

**HIGH COURT OF TRIPURA
AGARTALA
MAC. APP. NO.118 OF 2023**

MD. Assad Uddin.

.....Appellant(s)

Versus

Sri Sukumar Modak & Anr.

.....Respondent(s)

For the Petitioner(s) : Mr. T.K. Deb, Advocate.

For the Respondent(s) : Mr. G.S. Das, Advocate.

Date of hearing and delivery of
Judgment & Order : 21.06.2024

Whether fit for reporting : NO.

**HON'BLE MR. JUSTICE T. AMARNATH GOUD
J U D G M E N T & O R D E R(ORAL)**

Heard Mr. T.K. Deb, learned counsel appearing for the appellant as well as Mr. G.S. Das, learned counsel appearing for the respondent- Insurance Company.

2. This present appeal has been filed under Section 173 of the M.V. Act 1988 against the impugned award dated 08.04.2022 passed in T.S.(MAC) 155 of 2017 by learned Motor Accident Claims Tribunal, West Tripura Agartala.

3. The appellant has prayed for the following reliefs:-

- i. Admit this appeal.
- ii. Call for the records.
- iii. Issue notice upon the respondent and
- iv. After hearing be pleased to set aside the impugned judgment and award dated 08.04.2022 passed by the Ld. Motor Accident Claims Tribunal, Court No.5, West Tripura, Agartala in TS(MAC) 155/2017 and be pleased to pass order modifying/directing the respondent no.2 to make payment to the claimant and the appellants is not liable to make payment of compensation to the claimant i.e. respondent no.1.

AND

Pending disposal of this appeal, be pleased to stay the execution of case bearing No. Civil Misc. 06 of 2023 pending in the Court of the Ld. Motor

Accident Claims Tribunal, Court No.5, West Tripura, Agartala till disposal of this appeal”.

4. The brief fact of the claimant's case i.e. respondent no.1 herein is that on 20.05.2017 at about 8.40 pm at Maiganga, Netajinagar, Tri Junction on Assam Agartala Road claimant i.e. respondent no.1 herein, being Rickshaw puller was pulling his Rickshaw from Golbari Side towards Maiganga and the offending vehicle came from Teliamura side with huge and uncontrolled speed and dashed claimant(Respondent no.1 herein). As a result claimant (respondent no.1 herein) sustained fracture injury on his leg and was shifted to Teliamura Hospital but considering his injury he was referred to AGMC and GBP hospital where he remained admitted from 20.05.2017 to 22.07.2017 and on 22.07.2017 he was discharged with an advise to attend Orthopedic for OT on 24.07.2017 and major surgical operation was done and as a result claimant (respondent no.1 herein) became disable being unable to work as a Rickshaw puller due to his injury on his leg. It is further pleaded that disability board issued certificate showing 60 percent disability but due to his disability on his leg his professional loss is 100 percent. Hence, this case.

5. The learned Tribunal below as against the claim of Rs.24,07,520/- passed the award in favour of the claimants in the following terms:-

"Order/ Award"

The OP No.2, New India Assurance Co. Ltd is directed to deposit the awarded compensation of Rs.16,70,000/- (Rupees Sixteen Lakhs seventy thousand) only within 30 days from today with interest thereon at the rate of 8% per annum with effect from date of filing of the claim application i.e., from 22.08.2017 to till realization of the full.

Protection Awarded Compensation

The 50% of the amount of the compensation is to be fixed deposited for five years.

The remaining amount of compensation of claimants is to be released in favour of claimant in his bank account.

The interest on the fixed deposit can be withdrawn by claimant. However, in case of necessity, the Tribunal can be approached for withdrawal of fixed deposited amount. On maturity of the fixed deposits the Banker shall credit the amounts to the sole SB Accounts of claimant without any further order from the Tribunal."

6. Being aggrieved and dissatisfied with the judgment and award dated 08.04.2022 passed by the Ld. Motor Accident Claims Tribunal, Court No.5, West Tripura, Agartala, in T.S (MAC) No. 155 of 2017, the present appeal has been preferred by the appellant.

7. This Court is of the opinion that since the liability has been fastened on the Insurance Company and all the documents have been placed before the tribunal except the registration certificate and the same is placed before this court and it is obvious that no insurance policy would be issued without any registration certificate. Since the policy is already issued this court draws inference in favour of the owner of the vehicle that the vehicle was properly insured and since the insurance company has issued the policy they are liable to pay the compensation. Since the awarded amount is already paid by the insurance company, the question of "pay and recovery" as passed in the award of Ld. Motor Accident Claims Tribunal vide order dated 08.04.2022 in TS (MAC) 155 of 2017, from the owner of the vehicle does not arise.

8. Accordingly, the award is modified as indicated above and the appeal is allowed. As a sequel, stay if any stands vacated. Pending application(s), if any, also stands closed.

JUDGE

Paritosh

SABYASACHI GHOSH
Digitally signed by
SABYASACHI GHOSH
Date: 2024.06.29
13:29:57 +05'30'