

HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A
MAC. App. No.36 of 2023

1. Sri Tapan Sutradhar, son of late Narendra Sutradhar of Chandrapur Colony No.1, Indiranagar, P.O. & P.S. R. K. Pur, Udaipur, Gomati District, Tripura.

..... Appellant

-V E R S U S-

1. Sri Dipankar Sarkar, son of Dhirendra Sarkar of Rajnagar, P.R. Bari, P.O. & P.S. Belonia, South Tripura (***Owner of TR-08-9231, Motor Bike***).
2. Sri Babul Das, son of Sri Narayan Das, of Jogendra Nagar, Khudiram Pally, P.S. East Agartala, West Tripura (***Rider of TR-08-9231***).
3. The Branch Manager, National Insurance Company Limited, Udaipur Branch, P.O.& P.S. R. K. Pur, District: Gomati Tripura, (***Insurer of TR-08-9231, Motor Bike***).

.....Respondents.

B_E_F_O_R_E
HON'BLE MR. JUSTICE T. AMARNATH GOUD

For Appellant(s)	:	Mr. K.Pandey, Advocate.
For Respondent(s)	:	Mr. N. Debnath, Advocate.
Whether fit for reporting	:	<i>YES/NO</i>

Judgment and order dated 20th June, 2024

JUDGMENT & ORDER [ORAL]

Heard Mr. K. Pandey, learned counsel appearing for the appellant also heard Mr. N. Debnath, learned counsel appearing for the respondents.

[2] This appeal has been filed under Section-173 of the Motor Vehicles Act, 1988 from the judgment and award dated 21.01.2022 passed by the learned Motor Accident Claims Tribunal, Court No.1, Gomati Judicial District, Udaipur in T.S. (MAC) No.23 of 2018 for enhancement of compensation of the award from Rs.3,80,220/- to Rs.10,00,000/-.

[3] The claimant petitioner-appellant had filed an application under Section-166 of the Motors Vehicles Act, 1988 for payment of compensation stating inter alia that on 15.01.2017 at about 07.30 p.m. when the appellant along with his friend was walking towards his house through Agartala-Sabroom

National High Way near Chandrapur at that time suddenly the appellant was dashed from his behind by a motor cycle No.TR-08-9231 which was being driven rashly and negligently with excessive speed. As a result, the appellant fell down on the road and received grievous injury on his spinal cord and all over his body.

[4] The accident took place due to rash and negligent riding of the motor bike No. TR-08-9231 by its rider. At the time of accident, the appellant was a stout and healthy man of 51 years and was a carpenter by profession and his earning was Rs. 12,000/- per month. Due to damage in the spinal cord in the accident he became a disabled person and unable to continue his profession. The appellant claimed Rs.10,00,000/- as compensation for the disability caused to him due to the said accident. The Ld. Motor Accident Claims Tribunal, Court No.1, Gomati Judicial District, Udaipur by a Judgment and Award dated 21.01.2022 in TS (MAC) 23 of 2018 allowed the claim petition of the claimant and directed the respondent No.3 to pay amounting to Rs.3,80,220/- to the claimant appellant within two months from the date of judgment & award along with interest @ 6% per annum from the date of filing of the claim petition i.e. 05.04.2018 till realization of same.

[5] On receipt of the notice, the owner and rider of the motor cycle, appeared and contested the case by filing joint written statement denying the accident, injuries, expenditure incurred towards the treatment, age and occupation of the petitioner, the appellant herein and any sort of rash and negligent driving of said offending vehicle. However, it was asserted that at the time of accident the offending motor cycle was ridden by the rider having valid driving licence and the bike was also duly insured with National Insurance Company Limited covering the period of accident.

[6] In response to the notice, the insurer of the offending motor cycle, also appeared and contested the case by filing written statement. In their written statement they also formally denied the accident, injuries, age, occupation, monthly income of the petitioner and any sort of rash and negligent driving of offending motor cycle. The insurance company claims strict proof of the insurance coverage of the alleged offending vehicle.

[7] The learned Tribunal after hearing the parties and on perusal of the material evidence on record has observed as under:

“22. In view of the above findings it is ordered that the petitioner, Sri Tapan Sutradhar is entitled to compensation of Rs. 3,80,220/- (Rupees three Lac Eighty Thousand Two Hundred Twenty) only in total. The O.P. No.3, National Insurance Company Limited, insurer of vehicle No.TR-08-9231 (Motor Cycle) is directed to 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 05.04.2018 till payment/realization of the same. Liberty is given to the National Insurance Company (OP No.3) to recover the amount of compensation from the owner of the vehicle Dipankar Sarkar(OP 1).”

[8] Being aggrieved by and dissatisfied with the judgment and award dated 21.01.2022 passed in T.S. (MAC) 23 of 2018, the present appeal has been preferred by the appellant.

[9] Mr. K. Pandey, learned counsel appearing for the appellant has submitted that the learned tribunal failed to consider that the appellant became permanently disabled and the extent of disability is 40% as determined by the District Disability Board, Gomati District, Udaipur by issuing a certificate and also failed to consider that the appellant has become permanently crippled and bed ridden, the extent of physical disability, the learned tribunal ought to have held that 40% disability resulted in 100% functional disability.

[10] The learned tribunal ought to have taken into consideration the future medical treatment including the cost of medicine, charge of the attendants and physiotherapist which the appellant is required to pay throughout the rest of life, while arriving at just and proper compensation. The pecuniary head for loss of income sustained by the appellant from the date of accident during the period of treatment has also not been appreciated by the tribunal below.

[11] The learned tribunal failed to consider that because of the accident the appellant has suffered shortening his expected longevity, the learned tribunal ought to have awarded compensation for the adverse impact of the accident on the life expectancy of the appellant. The appellant is still under treatment which is evident from the medical prescriptions issued by Doctors but nothing has been compensated onto this head.

[12] It has been further submitted that the learned tribunal failed to consider that the claimant appellant was a carpenter by profession and due to the said accident, he became 40% disabled which is evident from the Disability Certificate issued by the competent authority and because of the said accident his legs has become shorter in length and as a result he is unable to perform his duties as a carpenter. The learned tribunal did not consider that the appellant is unable to earn his livelihood due to said accident and also not awarded any amount of compensation towards future loss of income.

[13] The appellant has become 40% disabled and at the time of the said accident he was only 51 years old and due to the said accident, he will suffer pain and mental agony for his entire remaining life but the learned tribunal awarded only Rs.80,000/- towards pain and suffering which is absolutely unjust and insufficient. During treatment, the appellant also incurred transportation expenses and only Rs. 20,000/- towards transportation expenditure was awarded which is absolutely unjust and insufficient.

[14] In the light of the above, this Court is of the view that the being a carpenter, according to the guideline framed dated 4th August, 2023 a skilled labour must earn Rs.12,000/- per month but the learned tribunal below has assessed monthly income Rs.9,000/- which is obviously in a lower side. Accordingly, his income if computed, would be $\text{Rs.12,000} \times 40\% \times 12 \times 5 = 2,88,000/-$. Accordingly, towards loss of income amount Rs.2,88,000/- would come instead of Rs.2,16,000/- as awarded by the tribunal below. However, the rest of the award as compensated by the tribunal shall remain unaltered. Towards non-pecuniary damages on account of pain and suffering, the appellant has suffered burst fracture L3 in the vertebra which is a grievous in nature and due to this; his physical disability to the extent of 40% was caused. Thus, on this count Rs.80,000/- was awarded. Towards air journey he has submitted air ticket of Rs.5,212/-. Towards medical treatment Rs.40,000/- was awarded. For attendants Rs.19,000/- was given and for transportation cost including the cost of visiting doctors an amount of Rs.20,000 was awarded. Therefore, in total, the appellant is entitled to Rs.4,52,212/- instead of Rs.3,80,220/- as awarded by the learned tribunal below.

[15] This Court in all matters is fixing 7.5% interest and to maintain uniformity while comparing the bank rate of interest which is also much less. Consequently, the claimants would be entitled compensation as indicated above along with 7.5% interest per annum instead of 6% interest as awarded by the learned tribunal below, with effect from the date of presentation of the claim petition till the date of actual payment. Insofar as the pay and recovery, this Court also follows the principle as laid down by the Hon'ble Apex Court in *Shamanna and Another v. The Divisional Manager, Oriental Insurance Company Limited and Another*, reported in (2018) 9 SCC 650. The awarded amount shall be deposited by the insurance company within a period of one month from the date of receipt of the copy of this order and on such deposit; the appellant is at liberty to withdraw the same unconditionally.

[16] In view of above discussion and observation, the present appeal stands partly allowed. As a sequel, miscellaneous applications pending, if any, shall stand closed. Draw the decree accordingly and thereafter, send down the LCRs forthwith.

T. AMARNATH GOUD, J

A.Ghash

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