

**HIGH COURT OF TRIPURA
AGARTALA
MAC.APP.No.03 of 2024**

National Insurance Company Limited,
represented by the Divisional Manager,
office at A.K. Road, P.O.-Agartala,
P.S. West Agartala, District-West Tripura
(Insurer of the vehicle No.TR-01-H-1881(Max Pickup)

---- Opposite Party No.4 Appellant(s)

Versus

1. Sri Nepal Chandra Dhupi,
son of Late Maran Chandra Dhupi,
resident of Village-Jumerdepa,
P.O.-Melaghar, P.S. Melaghar,
District-Sepahijala, Pin-799115

---- Claimant Respondent(s)

2. Md. Kabir Maishan,
son of Chhidikur Rahaman Maishan
of Village-Bejimara, P.O. Sonamura,
P.S. Sonamura, Sepahijala,
District-Sepahijala Tripura
(Owner of Bus Vehicle bearing No.TR-07-1207(Bus)

**3. The Branch Manager Choramandalam
General Insurance Company Limited,**
Registered Head Office at Daza House 2nd Floor, No.2,
NSC Bass Road, Chennai, 600001,
Regional Office-Choramandalam MS General Insurance
Company Limited, Aashtha Plazaq; 4th Floor;
Opposite S.B. Deorah College; Ulubari Guwahati, 781005
(Insurer of Bus Vehicle Registration bearing No.TR-07-1207(Bus)

4. Sri Khokan Saha,
son of Sri Sridam Saha
of Village-North Chandrapur,
P.S.-R.K. Pur, District-Gomati
(Owner of the vehicle Registration
bearing No.TR01H1881(Max Pickup)

----Respondent(s)

For Petitioner(s)	: Ms. Rajashree Purkayastha, Adv.
For Respondent(s)	: Mr. Kishore Kumar Pal, Adv. Mr. Anjan Kanti Paul, Adv. Rajiv Saha, Adv.
Date of hearing & Judgment & Order	:02.08.2025
Whether fit for reporting	: NO

HON'BLE MR. JUSTICE BISWAJIT PALIT**Judgment & Order**

This appeal is preferred by the appellant Insurance Company challenging the judgment and award dated 06.06.2023 delivered by Learned Member, Motor Accident Claims Tribunal No.5, West Tripura, Agartala in connection with Case No.T.S.(MAC)177 of 2017.

[02] Heard Mr. R. Purakayastha, Learned counsel appearing on behalf of the appellant-National Insurance Company Limited. Also heard Learned counsel, Mr. K.K. Pal appearing on behalf of the respondent claimant petitioner and Mr. R. Saha, Learned counsel appearing on behalf of the OP respondent No.3 and Learned counsel, Mr. A.K. Paul appearing on behalf of the respondent No.2 i.e. the owner of the offending vehicle bearing No.TR-07-1207(Bus).

[03] At the time of hearing Ms. R. Purakayastha, Learned counsel appearing on behalf of the appellant National Insurance Company Limited drawn the attention of this Court that by the judgment and award dated 06.06.2023 Learned Tribunal has awarded a sum of Rs.25,85,000/- in favour of the petitioner and fastened the liability of payment of compensation upon the OP Nos,2 and 4 i.e. the present appellant and the respondent No.3, Cholamandalam MS General Insurance Company Limited to satisfy the award i.e. 50% each with interest @ 8% p.a. from the date of filing the claim petition w.e.f. 25.09.2017 to till the date of realization.

[04] It is also submitted by Learned counsel for the appellant Insurance Company that the Leaned Tribunal below in absence of cogent, oral/documentary evidence on record assessed the monthly income of the petitioner at Rs.15,000/- which was too high and for that the interference of the Court is required because the petitioner is not a skilled worker rather he is an unskilled worker and even if the notification of this High Court dated

04.08.2023 is followed in that case to that extent his monthly income can be assessed to Rs.10,000/- only as an unskilled worker.

[05] It was further submitted by Learned counsel for the appellant that towards the head of future treatment, Learned Tribunal has awarded a sum of Rs.1,00,000/- which was also not supported by any medical advice or relevant documents to justify the award. In respect of rate of interest imposed by the Learned Tribunal, Learned counsel for the appellant submitted that as per the settled norms in every cases now a days 7.5% interest is being imposed but here in the case at hand the Learned Tribunal has awarded interest @ 8% which also needs to be modified by allowing this appeal.

[06] On the other hand, Mr. K.K. Pal, Learned counsel for the respondent claimant petitioner drawn the attention of the Court referring page-165 of the paper book i.e. the certificate issued by the Secretary, Bairagi Bazar Market Committee (Exbt.6) wherein it was mentioned that the petitioner deals in vegetables and considering the market situation of that relevant period Learned Tribunal rightly determined the monthly income of the petitioner at Rs.15,000/- per month which was reasonable, rational and justified for which the same cannot be interfered with at this stage of appeal. It was further submitted by Learned counsel for the respondent claimant petitioner that the evidence of the petitioner remain un-rebutted by the contesting opposite parties before the Tribunal, so, at this stage of appeal the same plea cannot be considered.

[07] In respect of future treatment, Learned counsel referring some medical documents of the respondent claimant and also referring some photographs in respect of injury of the claimant drawn the attention of the Court that the respondent claimant petitioner has sustained 50% disability and considering the nature of his injury, already Learned Tribunal below has

awarded Rs.10,30,000/- towards the expenditure which the petitioner incurred for the purpose of his treatment and he was out of employment for a long period and furthermore, till today, he could not be fully recovered and situated thus, the said amount appears to be reasonable, rather Learned Tribunal has awarded lesser amount under the said head. In respect of rate of interest, Learned counsel for the respondent claimant petitioner submitted that there are some cases of the Hon'ble Apex Court wherein 9% interest is imposed but the Learned Tribunal only awarded 8% which according to Learned counsel was reasonable and in summing up, Learned counsel submitted that there was no infirmity in the judgment and award delivered by Learned Tribunal below and urged for dismissal of the appeal by upholding the judgment and award delivered by Learned Tribunal below.

[08] Learned counsel, Mr. R. Saha appearing on behalf of the respondent Cholamandalam MS General Insurance Company Limited also adopted the same submission made by Learned counsel for the present appellant.

[09] On the other hand, Learned counsel, Mr. A.K. Paul appearing on behalf of the respondent No.2 i.e. the owner of the offending vehicle bearing No.TR-07-1207(Bus) submitted that his vehicle was duly insured with the Insurer on the relevant date of accident but on the merit of the appeal he did not submit anything.

[10] In this case, the respondent claimant petitioner filed one claim petition before the Learned Tribunal with the assertions that on the alleged day the respondent claimant petitioner went to Agartala for the purpose of bringing of fruits from the whole seller and when he was returning back to his home by travelling a bus bearing registration No.TR-07-1207 from Agartala to Nalchar and as soon as the bus reached at Puskarbari under

Bishramganj P.S. that time a Max Pickup vehicle bearing registration No.TR-01-H-1881 which was coming from the opposite direction with high speed rashly and negligently and both the vehicles collided with each other and as a result of which the right hand of the claimant petitioner was badly damaged and it was separated from the body and right hand bone was also broken into several pieces. Immediately, thereafter, the fire service came to the place of occurrence and arranged for shifting of all the injured persons including the petitioner to AGMC and GBP Hospital at Agartala. On 03.04.2017 the claimant was admitted in AGMC and GBP Hospital as an indoor patient. On the following day, a Medical Board was constituted considering his injury and the Medical Board referred him to Kolkata on 04.04.2017 and accordingly, the respondent claimant petitioner went to Kolkata and admitted in Rabindranath Tagore Hospital and treated therein till 17.04.2017 and even after major operation and skin grafting the respondent claimant petitioner was in bed ridden condition and his right hand was not functioning properly and he was not in a position to move his right hand and so, the petitioner again went to Kolkata and admitted in Rabindranath Tagore Hospital and admitted in the said hospital on 13.06.2017 and discharged on 16.06.2017 and 14.06.2017 further skin grafting operation was done and even after prolong treatment it was found that the claimant was not in a position to move his right hand properly. So, for further treatment the claimant petitioner again was compelled to move to Kolkata and on 4th September, 2017 visited the Rabindranath Tagore Hospital and further undergone treatment and he was advised to go for further treatment after every three months by his doctor. It was further submitted that due to accident his family had suffer a lot which is continuing till today and the accident occurred due to negligence and rash driving of driver of both the vehicles. It was further submitted that due to

accident he sustained disability, so, he attended disability Board when the Medical Disability Board on 01.01.2018 issued disability Certificate to the extent of 50%. Hence, he filed the claim petition.

[11] The OP No.1 did not contest this case by filing written statement so the case was proceeded exparte against him. The OP No.3 in the original petition i.e. the owner of the vehicle bearing No.TR-01-H-1881(Max Pickup) contested the case by filing written statement denying the assertions of the claimant petitioner. Rather the said OP took the plea that on the alleged day the OP No.3 was proceeding through Bishramganj road and the driver of the vehicle was driving the same very slowly keeping himself on the extreme left side of the road and when the vehicle reached near Puskarbari that time one bus bearing registration No.TR-07-1207(Bus) came from Agartala with excessive speed rashly and negligently and dashed against the vehicle of OP No.3 and due to that dashing the vehicle of the OP No.3 was totally damaged and there was no negligence on his part. It was further submitted that his vehicle was duly ensured with National Insurance Company at the time of accident. The OP No.2 i.e. Cholamandalam MS General Insurance Company Limited contested the case by filing written statement denying the assertions of the claimant petitioner in the claim petition and submitted that the claim petition is subjected to strict proof by the respondent claimant petitioner. The National Insurance Company Limited i.e. the OP No.4 in the original proceeding, now the appellant herein also contested the case by filing written statement denying the assertions of the respondent claimant petitioner and also took the plea that the claim petition was subjected to strict proof and denied the rash and negligent driving of the vehicle bearing No.TR-01-H-1881(Max Pickup) by its driver.

[12] Upon the pleadings of the parties, Learned Tribunal below framed the following issues :

“(i) Is the claim petition maintainable ?

(ii) Whether the claimant petitioner got injured as a result of accident on 03.04.2017 at about 12.30 hours due to collusion in between TR-07-1207(Bus) and TR-01-H-1881(Max Pickup) for the rash and negligent driving of drivers of the vehicles at Puskarbari on National Highway-44 under Bishramganj Police Station ?
 (iii) Whether the claimant petitioner is entitled to get compensation, and if so up to what extent and who is liable to pay the compensation?"

[13] To substantiate the issues from the side claimant petitioner two witnesses were adduced and the petitioner relied upon some documents which were marked as exhibits and the OP No.3 Khokan Saha was examined as OPW-1 and relied upon the documents which were also marked as exhibits. For the sake of convenience, I would like to refer herein below the name of witnesses of the parties and their exhibited documents which are as follows :

"APPENDIX

Claimant Witness :-

**PW.1-Sri Nepal Chandra Dhupi
 PW.2-Dr. Tapan Kumar Das**

Claimant Exhibits :-

**Ext.1 :- Disablement certificate dated 01.11.2018.
 Ext.2 :- Prescriptions.
 Ext.3 series :- Discharge summary, operation note, outpatient slip etc.
 Ext.4 series :- Bill, money receipts.
 Ext.5 series :- Air tickets, Boarding Cards.
 Ext.6 :- Photograph of injured claimants.
 Ext.7 series :- Income certificate issued by Jumerdepa Gram Panchayat.
 Ext.8 :- Certified copy of FIR, Ejahar, Seizure list and Charge sheet in c/w Bishramganj PS case.
 Ext.9 :- Original discharge certificate.
 Ext.10 :- Original referral certificate.
 Ext.11 series :- Cashmemos/bill/money receipt/vouchers.**

Opposite party's Witness :-

OPW.1 - Sri Khokan Saha.

Exhibits by Opposite party No.1 :-

**Ext.AA –Registration Certificate.
 Ext.AB – Insurance certificate.
 Ext.AC-Driving licence."**

[14] Finally, on conclusion of enquiry, Learned Tribunal below allowed the claim petition and by the judgment and award dated 06.06.2023 disposed of the case with the following observations :

"It is ordered that, an amount of Rs.25,85,000/-(Rupees twenty five lakhs eighty five thousand) is awarded in favour of the petitioner as compensation. The OP No.2 and OP No.4, the insurer of the Bus and Max Pick up bearing registration No.TR-07-1207 &

TR-01-H-1881 are equally directed to pay the compensation as awarded i.e., to say the OP No.2 would pay ½ (half) of the compensation amount of Rs.25,85,000/- and Op No.4 would pay ½ (half) of the compensation amount of Rs.25,85,000/-. The OP No.2 and 4 are also directed to pay the interest @ 8% per annum on total awarded sum from the date of filing of this petition i.e. on 25.09.2017 till the date of realization. Sixty(60) percent of the awarded amount is to be fixed deposited for five years and rest amount of compensation is to be released in favour of the claimant in his bank account."

Challenging that award of the Learned Tribunal the National Insurance Company as appellant has preferred this appeal as already stated being the insurer of the vehicle bearing No. TR-01-H-1881(Max Pickup).

[15] I have heard arguments of both the sides and also gone through the judgment delivered by the Learned Tribunal below. In delivering the judgment and award Learned Tribunal below relied upon the following citations :

- (i) Pappu Deo Yadav v. Naresh Kumar and Others, AIR 2020 SCC 4424.**
- (ii) Govind Yadav v. New India Insurance Company Limited, (2011) 10 SCC 683.**
- (iii) Arvind Kumar Mishra v. New India Assurance Company Limited and Another, (2010) 10 SCC 254.**
- (iv) Raj Kumar v. Ajay Kumar and Another, (2011) 1 SCC 343.**
- (v) National Insurance Company Limited v. Pranay Sethi and Others, (2017) 16 SCC 680, (Para-55).**
- (vi) Helen C. Rebello (Mrs.) and Others v. Maharashtra State Road Transport Corporation and Another, (1999) 1 SCC 90 (Para-36).**
- (vii) Jagdish v. Mohan and Others, (2018) 4 SCC 571.**
- (viii) Parminder Singh v. New India Assurance Company Limited and Others, (2019) 7 SCC 217.**
- (ix) Kirti and Anodther v. Oriental Insurance Company Limited, (2021) 2 SCC 166.**
- (x) Smt. Sarla Verma and Ors. Vrs. Delhi Transport Corporation and Anr., 2009 AIR SCW 4992.**

[16] As already stated that the appellant, Insurance Company at the time of hearing confined the arguments only on three points :

- (i) Excessive determination of monthly income.**
- (ii) Granting award of Rs.1,00,000/- in absence of any documentary evidence on record towards future treatment.**
- (iii) Imposition of rate of interest @ 8%.**

[17] The respondent claimant petitioner objected the points of argument raised by Learned counsel for the appellant, National Insurance Company. Now, on perusal of the judgment, it appears that in determining the amount of compensation, Learned Tribunal below based upon Adhar Card determined the age of the respondent claimant petitioner as 37 years on the day of alleged accident and came to the observation that a man of 37 years can earn Rs.500/- per day easily. Thus, determined the monthly

income at Rs.1,5000/- per month. Learned counsel for the appellant at the time of argument drawn the attention of the Court referring the notification dated 04.08.2023 issued by this High Court wherein the notional wages in claim cases for unskilled labour workers was determined at Rs.10,000/- per month and for skilled workers Rs.12,000/- per month after 31.12.2015. Here in the given case, it is on record that the respondent claimant petitioner is a fruit seller/vegetable seller and he is/was running his shop at Bairagi Bazar. The accident took place on 03.04.2017 and learned counsel for the respondent claimant petitioner at the time of hearing only relied upon Exbt.6 i.e. the certificate issued by the Secretary, Bairagi Bazar Market Committee under Jumerdhepa Gaon Panchayat. On perusal of the same, it appears that he is a vegetable seller but in the said document regarding his monthly income nothing was mentioned, even no income certificate either from the local administration or from the Secretary of the Panchayat could be submitted or proved by the respondent claimant petitioner before the Learned Tribunal below. So, there is no scope to place reliance upon said Exbt.6 although it is not disputed by the contesting parties that he was selling vegetables/fruits.

[18] It was further submitted by Learned counsel for the petitioner that by the trend of cross examination the evidence of the claimant petitioner could not be shaken but this argument is not conclusive as because it is the duty of the claimant petitioner to substantiate his monthly income both by adducing oral/documentary evidence on record. The contesting OP did not dismantle his evidence in respect of his monthly income cannot be a sole ground for believing that his earning was Rs.15,000/- per month during the year, 2017 in a place like Bairagi Bazar, Jumerdhepa. But since the contesting OP did not raise any dispute regarding his profession and considering the location of profession of the

petitioner it can easily be taken into consideration that during the period of 2017 the respondent claimant petitioner being a vegetable seller could earn not less than Rs.400/- per day treating that he used to earn vegetables/fruits for thirty days in a month. The notification of this High Court would not support this case because that was in respect of worker but here in the given case the petitioner is a businessman. However, Learned Tribunal without any specific finding straightway determined his monthly income at Rs.15,000/- per month which in the considered opinion of this Court is too high which should actually be not less than Rs.13,000/- although it is stated that he used to earn Rs.400/- per day but sometimes as a vegetable seller he could have earn more than Rs.400/- also. So, considering all aspects this Court believes that Rs.13,000/- would be appropriate amount towards monthly income of the respondent claimant petitioner. If it is so, then the calculation of compensation would reduce slightly being calculated by the Tribunal. Tribunal awarded Rs.45,000/- for loss of income for three months which should be Rs.39,000/- i.e. Rs.13,000 x 3 during the period of treatment.

For future loss of income, Learned Tribunal treating his monthly income at Rs.15,000/- determined yearly income Rs.1,80,000/- and thereafter deducted 50% considering his disability and came to the observation that Rs.90,000/- would be his actual loss of income. Now, since the income is reduced, in that case, his yearly income would come to Rs.1,56,000/- and after deducting 50% his actual yearly loss of income comes to Rs.78,000/-. Now with that amount, based upon the judgment of **Smt. Sarla Verma**(supra) multiplier 15 would apply. So, his actual loss of income will come to Rs. 11,70,000/- which the petitioner will be entitled to get future loss of income.

Regarding loss of treatment, Learned Tribunal has awarded Rs.10,30,000/-. Since nothing was raised by the appellant in this regard and so, the same amount is also accordingly awarded in favour of the respondent claimant petitioner.

Now regarding pain and suffering and trauma Learned Tribunal awarded Rs.60,000/-which in my considered opinion was rightly awarded.

Regarding future treatment, Learned Tribunal awarded Rs.1,00,000/- which the appellant disputed in this appeal. From the evidence on record both oral/documentary and the nature of injury sustained by the respondent claimant petitioner it appears to this Court that that there was no infirmity in this regard towards awarding that amount by the Tribunal in favour of the petitioner. Although Learned counsel raised objection to that but I do not find any satisfactory ground to disbelieve/ignore that amount which has been granted by Learned Tribunal in favour of the petitioner.

So, in summing up, Learned Tribunal has awarded Rs.25,85,000/- but as some modification is made in the award, so, after revised calculation the amount of compensation would come to Rs.39,000 + 11,70,000 + 10,30,000 + 60,000 + 1,00,000 = Rs.23,99,000/- which in the considered opinion of this Court the petitioner is entitled to get in this case.

[19] Learned counsel for the respondent claimant petitioner although tried to draw the attention of the Court that monthly income of the petitioner was rightly assessed by the Tribunal but in the considered opinion of this Court, Learned Tribunal below failed to appreciate the evidence on record without assigning any specific reasons/grounds straightway determined Rs.15,000/- as monthly income of the petitioner which in my considered opinion was not proper. Regarding imposition of rate of interest

it appears that the Learned Tribunal below has awarded 8% interest which in the considered opinion of this Court is also not proper because considering the present market scenario and the rate of interest imposed by different banking authorities it appears to this Court that in place of 8% interest, rate of interest in this case should be awarded @ 7.5% p.a.

[20] In the result, the appeal is partly allowed. The respondent claimant petitioner is entitled to get the modified amount of Rs.23,99,000/- along with 7.5% interest from the date of filing the claim petition w.e.f. 25.09.2017 to till the date of realization/actual payment. Both the Insurance Company shall deposit 50% amount each to the Learned Tribunal below within a period of two months from the date of delivery of this judgment/order.

A copy of this judgment be furnished free of cost to Learned counsel of both the Insurance Company i.e. the National Insurance Company Learned counsel to Ms. R. Purakayastha and also for Cholamandalam MS General Insurance Company Limited to Learned counsel Mr. R. Saha for information and compliance. Also a copy of this judgment be supplied to Learned counsel for the respondent claimant petitioner, K.K. Pal free of cost.

Send down the record of the Learned Tribunal below along with a copy of this judgment/order.

The case is thus disposed of.

Pending application/s, if any, also stands disposed of.

JUDGE

MOUMITA Digitally signed by
A DATTA MOUMITA DATTA
 Date: 2025.08.05
 00:49:47 +05'30'

Sabyasachi B