

**HIGH COURT OF TRIPURA
AGARTALA
MAC. APP. NO.14 OF 2025
*Cholamandalam MS General Insurance Company Ltd.***

Versus

.....Appellant(s)

Sri Rati Debbarma & Anr.

.....Respondent(s)

For the Appellant (s) : Mr. R. Saha, Advocate.

For the Respondent(s): Mr. GS Das, Advocate.
Mr. K. Deb, Advocate.

HON'BLE JUSTICE DR. T. AMARNATH GOUD

ORDER

24.07.2025

[1] This present appeal has been filed under Section 173 of the M.V. Act 1988 against the judgment and award dated 29.06.2024 passed in T.S.(MAC) 191 of 2019 by learned Motor Accident Claims Tribunal Court no.2, West Tripura, Agartala.

[2] Brief facts of the case is that on 09.06.2019 the claimant (respondent herein) along with another person returning from Teliamura towards Agartala by riding a Motor bike through Assam-Agartala Road and when they reached at Barmura 19 Miles at about 13.20 hrs, one vehicle bearing registration No.TR-02-H-1622(Truck) (hereinafter referred as the offending vehicle) which was coming from Agartala side with excessive speed in a rash and negligent manner driven by its driver and dashed the motor bike of the claimant respondent as a result claimant along with another fell down on the road with his motor bike and sustained severe bodily injury on his persons. The driver of the offending vehicle fled away leaving the Truck at the place of occurrence. Claimant received multiple fracture upon his right leg. Immediately after the accident he was taken to AGMC & GBP Hospital where he was admitted

as an indoor patient w.e.f. 09.06.2019 to 12.06.2019 for his treatment. Thereafter, he was referred to Medica Superspeciality Hospital, Kolkata for his better treatment where he took admission on 14.06.2019 but as the treatment cost was very expensive so, again he returned to Agartala and took admission in the AGMC & GBP Hospital as an indoor patient w.e.f. 28.06.2019 to 19.07.2019. During treatment claimant undergone surgery on his right leg by causing amputation above the knee to save his life. It is further stated in the claim petition that due to the said accident claimant has become a permanently disabled person to the extent of 85% and he has lost his working capacity and cannot move without any crutch. It is also stated in the claim petition that due to rash and negligent driving of the part of the offending vehicle(Truck) the accident occurred. It is also stated that at the time of accident claimant was a Carpenter by profession and he used to earn Rs. 12,000/- per month from his profession. Accordingly, a case has been registered and the learned tribunal below passed an award on 29.06.2024.

[3] The learned Tribunal below as against the claim of Rs.63,00,000/- passed the award on 29.06.2024 in T.S. (MAC) 191 of 2019 in the following manner:-

".....The claimant petitioner has proved documents showing expenditure towards medical treatment only to the extent of Rs.73224/-vide Exbt. 4(1) to Ext.4(vi) and Exbt.5. It is a natural phenomena that when a person met with accident and thereby admitted to hospital the injured remains under treatment and his/her family members, if any, remains busy in connection thereto and as such it is not possible for them to preserve all the cash memos and other treatment related papers showing expenditure towards treatment. Having regard to such circumstances I find it appropriate to award a sum of Rs. 80,000/- towards cost of treatment.

So, considering the above circumstances including the fact that the claimant petitioner was admitted to AGMC & GBP hospital for about 25 days, I find it appropriate to award a sum of Rs. 1,00,000/- towards pain and sufferings. A sum of Rs. 5,000/- towards litigation cost and a sum of Rs.20,000/- is also found to be reasonable towards the cost of medical attendant. A further sum of Rs. 1,00,000/- is awarded towards future treatment. An amount of Rs. 30,000/- is also awarded as transportation charge.

Evidence on record further reveals that the claimant petitioner has suffered disability to the extent of 85% vide Ext.8 due to "Amputation Right Thigh Above Knee JT". According to the evidence of PW2, i.e., Dr. Sukomol Sarkar though in the certificate the disability is shown to the extent of 85% but it can be taken to the disability to the extent of 100% which is considered as functional disability and permanent in nature. He also opined that functional disability of a carpenter in the above case will be severely impaired. Due to the accident claimant petitioner also lost his working capacity fully due to his amputation of right thigh. So, in my considered view the nature of disability so suffered by the claimant petitioner it can be said that he had lost his working capability. So, in this regard compensation will be assessed on the basis of multiplier method. From the Voter ID Card it appears that the date of birth of claimant petitioner is 20.04.1995. So, age of the claimant petitioner was 24 at the time of accident. Since no age proof certificate has been produced, hence, it is assessed that at the time of accident claimant petitioner was 24 years old. There is also no cogent evidence to prove the income of the claimant petitioner. In this notification bearing regard, we may No.F.44(11)-HC/2023/19504,dated 04.08.2023 issued by the High Court of Tripura whereby revised minimum wages for the skilled worker is assessed as Rs. 12,000/- per month. So, I am of the considered view that a Carpenter as a skilled worker of this age can easily earn Rs. 12,000/-

per month. As the claimant petitioner was 24 so, in this respect future prospect will be 40%. take assistance of the

Now, in view of the aforesaid discussions I proceed to calculate the appropriate compensation regarding the head of disability in the present case as under:

(1) Income per month = Rs.12,000/- only.

(II) 40% of above to be added as future prospect :- Rs.4,800/- only.

(III) Total of SI Nos. 1 and 2 above comes to Rs.12,000+ Rs. 4,800/- Rs. 16,800/- only.

(IV) compensation after applying multiplier of 18: Rs. 16,800 x 12 x 18=36,28,800/- only.

In view of the discussion the total compensation comes to Rs. 80,000/- Rs. 1,00,000/- + Rs. 5,000/- Rs. 20,000/- +Rs. 1,00,000/-+30,000 + 36,28,800= 39,63,800/-.

8. Now coming to the question of liability, it appears from the case record that OP No.2 was directed to file reply in regard to insurance policy on an application filed by the claimant side but no reply was given from the side of OP No.2. OP No.1 also did not adduce the insurance policy as well as other vehicular documents before the Tribunal. Further it also reveals from exhibits 7(vi) and 7(xii) that offending vehicle had a insurance policy covering the period of insurance w.e.f. 29.12.2018 to 28.12.2019. It follows therefore, the OP No. 2 being the insurer of the offending vehicle is liable to satisfy the award. All the issues accordingly stand answered to the extent as indicated herein above.

ORDER

In the result, claim is awarded in following terms:-

Claimant petitioner is entitled to get the award of Rs. 39,63,800/-(Rupees thirty nine. lacs sixty three thousand eight hundred) only with 6% Simple interest per annum from the date of registration of claim i.e, w.e.f. 16.09.2019 till the date of realization thereof.

The OP No.2, Choramandalam General Insurance Co. Ltd., insurer of the offending vehicle bearing registration No.TR-01-2-H-1622(Truck) shall, within 30 days of the date of this award, deposit the entire amount as awarded, in favour of the Motor Accident Claims Tribunal, West Tripura, Agartala.

Supply a copy of this award free of cost to the parties by not later than 15 days from the date of the award. The case stands disposed off on contest."

[4] Being aggrieved and dissatisfied with the judgment and award dated 29.06.2024 passed by the learned Motor Accident Claims Tribunal Court No.2, Agartala. West Tripura in T.S (MAC) No. 191 of 2019, the present appeal has been preferred seeking the following relief:-

"(i) Admit the present Appeal condoning the delay of 146 days in preferring the present appeal;

(ii) Issue notice upon the respondents;

(iii) Call for the case records from the Learned Motor Accident Claims Tribunal, Court No. 2, West Tripura, Agartala, Tripura, in Case No. T.S. (MAC) 191 of 2019.

(iii) After hearing the parties be pleased enough to set aside/ quash and modify the impugned judgement and award dated 29.06.2024, passed by the Learned Tribunal below and may be kind enough to pass an appropriate order in terms of the law laid down by the Hon'ble Apex Court by passing the various judgments in this regard, for the fair ends of justice.

(iv) Pending disposal of the present appeal, stay the operation of the impugned judgment and Award dated 29.06.2024 in Case No. T.S. (MAC) 191 of 2019, passed by the Learned Motor Accident Claims Tribunal, Court No. 2, West Tripura, Agartala, Tripura;"

[5] Heard both sides.

[6] When the case is called Mr. R. Saha, learned counsel appearing for the appellant-insurance company submits before this Court that the learned tribunal below considered the disability of the claimant as 100% but as per the report of doctor, he sustained injuries to the effect of 85%. As such, Mr. Saha Submits that the percentage of disability be assessed as 85% instead of 100% as assessed by the learned tribunal. Mr.

GS Das, learned counsel appearing for the claimant- respondent has not disputed the said submission made on behalf of the appellant Insurance-Company.

[7] After perusing the record, it is seen that the learned tribunal below assessed the disability of the injured person at 100% but it is also seen that in the certificate of PW 2. i.e. the doctor, the disability has been shown to the extent of 85%. Thus, this Court is of the view that the disability which has been assessed at 100% needs to be reduced to 85% instead of 100%. It is also opined that all aspects of the award passed by the learned tribunal below shall remain unaltered and accordingly, the award of compensation to be paid to the claimant is recalculated herein below following the principles laid down in **Rajkumar vs. Ajay Kumar & Anr in Civil Appeal No.8981 of 2010 (Arising out of SLP (C) No. 10383 of 2007)** :-

Head	Amount of Compensation
Cost of Treatment	Rs.80,000/-
Pain and Sufferings	Rs.1,00,000/-
Towards Litigation Cost	Rs.5000/-
Towards Medical Attendant	Rs. 20,000/-
Towards Future Treatment	Rs.1,00,000/-
Towards Transportation Charge	Rs.30,000/-
Total	Rs. 3,35,000/-

The above calculated amount of Rs. 3,35,000/- as awarded by the trial court will be unchanged.

Now, if the disability of the injured is assessed as 85%, the award will stand thus:-

- I. Income per month = Rs.12,000/- x 85% = Rs.10,200/-
- II. 40% of the above to be added as future prospect:- Rs. 4,080/-
- III. Total of SL Nos. I and II above comes to Rs. 10,200+ Rs.4080/-= 14,280/-

IV. Compensation after applying multiplier of 18 :-
 $14,280 \times 12 \times 18 = 30,84,480/-$

In view of the above, total compensation comes to Rs.
30,84,480/- + 3,35,000/- = 34,19,480/-

[8] Accordingly, the claimant respondent will be entitled compensation of Rs. **34,19,480/-** instead of Rs. 39,63,800/- as awarded by the tribunal below. It is made clear that apart from the observation made above, all other aspects of the award of the tribunal below shall remain unaltered. 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, if not deposited. However, it is also made clear that on such deposit, the claimant is at liberty to withdraw the same unconditionally as per procedure.

[9] In view of the above observations and directions, the present appeal is allowed to the extent as indicated above. As a sequel, miscellaneous application pending, if any, shall stand closed.

Send down the LCR.

सत्यमेव जयते

JUDGE

Paritosh

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by SABYASACHI
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