i.e. Rs.22,500/- has been awarded towards loss of income.

So after considering the impugned award dated 04.10.2018, this Court is of the view that the award as passed by the learned Tribunal is based on the legal parameter and material findings. This Court finds no infirmities in the impugned award dated 04.10.2018 and as such the same is upheld.

Accordingly, this present appeal stands dismissed. Stay if any stands vacated. Pending application(s) if any also stand closed.

CHIEF JUSTICE (ACTING)

suhanjit

सत्यमेव जयते