

**HIGH COURT OF TRIPURA
AGARTALA**

MAC APP No.15 of 2024

Smt. Payeel Das

Wife of Sri Sukanta Das,
Resident of Dhaleswar, Azad Hind Road,
P.S. East Agartala, District: West Tripura

---- Appellant (s)

Versus

1. Sri Sumit Kumar Sinha,
Son of Smriti Ranjan Sinha,
Resident of Bhagaban Nagar, Kailashar,
P.S. Kailashahar, District: Unakoti Tripura,
(Owner of the Motor bike bearing
Registration No.TR-02-A-9592),
PIN:799 279

2. National Insurance Com. Ltd.,
Represented by it's Branch Manager,
Having it's Divisional Office at A.K. Road,
P.S. East Agartala, District: West Tripura,
(Insurer of the Motor bike bearing
Registration No.TR-02-A-9592)

---- Respondents (s)

For Appellant(s)	:	Mr. S. B. Debnath, Adv.
For Respondent(s)	:	Ms. R. Purakayastha, Adv.
Date of Hearing	:	24.07.2024
Date of delivery of Judgment and Order	:	26.07.2024
Whether fit for Reporting	:	NO

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

Heard Learned counsel Mr. S. B. Debnath appearing
for the appellant and also heard Learned counsel Ms. R.
Purakayastha for the Insurance Company. None appeared
on behalf of the respondent No.1, Sumit Kumar Sinha,

being the owner of motor bike bearing Registration No.TR-02-A-9592.

02. This present appeal is preferred challenging the judgment and award dated 13.12.2023 delivered by Learned Member, Motor Accident Claims Tribunal, Court No.1, West Tripura, Agartala in T.S.(MAC) 166 of 2020 wherein the Learned Tribunal below awarded an amount of Rs.2,39,100/- as compensation to the claimant-appellant with 9% interest with effect from 20.11.2020 i.e. from the date of filing the claim petition till realization.

03. At the time of hearing of argument Learned counsel for the appellant fairly submitted that this present appeal is preferred for enhancement of the award of the compensation determined by the Learned Tribunal below. According to him claimant-appellant was an Electrical Engineer of a private company on the day of alleged accident. On that relevant point of time her monthly income was Rs.20,000/- per month. But the Learned Tribunal below determined the monthly income of the appellant @ Rs.10,000/- per month which was too less. Learned counsel further submitted that due to accident the appellant sustained 20% disability and for that the Learned Tribunal below ignoring the principle of law laid down by the Hon'ble Supreme Court awarded compensation for future loss of income only for a period of six months, for which according to Learned counsel the interference of the court is required

and urged for allowing this appeal by setting aside the judgment/award of the Learned Tribunal below and to enhance the award.

04. On the other hand, Learned counsel Ms. R. Purakayastha appearing for the Insurance Company submitted that the Learned Tribunal below rightly and reasonably delivered the judgment because before the Tribunal the petitioner-appellant could not produce and prove any income certificate of the appellant-petitioner showing her monthly income @ Rs.20,000/-. So according to Learned counsel Learned Tribunal below rightly determined the amount of compensation and urged for dismissal of this appeal upholding the judgment and award of the Learned Tribunal below.

05. The appellant as petitioner filed one claim petition before the MAC Claims Tribunal No.1, West Tripura, Agartala which was numbered as T.S.(MAC) 166 of 2020. The case of the appellant-petitioner in brief was that on 28.01.2019 at about 3 p.m. the petitioner along with her father were proceeding towards her house at Dhaleswar from Nabarupa varieties, A.K. Road as a pillion rider and on seeing the red signal at Ganaraj Chowmuhanu when they stopped their scooty and waited for green signal that time one Motor bike bearing No.TR-02-A-9592 coming in a rash and negligent manner dashed against the back side of the scooty of the father of the petitioner resulting which she

received serious injuries on vital parts of her body and received fracture injuries on her left leg. Immediately after the accident the father of the petitioner who was riding the scooty with the help of local people shifted the victim to the AGMC & GBP Hospital, Agartala and after giving preliminary treatment she was taken at her home. In her claim petition she also stated that due to unbearable pain further she was taken to the ILS Hospital, Agartala on 31.01.2019 wherein she got admitted as an indoor patient and was treated therein w.e.f. 31.01.2019 to 04.02.2019. During the period of her treatment a major operation was done on her left leg. On this issue a police case was registered with the East Agartala Police Station vide East Agartala P.S. Case No.65 of 2019 under Sections 279/338 of I.P.C. and after completion of investigation the I.O. laid chargesheet against the rider of the motor bike bearing No.TR-02-A-9592. It was further case of the petitioner that as an Electrical Engineer she was doing a private job having monthly income of Rs.20,000/- and was 24 years old at the time of accident. So the petitioner filed the claim petition. In obedience to the notice issued the owner of the bike appeared by filing written statement and denied the entire assertions of the claimant-appellant. But the OP No.1 admitted that he is the registered owner of the motor bike bearing No. TR-02-A-9592 at the time of accident and it was further submitted that at the time of accident the bike was duly covered under

insurance with the National Insurance Company Limited covering the period with effect from 23.07.2018 to 22.07.2019 having a valid driving license of the motor bike and as such, if any compensation is awarded that should be borne by the insurer.

06. The OP No.2, i.e. the National Insurance Company appeared and filed written statement denying the assertions of the claimant-appellant and it was further submitted that the claim petition is subjected to strict proof by the petitioner. However, upon the pleadings of the parties Learned Tribunal below determined the following issues:

i) Had the claimant petitioner Smti Payeel Das sustained injuries out of a road traffic accident occurred on 28.01.2019 at about 3.00 p.m. near Ganaraj Chowmuhani traffic point within the territorial jurisdiction of East Agartala Police Station?

ii) Was the accident occurred due to rash and negligent riding of the motor cycle bearing registration no.TR-02-A-9592 by its rider?

iii) Is the claimant petitioner entitled to get compensation as claimed for? If yes, then to what extent and who shall be liable to pay the compensation money?

07. Before the Learned Tribunal the petitioner was examined herself as PW.1 and submitted some documents which were marked as Exbt.1 to Exbt.12. The OP No.1 examined as OPW1 and relied upon some documents which were marked as Exbt.A to Exbt.C. Finally on conclusion of proceeding the Learned Tribunal below allowed the claim petition of the claimant-appellant. For the sake of convenience, I would like to refer herein below the operative portion of the judgment and award dated

13.12.2023 passed by the Learned Tribunal which is as follows:

"It is, therefore, held that the claimant petitioner is entitled to get compensation of Rs.2,39,100/- (Rupees Two Lakh Thirty-nine Thousand One Hundred only) with interest @ 9% per annum with effect from 20.11.2020 i.e. the date of filing of the claim petition till the date of actual payment as per Judgment dated 17.10.2022 of the Hon'ble Supreme Court of India passed in CA No.7593. The Opposite Party No.2 namely, 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.

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."

08. I have heard arguments of both the sides and gone through the record of the Learned Tribunal below including the judgment. It is on record that to substantiate the claim the claimant-appellant examined herself as PW-1 and tendered some documentary evidence which were marked as exhibits. But surprisingly before the Learned Tribunal below, the petitioner could not produce any income certificate in support of her claim petition.

09. In course of hearing of argument Learned counsel for the appellant submitted that the petitioner was engaged as an Electrical Engineer to a private company who did not issue any income certificate on that relevant point of time for which the same could not be submitted. Learned counsel further submitted that considering the academic qualification of the appellant being an Engineer Learned Tribunal below ought to have determined the monthly income of the appellant @ Rs.20,000/- per month because

in our state even a day labourer also earns more than six thousand per month. But the Learned Tribunal below did not consider the same. So Learned counsel prayed for enhancement of the award.

10. After going through the award of the Learned Tribunal below it appears that the Learned Tribunal below at the time of determination of compensation determined the monthly income of the appellant relying upon the notification dated 04.08.2023 of this High Court as skilled worker @ Rs.10,000/- per month. In this case, from the evidence on record it appears that the contesting opposite parties before the Tribunal did not dispute anything regarding employment and status of the appellant as a private Electrical Engineer. So, the determination of monthly income in my considered opinion was not proper which in my considered view should not be less than Rs.15,000/- per month on that relevant point of time considering the prevailing circumstances. Learned Tribunal below at the time of determination of the compensation awarded Rs.5,000/- towards cost of attendants, Rs.6,000/- towards conveyance charges, Rs.700/- towards purchase of medicine and as per bills of ILS Hospital awarded Rs.95,358/- towards hospital charges, awarded Rs.50,000/- towards pain and sufferings, awarded Rs.40,000/- towards loss of income for a period of four months as she was confined in the house for a considerable period. Since

Learned counsel for the appellant-claimant at the time of hearing of argument did not submit anything regarding determination of other amounts at the time of determination of compensation by the Tribunal save and except monthly income of the appellant and also regarding determination of compensation towards pain and sufferings.

11. So, this court after hearing both the sides is of the considered view that the monthly income of the appellant would be Rs.15,000/- per month instead of Rs.10,000/- per month considering her status and position. Accordingly, a sum of Rs.60,000/- (Rs.15,000x4) is awarded towards loss of income. A further sum of Rs.1,00,000/- is awarded towards pain and sufferings in place of Rs.50,000/- as awarded by the Tribunal below in view of the judgment of the Hon'ble Supreme Court of India in **Raj Kumar vs. Ajay Kumar and Another** reported in **(2011) 1 SCC 343** considering the age, nature of injury and disability suffered by the appellant-claimant. The Hon'ble Supreme Court in para No.7 observed as under:

"7. Assessment of pecuniary damages under item (i) and under item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses - item (iii) -- depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages - items (iv), (v) and (vi) -- involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant. Decision of this Court and High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on account of permanent

disability - item (ii)(a). We are concerned with that assessment in this case."

In addition to that as awarded by the Tribunal Rs.5,000/- is awarded towards cost of attendants, Rs.6,000/- is awarded towards cost of conveyance charges, Rs.700/- towards purchase of medicine, Rs.95,358/- is awarded towards hospital charges for the treatment of injuries, Rs.20,000/- is further awarded for loss of amenities of life and towards future loss of income, the claimant petitioner would get (20% of Rs.15,000/-)=Rs.3000 x 6 i.e. 18,000/-. Thus, the total amount of compensation after modification comes to Rs.5000 + Rs.6,000 + Rs.700 + Rs.95,358 + Rs.60,000 + Rs.1,00,000 + Rs.10,000 + Rs.20,000 + Rs.18,000 =Rs.3, 15,058/- which the claimant petitioner would be entitled to get from the Insurance Company since the offending vehicle was duly insured with the National Insurance Company on that relevant point of time of accident.

12. In the result, the appeal filed by the appellant is partly allowed. The judgment and award delivered by the MAC Tribunal, Court No.1, West Tripura, Agartala in connection with Case No.T.S.(MAC) 166 of 2020 is hereby modified to the extent that the claimant-appellant would get Rs.3, 15,058/- with 9% interest w.e.f 20.11.2020 i.e from the date of filing the claim petition till realization. The insurance company i.e. the OP No.2, i.e. the National Insurance Company will pay the said amount with interest

within a period of six weeks from the date of judgment of this court to the concerned MAC Tribunal. A copy of this judgment be furnished free of cost to both the parties. The appeal is thus disposed of to the extent as stated above.

Send down the LCRs along with a copy of this judgment.

Pending application, if any, stands disposed of.

JUDGE



**MOUMITA
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