

**HIGH COURT OF TRIPURA
AGARTALA**

MAC APP No.12 of 2023

Sri Debasish Roga

Son of Sri Niranjan Roaga,
Resident of Battali, Dataram,
P.S. R.K. Pur, Udaipur,
District: Gomati Tripura

-----Appellant (s)

Versus

1. Sri Parimal Dey,

Son of Chinta Haran Dey,
Resident of Rajarbag,
P.O. & P.S. R.K. Pur, Udaipur,
Gomati Tripura,
(Owner of TR-01-B-1671, Truck)

2. Mukbal Hossain,

Son of late Abdul Barek,
Resident of Muslim Para, Rajarbag,
P.S. R.K. Pur, Gomati Tripura,
(Driver of TR-01-B-1671, Truck)

3. The Branch Manager,

United India Insurance Company Ltd.,
Udaipur Branch, P.O. & P.S. R.K. Pur,
District: Gomati Tripura
(Insurer of TR-01-B-1671, Truck)

4. Uttam Kr. Das,

Son of Sri Niranjan Das,
Resident of Dataram, P.O. A.R. Para,
P.S. R.K. Pur, Udaipur, District: Gomati Tripura
(Owner of TR-03-D-5954, Motor Cycle)

5. Sri Tapas Roy,

Son of Late Babul Roy,
Resident of Dataram, P.O. A.R. Para,
P.S. R.K. Pur, Udaipur, District: Gomati Tripura
(Rider of TR-03-D-5954, Motor Cycle)

6. The Branch Manager,

National Insurance Company Ltd.,
Udaipur Branch, P.O. & P.S. R.K. Pur,
District: Gomati Tripura
(Insurer of TR-03-D-5954, Motor Cycle)

----- Respondents (s)

For Appellant(s)	:	Mr. Kundan Pandey, Adv.
For Respondent(s)	:	Mr. S. D. Choudhury, Adv. Mr. Subham Majumder, Adv.
Date of Hearing	:	16.05.2024
Date of delivery of Judgment and Order	:	28.05.2024
Whether fit for Reporting	:	YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This appeal is preferred by the appellant claimant-petitioner under Section 173 of MV Act challenging the judgment and award passed by Learned Motor Accident Claims Tribunal, Court No.1, Gomati Judicial District, Udaipur in TS(MAC)71 of 2018 for the purpose of enhancement of compensation and award.

02. Heard Mr. K. Pandey, Learned counsel representing the appellant and also heard Mr. S. Datta Choudhury, Learned counsel appearing for the respondent No.3 and Mr. Subham Majumder, Learned counsel appearing for the respondent No.1.

03. Before coming to the conclusion of the case let us project the subject matter of the claim-petition filed by the appellant claimant-petitioner before the Learned Tribunal. The appellant claimant-petitioner under Section 166 of MV Act preferred the claim petition before the Learned MAC Tribunal seeking compensation for the purpose of injuries sustained by him in a road traffic

accident involving the vehicles bearing registration No.TR-01-B-1671 (Truck) and TR-03-D-5954 (Motor Cycle) which took place on 28.01.2016 in front of Chandrapur Rice Godown on Agartala-Sabroom National Highway under R.K. Pur PS.

04. The gist of the claim petition filed by the appellant claimant-petitioner is that on 28.01.2016 at around 8/8.30 a.m. when the appellant was proceeding towards Udaipur from Dataram by riding a bike bearing No.TR-03-5954 which was being ridden by one Tapas Roy. On the way when they reached in front of Chandrapur Rice Godown at Agartala-Sabroom National Highway that time a truck bearing No.TR-01-B-1671 came from the opposite direction and dashed against their bike for which the accident occurred and resulting which both the appellant and rider of the bike received grievous injury on their persons. Soon after the accident the appellant was taken to District Hospital, Tepania wherefrom he was referred to AGMC & GBP Hospital, Agartala and again he was further referred to Christian Medical College, Vellore for better treatment. Due to accident the appellant sustained proximal tibia fracture. In the department of Orthopedics Unit No.III at CMC Vellore he was treated as an indoor patient w.e.f. 30.08.2017 to 23.11.2017. Thereafter he also took treatment in the said hospital from 26.01.2018 to 30.01.2018. It was further alleged that the accident took

place due to rash and negligent driving of the vehicle bearing No.TR-01-B-1671 (Truck) by its driver. According to the appellant on this matter a police case was registered vide No.25 of 2017 under Sections 279/338 of IPC and Sections 177/184 of M.V. Act on the basis of ejahar lodged by the father of the appellant. It was further submitted that at the time of accident the appellant was a man of 25 years and was an employee of a tailoring shop and he was earning Rs.12,000/-. Due to damage in his right leg in the accident he became disabled and presently cannot run his profession. A huge debt had already been incurred towards cost of treatment and further a good amount also be required towards the cost of future treatment. Finally he claims compensation for an amount of Rs.66,40,000/-.

05. On receipt of the notice, the OP Nos. 1 and 2 being the owner and driver of the vehicle bearing No.TR-01-B-1671 appeared and contested the case by filing joint written statement denying the accident, injuries, expenditure incurred towards the treatment, age and occupation of the appellant etc. However, it was asserted that at the time of accident the offending truck was driven by the driver having valid driving licence and the truck was also duly insured with United India Insurance Company Limited. The OP No.3 being the insurer of the truck vehicle appeared and contested the case by filing written statement denying the assertions of the appellant claimant-petitioner

and it was further submitted that the claim-petition was subjected to strict proof. It was also further submitted that there was head on collision between the motor bike and the truck. So there was contributory negligence in the accident on the part of the rider of the motor cycle at the relevant time of accident. It was also stated that in absence of the complete policy particulars and fulfillment of the terms and conditions of the policy the respondent insurance company was not liable for making any payment.

06. OP No.4, the owner of the vehicle No.TR-03-D-5954 (Motor Cycle) appeared and contested the case by filing written statement denying the averments made by the petitioner in the claim petition. The owner also denied the accident, injuries, age etc. It was further submitted that on the relevant date and time of the accident his motor cycle was duly insured with OP No.6 covering the period of accident. As such, compensation if any, is awarded that should be awarded by the insurance company. The OP No.5, rider of the motor cycle also appeared through his engaged counsel but ultimately did not contest the case by filing written statement. So the case proceeded ex-parte against the rider of the motor cycle bearing No.TR-03-D-5954.

07. The OP No.6 also after receipt of notice appeared and contested the case by filing written statement and in the written statement they denied the assertions of the

appellant claimant-petitioner and submitted that the claim-petition was subjected to strict proof.

08. Upon the pleadings of the parties following issues were framed by the Learned Tribunal:

1) Whether the case is maintainable in its present form.

2) Whether the injured Debasish Roga of Battali, Dataram, P/S R.K. Pur, sustained injury on his person in a road traffic accident occurred on 28.01.2016 at about 8 to 8-30 p.m. in front of Chandrapur Rice Godown on Agartala-Sabroom road involving the vehicles bearing Nos.TR-01-B-1671 (Truck) and TR-03-D-5954 (Motor Cycle) due to rash and negligent driving of the vehicles by the drivers.

3) Whether the petitioner is entitled to compensation and if so, to what amount and who is liable to pay the same.

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

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

Witnesses of the claimant-petitioner:

PW-1: Debasish Roga

PW-2: Niranjana Roga

PW-3: Samir Das

Exhibits of the claimant-petitioner:

- (i) Certified copy of FIR No.25/2017 marked as Exbt.1,
- (ii) Certified copy of ejahar marked as Exbt.2,
- (iii) Certified copy of seizure list (2 sheets) marked as Exbt.3 series,
- (iv) Certified copy of injury report Exbt.5,
- (v) Discharge certificate of Tepania District hospital
- (vi) Discharge certificate of of AGMC & GBP hospital, Agartala marked as Exbt.5,

- (vii) Discharge certificate of Ambedkar hospital, Hapania marked as Exbt.6,
- (viii) Discharge certificate of Christian Medical College, Vellore (2 sheets) marked as Exbt.7,
- (ix) Prescriptions (65 sheets) marked as Ext.8 series,
- (x) Cash memo (112 nos.) marked as Exbt.9 series,
- (xi) Original disablement certificate marked as Exb.10,
- (xii) Income certificate marked as Ext.11,
- (xiii) Air tickets (8 nos.) marked as Exbt.12,
- (xiv) Boarding passes (21 nos.) marked as Exbt.13,
- (xv) Lodging and fooding bills (8 nos.) marked as Ext.14,
- (xvi) Train tickets (3 nos.) marked as Ext.15,
- (xvii) Charge sheet (2 sheets) marked as Exbt.16,
- (xviii) Blood and component request marked as Ext.17,
- (xix) Photo-copy of Aadhar Card and Voter Identity Card.

Witnesses of OP No.4:

OPW-1: Sri Uttam Kumar Das

Exhibits of the OPWs:

- 1) Exbt. D1: Certificate of Registration of TR-03-D-5954
- 2) Exbt. D2: Text token of the above vehicle
- 3) Exbt D3: The insurance Policy No.203001/31/15/6200005511

10. On perusal of the evidence on record and also after hearing arguments of the contesting parties Ld. Tribunal allowed the claim petition by judgment dated

30.03.2022. The operative portion of the judgment runs as follows:

"In view of the above findings it is ordered that the petitioner, Sri Debasish Roga is entitled to compensation of Rs.7,16,000/- (Rupees Seven lac sixteen thousand) only in total. The O.P. No.3, United India Insurance Company Limited, insurer of vehicle No.TR-01-B-1671 (Truck) is directed to make the payment of compensation within two months from today along with interest @7.5% per annum thereupon from the date of filing of claim petition i.e. from 12.12.2018 till payment/realization of the same.

The case is disposed of on contest.

Enter the result in the relevant register.

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

11. Challenging that judgment the appellant has preferred this appeal before this High Court. At the time of hearing of appeal Learned counsel Mr. K. Pandey appearing for the appellant only submitted that the Tribunal below assessed the disability of the victim appellant for a period of five years only and accordingly assessed the compensation applying multiplier of 5 on the basis of disability certificate. But actually it should be 18 as because at the time of accident he was 25 years old. So he urged for allowing this appeal by setting aside the judgment of the Learned Tribunal and also prayed for enhancement of the quantum of compensation awarded by the Learned Tribunal in respect of the future loss of income. Regarding other components no further arguments were raised by Learned counsel for the appellant.

12. On the other hand, Mr. S. Datta Choudhury, Learned counsel appearing on behalf of the insurance company submitted that considering the material evidence

on record both the oral/documentary Learned Tribunal below rightly determined the amount of compensation to the appellant. Learned counsel further submitted that the claimant-petitioner admitted that he was a Tailor by profession but his father when turned up the witness box he specifically admitted that his son i.e. the appellant was a student. So if the appellant claimant-petitioner was a student then question of earning any income from any source could not be accepted. But the Learned Tribunal below inspite of that determined the monthly income of the appellant as Rs.9,000/- per month and determined the disability as per the certificate of the disability board for a period of five years and accordingly rightly calculated the amount of compensation in favour of the appellant claimant-petitioner. So Mr. Datta Choudhury, Learned counsel urged for dismissal of this appeal with costs and submitted for upholding the judgment of the Learned Tribunal.

13. I have heard detailed argument of both the sides. As already stated at the time of hearing of argument Learned counsel for the appellant only challenged the determination of 'future loss of income' of the appellant claimant-petitioner by the Tribunal and in respect of other components he did not submit anything. On the other hand, Learned counsel for the insurance company submitted that since the appellant claimant-petitioner was a student at the

time of accident. So question of earning any money was not relevant. But the Tribunal below determined the monthly income of the appellant claimant-petitioner @ Rs.9,000/- per month which was not warranted in the eye of law because the witnesses of the appellant claimant-petitioner i.e. his father himself admitted that the appellant claimant-petitioner was a student on that relevant point of time. Before the Tribunal the appellant claimant-petitioner was examined as PW-1 and he relied upon some documentary evidence which were marked as Exbt.1-Exbt.17. During cross-examination by the OP Nos.1 and 2 he stated that at the time of accident he was on the pillion of the bike and one Tapas Roy was riding the bike. However, he admitted that at the time of accident he was a college student and denied the other suggestions by the OP Nos.1 and 2. In course of cross-examination by the OP No.3 he denied the fact of injury not related to any vehicular accident and also denied the fact that he was sustained injury by his own bike and also in course of cross-examination by OP No.6. He denied the fact that the accident occurred due to the fault of bike No.TR-03-D-5954.

14. PW-2 Niranjana Roga, father of the petitioner. He in his examination in chief in affidavit reiterated the same version as made by the petitioner in his claim petition. During cross-examination by the OP Nos. 1 and 2 he stated that he did not see the accident and at the time of accident

his son i.e. the appellant claimant-petitioner was a college student. He also denied the fact of suggestions of defence that the accident did not occur due to the fault of the vehicle bearing No.TR-01-B-1671 (Truck) and during cross-examination by OP No.3 he stated that he reached to the P.O. after the accident.

15. PW-3 one Samir Das owner of a tailoring shop also stated in the same tune like PWs 1 and 2 and further submitted that prior to accident the appellant claimant-petitioner Debasish Roga was working in his shop namely 'M/S Loknath Tailors' as Tailoring Master and he used to earn Rs.400/- to Rs.450/- per day i.e. Rs.13,500/- per month. He could not submit any documentary evidence in this regard. It is quite natural that if any person serves in any tailoring shop as a helper/assistant or as a Master Tailor in that case it is very difficult on his part to submit any documentary evidence to substantiate his monthly income. Here in the case Learned Tribunal considering the facts and circumstances of the case determined the monthly income of the appellant @ Rs.9,000/- per month.

16. In course of hearing of argument regarding fixing of monthly income of Rs.9,000/-, no legal point was raised by the Learned counsel for the insurance company. There was also no rebuttable evidence on record from the side of the contesting respondents that the appellant had no such scope to work as a helper/assistant/master tailor to the

shop of PW-3 i.e. 'M/S Loknath Tailors'. So, in my considered opinion, Learned Tribunal below rightly determined the income of the appellant claimant-petitioner @ Rs.9,000/- per month. Now, in respect of disability of the appellant relied upon Exbt.-10 i.e. the certificate issued by the District Disability Board, Gomati District, Udaipur who had assessed the physical disability to the extent of 40% with validity for a period of five years from 2018 that certificate discloses that the disability is likely to be improved with periodical review of every six months prescribed. Although no doctor was examined to assess the disability who ought to suggest that future treatment would be required and for that the Learned Tribunal below assessed the compensation in respect of disability for a period of five years only. The petitioner was 25 years old at the time of accident. So, towards the future loss of income the Tribunal calculated the amount as Rs.9,000/- x40%x12x5 which came to Rs.2,16,000/-(Rupees two lakh sixteen thousand).

17. In course of hearing of argument Learned counsel for the appellant relied upon one judgment of this High Court in **Pinki Roy vs. Smt Lekha Roy Chowdhury and Ors.** numbered as **MAC APP No.07 of 2019** dated 24.01.2020 in para Nos.8, 9 and 10 this High Court observed as under:

[8] At the same time the Tribunal also committed an error in believing that the disability was temporary.

Neither in the medical certificate of injury nor in his deposition Dr. Tusar Kanti Chowdhury, P.W.2 it has been stated that such disability was temporary. The medical certificate of the board was clear and certified that the claimant had suffered disability to the extent of 30% (of a body as a whole). Significantly, the certificate was based on the physical examination of the claimant by the medical board as late as on 01.08.2018. This was nearly 5 years after the date of accident. This certificate carried two printed columns. (i) "This condition is progressive" and (ii) "reassessment is recommended after 5 year 0 month and validity of certificate upto 01 August, 2023". This certificate, therefore, did not in any manner suggest that the condition of the claimant was likely to improve over a period of time. When Dr. Tusar Kanti Chowdhury, P.W.2 stated in his cross-examination that the certificate as well as injury is temporary and the same would have to be reassessed after 5 years, in no way, he suggested that there is a likelihood of the improvement in the condition of the claimant. He merely reiterated what the certificate contained namely that the claimant should be examined again after 5 years.

[9] Firstly, in the present case the Tribunal committed an error in appreciating the contents of the said injury certificate and the doctor's deposition. I am informed that in the State of Tripura there is a pattern of the examination of an injured claimant of motor accident claim petition by a medical board which assesses the injury only for a limited period and calls for revision of such injury after 5 years. I am not sure the source of this practice having been developed. I have serious doubt about the correctness and practicality of such practice. In an appropriate case the legality of this process will have to be undergone.

[10] In the present case, however, I am satisfied that neither the injury certificate nor the doctor's deposition suggested any possibility of improvement to the condition of the claimant with passage of time. The Claims Tribunal, therefore, committed an error in not awarding any compensation for future loss of income. The culmination of this discussion would lead to the following result. As per the Tribunal, the claimant was earning Rs.9,000/- per month at the time of accident. The period of no activity can be reduced to 1 year. The claimant would, therefore, receive a sum of Rs.1,08,000/- for 1 year of no earning @ Rs.9,000/- per month. The claimant was aged about 26 years at the time of accident. As per the decision of Supreme Court in case of National Insurance Company Limited Versus Pranay Sethi and others reported in (2017) 16 SCC 680, there would be 40% increase for future income. Her prospective monthly income would come to Rs.12,600/-. Looking to her disability, there shall be 30% loss of earning capacity. There would therefore be a monthly loss of Rs.3,780/- i.e. Rs.45,360/- per annum. Multiplier of 17 would be applied as per the decision of Supreme Court in case of Sarla Verma (Smt) and others Versus Delhi Transport Corporation and another reported in (2009) 6 SCC 121. Her Page 7 of 8 total future loss of income would, therefore, come to Rs.7,71,120/- added by Rs.1,08,000/- of actual loss of income. The total loss of income would come to Rs.8,79,120/-.

Referring the same Learned counsel for the appellant submitted that in view of the principle of the said judgment the victim is entitled to get loss of future income in view of the judgment passed by Hon'ble Supreme Court in **Sarla Verma and Others vs. Delhi Transport Corporation and Another** reported in **(2009) 6 SCC 121** and also **National Insurance Company Limited vs. Pranay Sethi and Others** reported in **(2017) 16 SCC 680** and further submitted that along with monthly income 40% of income be added as future prospects and the present appellant claimant-petitioner is entitled to get the said benefit. From the aforesaid judgment it appears that in the aforesaid case as per disability certificate the concerned Medical Board opined that the condition is progressive and reassessment is recommended after 5 years 0 months. But in the given case although as per Exbt.10(discharge certificate) it was shown that the victim suffered 40% disability but his condition was likely to be improved and his case was recommended after a period of six months. So the principle of the aforesaid judgment cannot be applied in this case. So as submitted by the Learned counsel for the appellant the Learned Tribunal below in my considered view has rightly determined towards future loss of income amounting to Rs.2,16,000/-. Since in respect of other components no arguments were raised by Learned counsel for the appellant. So it can be safely assumed that the

Learned Tribunal below rightly determined the other components towards compensation at the time of delivery of the judgment. So this court does not find any scope to interfere with the judgment awarded by the Learned Tribunal below. In the case of **Raj Kumar vs. Ajay Kumar and Another** reported in **(2011) 1 SCC 343** Hon'ble the Apex Court in para Nos.10, 11, 12 and 13 observed as under:

10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation.

11. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation (see for example, the decisions of this court in Arvind Kumar Mishra v. New India Assurance Co.Ltd. : (2010) 10 SCC 254 and Yadava Kumar v. D.M., National Insurance Co. Ltd. (2010) 10 SCC 341.

12. Therefore, the Tribunal has to first decide whether there is any permanent disability and if so the extent of such permanent disability. This means that the tribunal should consider and decide with reference to the evidence:

(i) whether the disablement is permanent or temporary;

(ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement,

(iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person.

If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent ability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.

Here in the given case from the evidence on record it appears that the appellant claimant-petitioner could not make any case to enhance the compensation awarded by the Learned Tribunal below in determining the amount of compensation and from the principle of law laid down by the Hon'ble Apex Court in the aforesaid case it appears that the Learned Tribunal below rightly determined the amount of compensation in favour of the claimant-petitioner i.e. the present appellant herein.

18. In the result, the appeal filed by the appellant is hereby dismissed on contest. The appellant is not entitled to

get any relief in this context. The judgment and order dated 30.03.2022 passed by Learned Member, MACT, Gomati Judicial District in TS(MAC)71 of 2018 is hereby upheld and accordingly it is affirmed.

The respondent insurance company is asked to deposit the award/compensation within a period of 6(six) weeks from the date of passing of the judgment if by this time the same is not deposited to the Tribunal. The compensation shall carry interest @7.5% from the date of filing the claim petition i.e. from 12.12.2018 to till realization.

The case is thus disposed of on contest. The pending application, if any, stands disposed of.

Send down the LCRs forthwith.

A copy of this judgment and order be supplied to the Learned Counsel Mr. S. D. Choudhury for the OP-Insurance Company free of cost.

JUDGE

**MOUMITA
DATTA**

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