

HIGH COURT OF TRIPURA
AGARTALA
MAC.APP.No.38 of 2023

The National Insurance Company Limited,
(to be represented by Divisional Manager),
Agartala, Divisional Office, 42, Akhaura Road,
P.O Agartala, District- West Tripura, Pin-799001

---- Insurer Appellant-petitioner(s)

Versus

1. Sri Tapan Debnath,
son of Late Radha Gobinda Debnath,
resident of East Howaibari, P.S. Teliamura,
District-Khowai

----Claimant-Respondent(s)

2. Sri Subal Debnath,
son of Matilal Debnath,
resident of Khejurbagan Abasan, near Ginger Hotel,
P.S. New Capital Complex, District-West Tripura,
(Owner of Tata Nano TR-01-AG-0660)

----Owner-Respondent(s)

For Appellant(s)	:	Mr. A.K. Deb, Adv.
For Respondent(s)	:	Mr. S.M. Chakraborty, Sr. Adv. Mr. R.R. Datta, Adv. Ms. A. Begam, Adv.
Date of Hearing	:	14.03.2024
Date of Judgment & Order	:	04.04.2024
Whether fit for reporting	:	YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

Heard Mr. A.K. Deb, Learned counsel appearing for the Insurer-appellant as well as Mr. S.M. Chakraborty, Learned senior counsel assisted by Mr. R.R. Datta, Learned counsel and Ms. A. Begam, Learned counsel appearing for the claimant-respondent.

2. This is an appeal under Section 173 of the Motor Vehicles Act is preferred challenging the award dated 30.01.2023 delivered by Motor Accident Claims Tribunal, Court No.4, Agartala, West Tripura in connection with Case No.T.S.(MAC)292 of 2015.

3. The subject matter of the dispute in short is that the claimant-respondent (Tapan Debnath) filed one claim petition under Section 166 of the M.V. Act claiming compensation of Rs.52,25,000/- for sustaining injury by a road traffic accident on 04.05.2014. According to the claimant, on the alleged day, the claimant-respondent was proceeding towards Bishalgarh by riding the Motor Cycle bearing registration No.TR-01-M-5870 along with his wife and minor son and while they reached near Bangeswar Bridge on Khayerpur-Amtali By-pass road then a TATA NANO vehicle bearing registration No.TR-01-AG-0660 came from the opposite direction with high speed rashly and negligently dashed against the Motor Bike and as a result of which, the claimant-respondent and his wife and minor son fell down on the road and received multiple grievous injuries. Immediately, they were taken to Dr. BRAM Hospital, Hapania where the victim Tapan Debnath was admitted from 04.05.2014 to 21.05.2014. As the victim was not fully cured, so, the victim had to undergo chambers of several private Doctors for better treatment. According to the claimant-respondent, even after filing the claim petition the victim got treatment in GBP Hospital on 19.03.2018, 21.03.2018 and 26.03.2018 and he was referred to Chennai for better treatment. Further, according to the claimant-respondent on the issue of accident a police case was registered vide Amtali P.S. Case No.97 of 2014 under Section 279/338 of IPC and according to him, his monthly income was Rs.15,000/- from the business of garments. The claimant-respondent further took the plea that due to accident, he became

disabled and was suffering from severe mental agony and pain with sufferings. Hence, he filed the claim-petition.

4. The OP owner i.e. the respondent No.2 herein of the offending vehicle TATA NANO bearing registration No.TR-01-AG-0660 by filing written statement denied the facts of accident and submitted that his vehicle was not involved in the accident and he has been falsely implicated and further submitted that on the alleged day his vehicle was insured with the National Insurance Company Limited i.e. the appellant herein covering the period of alleged accident with all valid documents. The appellant as OP No.2 also contested the case by filing written statement denying the relevant paragraphs of the claim petition and also took the plea that the age of the victim and monthly income of the victim as alleged was not genuine and also took the plea that the claim petition was subjected to strict proof.

5. On the pleadings of the parties, Learned tribunal below framed the following issues :

“(1) Whether the claimant Sri Tapan Debnath sustained bodily injury in a vehicular accident which alleged to have been occurred on 04.05.2014 on Khayerpur-Amtali Road near Bangeswar bridge, due to rash and negligent driving of vehicle bearing registration No.TR-01-AG-0660 (TATA NANO) by its driver.

(2) Whether the claimant is entitled to compensation as prayed for. If so, up to what extent and who will be held liable to pay the same.”

6. To substantiate the claim petition, the claimant-petitioner adduced both oral and documentary evidence on record.

“Name of the witnesses of the claimant-petitioner:

PW-1- Tapan Debnath

PW-2- Sri Ratan Debnath

PW-3- Dr. Anupam Debnath

PW-4- Dr. Dipti Bikash Roy (Locomotor Specialist)

Exhibits of the claimant-petitioner :

- 1. Certified copy of FIR and ejahar-Ext.1 series;**
- 2. Certified copy of charge sheet-Ext.2 series;**
- 3. Discharge certificate of TMC Hospital-Ext.3;**

4. Discharge summary of Apollo Hospital, Chennai-Ext.4 series;
5. Certified copy of injury report-Ext.5;
6. Original referral certificate-Ext.6 series;
7. Original medical reports-Ext.7 series;
8. Original prescriptions-Ext.8 series;
9. Original cash memos and paid bills-Ext.9 series;
10. Original air tickets and boards cards-Ext.10 series;
11. Original family income certificate-Ext.11;
12. Disablement certificate-Ext.12;
13. Registration certificate of shop of Tapan Debnath-Ext.13;
14. B.Sc. mark sheet of Tapan Debnath-Ext.14;
15. Admit Card of Tapan Debnath-Ext.15;"

Inspite of allowing opportunities, the OP did not adduce any evidence both oral/documentary.

7. Finally, on conclusion of the enquiry, the Learned tribunal below passed the award/judgment on 30.01.2023. The operative portion of the said judgment runs as follows :

"In the result, the application under Section 166 of the M.V. Act, 1988 filed by the claimant, Sri Tapan Debnath is allowed on contest.

The claimant is entitled to a sum of Rs.30,33,941/- (Rupees thirty lakhs thirty three thousand nine hundred and forty one) only as compensation in this case.

O.P. No.2, the National Insurance Co. Ltd. being insurer of the offending vehicle bearing No.TR-01-AG-0660 shall pay the said amount of compensation to the claimant within a period of 30(thirty) days from the date of award in terms of Section 168(3) of the Act.

The amount of compensation shall carry interest @ 9% per annum from the date of presentation of the claim petition before the Tribunal on 22.12.2015 till realization.

The O.P. insurance company shall give notice of the deposit of the compensation amount to the claimant and shall also file a compliance report with this Tribunal within 15 days of the deposit.

Out of the total amount of compensation, 30% be invested by purchasing Fixed Deposit certificate from any Nationalized Bank at least for the next 5 years with a liberty to the claimant petitioner to withdraw the monthly interest from his own account and no loan or advance or pre-mature withdrawal shall be allowed without prior sanction of this Tribunal."

8. At the time of hearing, Mr. A.K. Deb, Learned counsel appearing for the Insurer-appellant first of all submitted that the award awarded by the tribunal was excessive and the Learned tribunal below did not appreciate the evidence on record properly, nor appreciated the principles of citations referred by the Hon'ble Supreme Court and awarded excessive amount. He further referred para-10.7 of the award

and submitted that the Learned tribunal below without any basis determined the loss of income per month @ Rs.12,000/- in absence of any cogent documentary evidence on record. Further, he submitted that in view of the judgment of Hon'ble Supreme Court there was no scope to award 25% of monthly income as future prospects. Thus, came to an erroneous finding.

9. Learned counsel for the Insurer-appellant further submitted that in para-10.8 of the award Learned tribunal awarded Rs.50,000/- towards future medical expenses without any basis. He has also submitted that the rate of interest as awarded by the Learned tribunal below @ 9% p.a. was beyond the principles of natural justice as because considering the present market rate of interest as per the RBI Guidelines the said percentage of interest as imposed by the Learned tribunal was too high and urged for reconsideration of the rate of interest. Further, he has submitted that the prayer submitted by the claimant-petitioner under Order 41 Rule 27 cannot be accepted at this stage because the claimant-petitioner in the case at hand could not adduce any cogent evidence that he became permanently disabled and prayed for dismissal of the petition filed by the claimant-petitioner.

10. Per contra, Mr. S.M. Chakraborty, Learned senior counsel appearing for the claimant-respondent submitted that after considering both oral/documentary evidence on record Learned tribunal below rightly awarded the compensation in favour of the claimant-petitioner for which there is no scope to interfere with the award passed by the tribunal below. Learned senior counsel further submitted that all though, the claimant-petitioner initially submitted a certificate issued by the District Disability Board showing 60% disablement which was for a period of five years with Locomotor Disability but on 12.09.2023 another certificate has been issued wherein the rate of disability has been shown as 70%.

11. Learned senior counsel further submitted that although for a certain period, the claimant-petitioner was admitted in Dr. BRAM Hospital, Hapania but after discharging from the hospital, he had to attend the chamber of different private Doctors and not only that, he went to Chennai for further better treatment. As the claimant-petitioner became permanently disabled due to Trochentric fracture of RT side, femur, Intra Capsular (fracture) neck of femur (garden v), pelvis and Hip joint by the said RTA, which amounts to destruction or permanent impairing of the power of any member or joints, within the definition of permanent disablement as provided in Section 142(b) of the MV Act. So, Learned senior counsel urged for dismissal of the appeal by allowing the prayer for adducing additional evidence under Order 41 Rule 27 which the claimant-petitioner earlier could not submit.

12. Admittedly, in this case, there is no dispute on record in respect of sustaining injury by the petitioner on 04.05.2014 by the offending TATA NANO vehicle of the owner bearing registration No.TR-01-AG-0660. The appellant-Insurance Company and also the OP owner by the trend of cross-examination could not discard the evidence of the claimant-petitioner that no such accident took place on the alleged day. Now, here in this appeal, the claimant-petitioner did not submit any cross-objection nor file any cross-appeal for enhancement of the award of tribunal dated 30.01.2023.

13. Learned counsel for the appellant at the time of hearing also did not dispute that fact of accident. He only confined his arguments to the quantum of award awarded by the tribunal by referring the relevant paras of the award. In support of his contention, Learned counsel for the claimant relied upon one judgment of Hon'ble Supreme Court in **Raj Kumar versus Ajay Kumar and Another** reported in **(2011) 1 SCC 343**. In that judgment, the Hon'ble Supreme Court has discussed about

the procedure as to how the tribunal should consider the case of permanent disablement. For better reference, the said judgment is extracted hereunder :

"9. The percentage of permanent disability is expressed by the Doctors with reference to the whole body, or more often than not, with reference to a particular limb. When a disability certificate states that the injured has suffered permanent disability to an extent of 45% of the left lower limb, it is not the same as 45% permanent disability with reference to the whole body. The extent of disability of a limb (or part of the body) expressed in terms of a percentage of the total functions of that limb, obviously cannot be assumed to be the extent of disability of the whole body. If there is 60% permanent disability of the right hand and 80% permanent disability of left leg, it does not mean that the extent of permanent disability with reference to the whole body is 140% (that is 80% plus 60%). If different parts of the body have suffered different percentages of disabilities, the sum total thereof expressed in terms of the permanent disability with reference to the whole body, cannot obviously exceed 100%.

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 permanently 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. 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."

14. In addition to that, he also relied upon another citation of the Hon'ble Supreme Court of India in **Bajaj Allianz General Insurance Company Private Ltd. versus Union of India in Writ Petition(s) (Civil) No.534 of 2020** wherein in para-(iv) the Hon'ble apex Court has observed as under :

"(iv) As far as the aspect of the issuance of certificate on disability of victims is concerned, it is reiterated that the guidelines laid down by this Court in *Raj Kumar v. Ajay Kumar and Anr.* : (2011) 1 SCC 343 mandatorily must be followed by the MACTs, in respect of loss of income due to injury/disablement. The District Medical Board is also directed to follow the guidelines issued by the Ministry of Social Justice and Empowerment, Government of India vide Gazette Notification S. No.61, dated 05.01.2018, for issuance of disability Certificate in order to bring Pan India uniformity. The consequence is that the MACT would ascertain that permanent disability certificate issued by the District Medical Board or body authorized by it is in accordance with the Gazette Notification alone. Once the certificate is issued in this manner, the same can be marked for purposes of being taken into consideration as evidence without the necessity of summoning the concerned witness to give formal proof of the documents unless there is some reason for suspicion on the document."

Relying upon the same, Learned counsel submitted that the learned tribunal did not follow the proper procedure and guidelines of the

Hon'ble Supreme Court of India in determining the amount of compensation.

15. From the award, it appears that the Learned tribunal below in determining the monthly income of the claimant-petitioner came to an observation that the monthly income of the claimant-petitioner as the owner of the garment shop would not be less than Rs.12,000/- per month i.e. the Learned tribunal below determined the monthly income @ Rs.400/- per day for 30 days which in my considered view Learned tribunal below determined the same without application of proper mind. Even if it is assumed that he was a garment shop owner but in this regard, the petitioner could not adduce any valid documentary evidence on record. Learned tribunal below determined his daily income as Rs.400/- per day and if it is so, the Learned tribunal below also taken into consideration the holidays in determining the monthly income. Thus, Learned tribunal below committed error in calculating the monthly income of the claimant-petitioner which in my considered view would be appropriate if it is taken into consideration @ Rs.10,000/- per month i.e. Rs.400 x 25 days per month, excluding the holidays.

16. In respect of determination, 25% as future prospects as submitted by the Learned counsel for the appellant the Hon'ble Supreme Court of India in **Sidram versus Divisional Manager, United India Insurance Company Limited and Another** reported in **(2023) 3 SCC 439** in para-31 observed as under :

"31. It is now a well settled position of law that even in cases of permanent disablement incurred as a result of a motor-accident, the claimant can seek, apart from compensation for future loss of income, amounts for future prospects as well. We have come across many orders of different tribunals and unfortunately affirmed by different High Courts, taking the view that the claimant is not entitled to compensation for future prospects in accident cases involving serious injuries resulting in permanent disablement. That is not a correct position of law. There is no justification to exclude the possibility of compensation for future prospects in accident cases involving serious injuries resulting in permanent disablement. Such a narrow reading

is illogical because it denies altogether the possibility of the living victim progressing further in life in accident cases – and admits such possibility of future prospects, in case of the victim's death."

Relying upon the principle of Hon'ble Supreme Court as mentioned above in my considered view Learned tribunal below rightly awarded 25% of the monthly income as future prospects. So, the submission of Learned counsel for the appellant cannot be accepted to this point.

17. In para-66 of the aforesaid judgment (supra) the Hon'ble apex Court further observed as under :

"66. In view of the aforesaid, we grant compensation of Rs1,55,000/- towards medical expenses.

(4) Future medical expenses

67. At the outset, we may state that the "Future Medical Expenses" and "Attendent Charges" would fall within the ambit of pecuniary expenses. In Abhimanyu Partap Singh v. Namita Sekhon : (2022) 8 SCC 489, this Court held :

"19. In view of the said legal position, the compensation can be assessed in pecuniary heads i.e., the loss of future earning, medical expenses including future medical expenses, attendant charges and also in the head of transportation including future transportation. In the non-pecuniary heads, the compensation can be computed for the mental and physical pain and sufferings in the present and in future, loss of amenities of life including loss of marital bliss, loss of expectancy in life, inconvenience, hardship, discomfort, disappointment, frustration, mental agony in life, etc."

Relying upon the aforesaid principle as laid down by the Hon'ble apex Court, it further appears that the Learned tribunal also rightly and reasonably awarded future medical expenses to the tune of Rs.50,000/-. So, there is no scope to interfere with the said amount of award as awarded by the Learned tribunal.

18. Regarding rate of interest in the aforesaid judgment in para-34 Sub-para-15 the Hon'ble apex Court determined the rate of interest as 9% which reads as under :

"34. * *** *** *****

15. The Tribunal has noted that the appellant is unable to even eat or to attend to a visit to the toilet without the assistance of an attendant. In this background, it would be a denial of justice to compute the disability at 90%. The disability is indeed total.

Having regard to the age of the appellant, the Tribunal applied a multiplier of 18. In the circumstances, the compensation payable to the appellant on account of the loss of income, including future prospects, would be Rs 18,14,400. In addition to this amount, the appellant should be granted an amount of Rs 2 lakhs on account of pain, suffering and loss of amenities. The amount awarded by the Tribunal towards medical expenses (Rs 98,908); for extra nourishment (Rs 25,000) and for attendant's expenses (Rs 1 lakh) is maintained. The Tribunal has declined to award any amount towards future treatment. The appellant should be allowed an amount of Rs 3 lakhs towards future medical expenses. The appellant is thus awarded a total sum of Rs 25,38,308 by way of compensation. The appellant would be entitled to interest at the rate of 9% p.a. on the compensation from the date of the filing of the claim petition. The liability to pay compensation has been fastened by the Tribunal and by the High Court on the insurer, owner and driver jointly and severally which is affirmed. The amount shall be deposited before the Tribunal within a period of 6 weeks from today and shall be paid over to the appellant upon proper identification."

So, here in the given case, in my considered view also, Learned Tribunal below rightly awarded 9% p.a. as interest on the claim petition.

19. Regarding permanent disablement certificate Learned tribunal below basing upon the certificate issued by the District Disability Board in para-10.7 clearly mentioned that as per observation of the Medical Board on that relevant point of time he was suffering 60% physical disability all though, later on, the same was enhanced up to 70%. Admittedly, the same could not be proved and produced earlier by the claimant-petitioner. The appellant also in course of hearing could not satisfy the Court to disbelieve the relevant para-10.7. So, in my considered view the Learned tribunal below rightly determined the status

of the claimant-petitioner as the person suffering from personnel disability.

20. In course of hearing, Learned senior counsel for the claimant-petitioner could not highlight anything regarding the fixation of monthly income determined by the tribunal and as already stated there is also no any cross appeal to enhance the amount of compensation from the side of the claimant-respondent.

21. Thus, after hearing both the sides, the total compensation awarded be calculated as under :

"Compensation under the head pecuniary damages:

- (i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food and miscellaneous expenditure :
- i) on vouchers tribunal awarded Rs.7,00,000/-
 - ii) on flight fare tribunal awarded Rs.89,941/-
 - iii) for purpose of local transportation inside and outside the State of Tripura Rs.30,000/-
 - iv) from the vouchers exhibited as Exbt.9 series for purpose of cost of attendance for treatment Rs.1,50,000/-
 - iv) for guess work for nourishment and miscellaneous expenses tribunal awarded Rs.50,000/-

So, the tribunal awarded total compensation under this head is **Rs.10,19,941/-**.

- (I) Loss of income per month = $\text{Rs.10,000} \times 70\% = \text{Rs.7,000/-}$
- (II) 25% of above to be added as future prospect as self employed in view of Pranay Shethi Case :- Rs.1,750/- only
- (III) Total of SL. Nos. I and II above comes to $\text{Rs.7,000/-} + \text{Rs.1,750/-} = \text{Rs.8,750/-}$ only.
- (IV) Compensation after applying multiplier of 14:- $\text{Rs.8,750/-} \times 12 \times 14 = \text{Rs.14,70,000/-}$ only.
- So, the total compensation comes to **Rs14,70,000/-**.

Future medical expenses awarded by tribunal – Rs.50,000/-

Compensation under Non-pecuniary damages – Rs.2,00,000/-

Therefore, the total compensation would comes to **Rs.2,50,000/-**.

So, in total compensation comes to Rs.10,19,941 + 14,70,000 + 50,000 + 2,00,000 = Rs.27,39,941/-.

22. Thus, the appeal filed by the appellant is partly allowed. The claimant is entitled to get a sum of Rs. 27,39,941/-. The appellant

petitioner i.e. the National Insurance Company Limited the OP No.2 being the insurer of the offending vehicle bearing No. TR-01-AG-0660 shall pay the said amount of compensation to the claimant within a period 60 days from the date of passing of this judgment. This amount shall carry interest @ 9% p.a. from the date of presentation of the claim-petition i.e. w.e.f.22.12.2015 to till realization. The appellant-Insurance Company shall give notice to the claimant within 15 days from the date of deposit of the compensation. As observed by the tribunal by order dated 30.01.2023 30% of the compensation be invested by purchasing fixed deposit certificate from any Nationalized Bank for next 5 years with liberty to the claimant-petitioner to draw the monthly interest from his own account and no loan or advance or pre-mature withdrawal shall be allowed without prior sanction of the tribunal.

Since, the tribunal at the time of delivery of award/judgment came to the finding that the claimant-petitioner was suffering from permanent disability, so, this Court also after hearing both the sides also arrived to the said finding. So, the petition filed by the claimant-petitioner for adducing additional evidence under Order 41 Rule 27 appears to be redundant.

With this observation, the case is finally disposed of.

A copy of this judgment be supplied free of cost to the Learned counsel for the appellant-Insurance Company and the claimant-petitioner.

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

JUDGE