

**HIGH COURT OF TRIPURA
AGARTALA**

MAC App. No.100 of 2023

Sri Mintu Saha

S/O Late Manindra Chandra Saha,
Resident of Village- Subash Palli,
Badharghat, Agartala, P.S., A.D. Nagar,
District- West Tripura, Pin-799003

.....Appellant

Versus

1. Sri Saraswata Datta,

S/O. Sri Chiranjib Datta,
Resident of Malancha Nibash,
Government Quarter No. Type-IV/1, Block No.10, Kunjaban,
P.S. New Capital Complex, District West Tripura.
(Driver of Scooty bearing No. TR-01-AB-9561).
Present address- Kunjaban Colony (Eastern Side Lane of
Circuit House, Old Matri Mangal area),
P.O.-Abhoynagar, P.S.- New Capital Complex,
Dist.- West Tripura, Pin- 799005.

2. Smti. Samita Paul Datta,

W/O. Sri Chiranjib Datta,
Resident of Malancha Nibash,
Government Quarter No. Type-IV/1, Block No.10, Kunjaban,
P.S. New Capital Complex, District West Tripura.
(Owner of Scooty bearing No.TR-01-AB-9561).
Present address- Kunjaban Colony (Eastern Side Lane of
Circuit House, Old Matri Mangal area),
P.O.-Abhoynagar, P.S.- New Capital Complex,
Dist.-West Tripura, Pin- 799005.

3. The Divisional Manager,

National Insurance Company Ltd.,
Thana Road, Dharmanagar,
District North Tripura, PIN-799250,
(Insurer of Scooty bearing No.TR-01-AB-9561).

.....Respondents

a/w

MAC App. No.16 of 2024

National Insurance Co. Ltd.,

Represented by the Divisional Manager,
Office at A.K. Road, P.S. West Agartala,
District- West Tripura
(Insurer of Scooty bearing No.TR-01-AB-9561).

..... Opposite Party No.3 Appellant

Versus

1. Sri. Mintu Saha,

S/O. Late Manindra Chandra Saha,
Resident of village Subash Palli, Badharghat, Agartala,
P.S. A.D. Nagar, District- West Tripura, Pin-799003.

.....Claimant Respondent

2. Sri Saraswata Datta,

S/O. Sri Chiranjib Datta,
Resident of Malancha Nibash,
Govt. Quarter No. Type-IV/1, Block No.10, Kunjaban,
P.S. New Capital Complex, District- West Tripura,
(Driver of Scooty bearing No.TR-01-AB-9561).

3. Smti. Samita Paul Datta,

W/O. Sri Chiranjib Datta,
Resident of Malancha Nibash,
Govt. Quarter No. Type-IV/1, Block No.10, Kunjaban,
P.S. New Capital Complex, District- West Tripura.
(Owner of Scooty bearing No.TR-01-AB-9561).

.....Opposite Party Respondents

MAC App. No.100 of 2023

For Appellant(s) : Mr. N. Chowdhury, Adv,
Mr. S. Saha, Adv.
For Respondent(s) : Ms. R. Purkayastha, Adv,
Ms. V. Poddar, Adv.

In MAC App. No.16 of 2024

For Appellant(s) : Ms. R. Purkayastha, Adv.
For Respondent(s) : Mr. N. Chowdhury, Adv,
Mr. S. Saha, Adv,
Ms. V. Poddar, Adv.

Date of Hearing : 22.05.2024
Date of delivery of
Judgment and Order : 20.06.2024
Whether fit for
Reporting : NO

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This appeal under Section 173 of MV Act is preferred by the appellant-petitioner challenging the judgment and award dated 11.08.2023 passed by Learned

Member, Motor Accident Claims Tribunal No.1, West Tripura, Agartala in connection with case No.T.S.(MAC) 73 of 2019. Another appeal under Section 173 of M.V. Act is also preferred by the O.P. No.3 i.e. the National Insurance Company Limited challenging the judgment dated 11.08.2023 passed by the same Tribunal in the said case. The appellant-petitioner in the appeal No.MAC App.No.100 of 2023 has prayed for enhancement of the award, on the other hand, the appellant-petitioner i.e. the Insurance Company has preferred this appeal to quash/set aside the impugned judgment/award in the aforesaid case. Since the parties of both the appeals are same and identical and subject matter is arising out of the same judgment, so, by this common judgment, the matter is taken up for hearing and decision.

02. Heard Learned Counsel, Mr. N. Chowdhury along with Learned Counsel, Mr. S. Saha for the claimant-appellants and also heard Learned Counsel, Ms. R. Purkayastha along with Learned Counsel Ms. V. Poddar for the appellant-Insurance Company in the same connected case.

03. In course of hearing, Learned Counsel for the appellant, Mr. N. Chowdhury fairly submitted that the appellants have challenged the award on certain grounds. According to him, the Learned Tribunal below for the purpose of attendant charges awarded Rs.53,000/- i.e. Rs.1,000/- per day for two attendants for 53 days but the claimant-petitioner was actually undergone treatment for a period of

25 months which was not considered by the Learned Tribunal below. In respect of conveyance charges, according to Learned Counsel, only Rs.20,000/- was awarded but which according to Learned Counsel, it should be not less than 50,000/-. In respect of pain and sufferings, only Rs.50,000/- was awarded by the Tribunal which was also too less and needs to be enhanced. In respect of disability, Learned Counsel submitted that there was amputation on the body of the victim-petitioner but Learned Tribunal below wrongly calculated the amount of compensation in respect of disability. So, Learned Counsel urged for enhancement of the award granted by the Learned Tribunal below.

04. On the other hand, Learned Counsel for the appellant-Insurance Company, Ms. R. Purkayastha along with Learned Counsel, Ms. V. Poddar submitted that the award granted by the Learned below was excessive because the claimant-petitioner could not prove the disability certificate in accordance with law. There was no incident of road traffic accident. Even the doctor was also silent in respect of sustaining injury by the victim through road traffic accident. So, according to Learned Counsels, the findings of the Learned Tribunal below suffers from infirmities and as such prayed for allowing the appeal and to set aside the judgment or in the alternative submitted for reduction of compensation awarded.

05. Now for the sake of convenience, I would like to refer herein below the subject matter of the claim-petition filed by the claimant-petitioner before the Tribunal under Section 166 of M.V. Act. The claimant-petitioner submitted an application under Section 166 of M.V. Act before the Learned Tribunal alleging inter alia that on 28.03.2018 at about 7.00 to 7.30 p.m., when he was crossing the road from western side towards eastern side auto stand after shopping from Lake Chowmuhani Market that time a scooty bearing registration No.TR-01-AB-9561 came from Radhanagar Stand towards North Gate with abnormal speed in rash and negligent manner and dashed the appellant for which he sustained injuries and both the legs were fractured and he became senseless. Immediately, after the accident, he was rescued by the staff of Fire Brigade and shifted to AGMC and GBP hospital, Agartala wherein he regained his sense after three days and was under treatment upto 06.04.2018. During that period, an operation was done on his legs. Again in the month of January 2019, he was under treatment for about 40 days for the said injuries. Therefore, he continued his treatment as an outdoor patient of the said hospital as well as under private doctors. But he was not cured and ultimately his right leg became shorter than his left leg by 2 to 2.5 inches. The accident occurred due to rash and negligent driving by the rider of the scooty bearing registration No.TR-01-AB-9561. On this issue, East Agartala

P.S. case No.61 of 2018 under Sections 279/338 of IPC was registered.

It was further submitted that the appellant was an auto driver by profession and his monthly income was Rs.20,000/- to 25,000/- per month and was 55 years old at the time of accident. Hence, he claimed compensation amounting to Rs.38,00,000/-. The O.P. No.1, the driver of the offending scooty, in his objection stated that the O.P. No.2 is the owner of that scooty bearing No.TR-01-AB-9561 at the time alleged accident had valid documents. In his written objection he stated that he is ignorant regarding age, nature of injury, profession and monthly income of the injured and as such he denied the same. In his written objection he further stated that the accident occurred not for any rash and negligent driving of the offending scooty, but the accident occurred due to negligence on the part of the claimant-petitioner.

It was further submitted that at the time of accident, the scooty was duly insured with the National Insurance Company Limited covering the period with effect from 16.05.2017 to 15.05.2018 and as such if any compensation is to be awarded that should be paid by the insurer of the scooty.

06. The O.P. No.2, being the owner of the scooty, appeared and submitted that she was the owner of the scooty bearing No.TR-01-AB-9561 at the time of alleged

occurrence. She had got all the valid documents like registration, insurance policy, driving licence etc. In her written objection she stated that she is also ignorant about the accident, age, and profession etc. of the injured. She further admitted that at the time of alleged occurrence, the scooty was being driven by O.P. No.1 and also took the plea that the accident occurred not for rash and negligent driving of the offending scooty bearing registration No.TR-01-AB-9561. It was further submitted that at the time of alleged accident, the scooty was duly insured with the National Insurance Company Limited and if any compensation is awarded, that should be paid by the insurer.

07. The O.P. No.3, the National Insurance Company Limited by filing written statement prayed for directing upon the owner as well as the rider of the offending scooty to produce valid driving licence, permit, insurance policy and other vehicular documents. It was further submitted that the claim-petition is subjected to strict proof by the petitioner. They also denied the involvement of the scooty with the alleged accident and it was further submitted that the claim of the appellant was exorbitant and excessive.

08. Upon the pleadings of the parties, following issues were framed:

(1) Did the petitioner Shri Mintu Saha sustain injuries in a road traffic accident occurred on 28.03.2018 at about 7 p.m. in front of Auto Parking area near Lake Chowmuhani Bazar on the way to Northgate from Radhanagar Bridge out of use of vehicle bearing registration no. TR01-AB-9561 (Scooty) due to rash and

negligent driving of the driver of said Scooty ?

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

(3) To what other reliefs the parties are entitled ?

09. To substantiate the issues, both the parties have adduced oral/documentary evidence on record:

Witnesses of Claimant-Appellant:-

PW1 – Shri Mintu Saha

PW2- Dr. Dipti Bikash Roy

Exhibits of Claimant-appellant:-

Ext.1: FIR u/s 154 of Cr.P.C.

Ext.2: Ejahar along with English translation.

Ext.3/1, 3/2: Injury report

Ext.4: Final form/report

Ext.5/1, 5/2: Discharge summary

Ext.6: Disability certificate

Ext.7: Report of the loss of documents

Ext.8: Extract of driving licence

Ext.9: Photograph of patient in bed-ridden state

Ext.10: Aadhaar card

Ext.11/1 to 11/80: Invoice (Cash/credit), GST invoice, Cash memos

Ext.12/1 to 12/23: Ultrasonography requisition form, Prescriptions, Patient's record/ summary, Patient case sheet.

O.P. Witness:-

O.P.W 1 – Smti Samita Paul Datta

Exhibits of OPW:-

Ext.A: Driving Licence

Ext.B: Motor Insurance cum Policy Schedule

Ext.C: Certificate of registration

10. And finally, after hearing arguments of both the sides, Learned Tribunal below allowed the claim-petition by the judgment and award dated 11.08.2023. The operative portion of the order/award:

Order/Award

It is, therefore, held that the claimant petitioner Sri Mintu Saha is entitled to get compensation of Rs.10,39,100/- (Rupees Ten Lakh Thirtynine Thousand One Hundred) only with interest @ 7% per annum from 29.03.2019 i.e. the date of filing of the case till the date of actual payment. The Opposite Party No.3, National Insurance Company Ltd., will pay the amount of compensation with interest within 30 days from today in terms of Section 168(3) of M.V. Act, 1988. Out of the awarded amount of compensation inclusive of 14 interest, 50% shall be kept in a fixed

deposit scheme in his name in any Nationalized Bank of his locality for a period of five years and the rest 50% shall be paid to him through his Bank Account. However, the claimant petitioner shall be entitled to receive monthly interest therefrom for his day to day expenses. No loan or premature withdrawal shall be permitted from the fixed deposit account without prior permission of this Tribunal. Supply copy of this award free of cost to the parties. The claim petition stands disposed of on contest. Enter the result in the relevant Register as well as in the CIS.

11. Challenging the award, the claimant-appellants have preferred this appeal and also the National Insurance Company Limited has challenged the appeal. I have heard detailed arguments of both the sides and gone through the record of the Learned Court below. For the sake of convenience, I think it would be apposite herein below to refer the evidence on record of the parties:

12. The claimant-appellant as PW1 has submitted his examination-in-chief in affidavit. During examination-in-chief before the Court, he relied upon the exhibited documents as already stated.

During cross-examination by O.P. Nos.1 and 2 save and except denial nothing came out relevant.

During cross-examination by Insurance Company, he stated that he did not submit any document showing that he was driving auto rickshaw before the accident. He further submitted that he did not submit documents showing that his right leg became shorter than his left leg by 2 to 2.5 inches. Nothing more came out relevant from his cross-examination.

13. PW2 Dr.Dipti Bikash Roy deposed that on 05.02.2020 he was one of the members of the District

Disability Board, West Tripura, Agartala as a locomotor specialist. On that day, he examined one Shri Mintu Saha, S/O. Shri Manindra Saha of Subhash Palli, Arundhutinagar in the District Disability Board, West Tripura, Agartala and assessed his disability upto 60%. The diagnosis in this case was difficulty to walk due to osteoarthritis both knee joint. Accordingly, one disability certificate was issued bearing No.TR0110619630002851 for a period of five years. The patient was directed to report before the District Disability Board, West Tripura, Agartala after 05.02.2020 for reassessment of the percentage of disability. Osteoarthritis in knee joint may occur if a person sustains injury out of a road traffic accident. In the Disability Board, he had produced all the relevant papers regarding his age, address, etc. and identified the disability certificate marked Exhibit 6.

He was declined to cross-examine by OP Nos.1 & 2.

During cross-examination by O.P. No.3, he deposed that Osteoarthritis is also related to the age of the patient and a human being aged 56 years may suffer from osteoarthritis due to his old age. Shri Mintu Saha did not produce any medical papers relating to his injuries out of any road traffic accident at the time of examination in the District Disability Board.

14. OPW1, Smti. Samita Paul Datta filed her examination-in-chief in affidavit and relied upon the exhibited documents marked Exhibit A, B and C.

During cross-examination, she stated that the accident was occurred on 28.03.2018 and her scooty was seized by police in connection with the alleged road traffic accident. She made prayer to the Officer-in-charge of East Agartala Police Station in writing to release her scooty on bail.

During cross-examination by O.P. No.3, she stated that O.P. No.1, Shri Sarswata Datta is her son and she heard the entire incident from her son. Further, stated that the accident was occurred when the victim suddenly made attempt to cross the main road without observing the traffic from both the sides on the road.

These are the synopsis of the evidence on record.

15. From the evidence on record, it appears that there is no dispute on record in respect of accident on the alleged date and time and also the fact of sustaining injury by the appellant-claimant. Because from the relevant medical papers, prosecution papers, the Tribunal came to the observation that the victim sustained injury due to road traffic accident on that day and also due to the dashing by a scooty to him. In course of hearing of argument, Learned Counsel for the appellant, Mr. N. Chowdhury only highlighted 2 to 3 points in respect of determination of amount of compensation by the Tribunal. According to him, Learned Tribunal below awarded Rs.50,000/- as attendant cost for the two attendants at the rate of Rs.1,000/- per day i.e. Rs.500/- per head, which in my considered view, Learned

Tribunal below could not properly appreciate in view of the fact that the cost of skill/technical attendants cannot be equated with other job of this nature.

From the evidence on record, it appears that due to accident the appellant had to remain in the house for a period of ten months and for that he had to engage two attendants per day. Although the Tribunal below awarded 53,000/- for 53 days i.e. Rs.1,000/- per day, so, in my considered view, considering the period of confinement at residence, the appellant should get attendant charges for a period of ten months i.e. 300 days at the rate of 1,500/- per day for two attendants at the rate of Rs.750 per head per day. Thus, the amount comes to Rs.4,50,000/-

16. In respect of conveyance charges, it appears that Learned Tribunal below awarded Rs.20,000/- which in my considered view also appears to be too meager on the fact that the victim-complainant had to attend hospital on so many occasions. So, in this regard, in my considered view Rs.50,000/- would be the appropriate amount. Regarding purchase of medicines, Learned Tribunal has awarded Rs.38,089/-. There is no dispute on record in this regard. Learned Tribunal below further awarded a sum of Rs.1,80,000/- for loss of income for ten months. There is no dispute in this regard. Considering the nature of injury, Learned Tribunal below also awarded a sum of Rs.50,000/- towards pain and sufferings, which in my considered view, it

should be Rs.2,00,000/-. Thus, towards this head Rs.2,00,000/- is awarded in place of Rs.50,000/-. Learned Tribunal below further awarded Rs.30,000/- towards cost of future treatment and Rs.20,000/- as his loss of amenities in life. Nothing was submitted in this regard. Towards future loss of income, the Learned Tribunal below determined the monthly income of the claimant-petitioner Rs.18,000/- and the Learned Tribunal also assessed his disability upto 60% based on the report of Medical Officer and thus, assessed future loss of income to Rs.6,48,000/- for temporary disability (60% of Rs.18,000/- = Rs.10,800 X 12 X 5) and so, I do not find any infirmity to that.

17. Thus, after calculation the total compensation would come to Rs.16,16,089/- (Rs.4,50,000/- + Rs.50,000/- + Rs.38,089/- + Rs.1,80,000/- + Rs.2,00,000/- + Rs.30,000/- + Rs.20,000/- + Rs.6,48,000/-). Since the Tribunal below assessed the functional disability of 60% on the report of the Locomotor specialist, so, I do not find any scope to interfere with that finding regarding future loss of income for the purpose of temporary disability for 5 years amounting to Rs.6,48,000/- as already awarded by the Tribunal. So, after hearing both the sides, it appears to me that there is no merit in the appeal filed by the appellant-Insurance Company but considering the facts and circumstances of the case and in view of the principle laid down by the Hon'ble Supreme Court of India in **Raj Kumar**

v. Ajay Kumar & Another, reported in (2011) 1 SCC 343, the appellant-claimant-petitioner is entitled to get some enhanced amount of Rs. Rs.16,16,089/-.

18. In the result, the appeal filed by the appellant-claimant-petitioner is hereby partly allowed. The claimant-appellant is entitled to get Rs.16,16,089/- with 7% of interest from 30.03.2019 to till realization of the payment. The O.P. National Insurance Company Limited shall deposit the amount to the Learned Tribunal below within a period of six weeks from date of passing of this judgment and at the same time, considering the materials on record, I also find no scope to interfere with the judgment delivered by the Learned MAC Tribunal in the aforementioned case on the appeal of National Insurance Company Limited and accordingly, the appeal filed by the appellant-Insurance Company stands dismissed being devoid of merit.

Send down the LCR along with a copy of this judgment/order.

Pending application(s), if any, also stands disposed of.

JUDGE

MOUMITA DATTA
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DATTA
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Purnita