

**HIGH COURT OF TRIPURA
AGARTALA**

**M.A.C. App. No.24 of 2024
Along With
M.A.C. App. No.97 of 2024**

IN M.A.C. App. No.24 of 2024

Sri Dipak Majumder,

Son of Sri Phanibhusan Majumder,

aged about 45 years,

resident of Nandannagar, P.S.- New Capital Complex,
District- West Tripura.

(as the appellant is unable to move, he is represented
by his wife, **Smt. Anita Choudhury (Majumder)**,
wife of Dipak Majumder, resident of Nandannagar,
P.S.- New Capital Complex, District-West Tripura).

.....Claimant-Petitioner-Appellant(s)

Versus

1. (A) Smt. Sadhana Chakraborty (Sharma),

W/O Late Nepal Sharma,

Resident of Gandhigram,

Airport, Mohanpur, P.S.-Airport,

District-West Tripura, P.O.- Gandhigram,

Pin-799012.

1. (B) Nayan Sharma,

S/O Late Nepal Sharma,

Resident of Gandhigram,

Airport, Mohanpur, P.S.- Airport,

District- West Tripura,

P.O.- Gandhigram, Pin-799012.

1. (C) Smt. Nisha Sharma,

D/O Lt. Nepal Sharma,

Resident of Gandhigram, Airport,

Mohanpur, P.S.-Airport, District-West Tripura,

P.O.-Gandhigram, Pin-799012.

*(Legal heirs of the registered owner of the offending
vehicle bearing its registration No.TR-01-H-2593,
Auto).*

2. The Branch Manager,

Bajaj Allianz General Insurance Company Ltd. of 3rd
Floor, Aitorma, Agartala Sentrum, Sakuntala road,

P.S.- West Agartala, District-West Tripura,

P.O.- Agartala, Pin-799001
(Insurer of the offending vehicle No.TR-01-H-2593
(Auto)).

.....Respondent-OPS

For Appellant(s) : Mr. Sankar Lodh, Adv.

For Respondent(s) : Mr. Subhajit Chakraborty, Adv.

IN M.A.C. App. No.97 of 2024

The Branch Manager,

Bajaj Allianz General Insurance Company Limited
Having its Branch Office at Agartala,
3rd Floor, Aitorma Centrum Agartala,
Sakuntala Road, Near Metro Bazar,
P.S.- West Agartala, District-West Tripura,
(Insurer of the vehicle No.TR-01-H-2593 Auto
Rickshaw)

..... Appellant

Versus

1. Dipak Majumder,

S/O Sri Phani Bhushan Majumder,
Of Nandan Nagar, P.S. NCC., District-West Tripura.

To be represented by his wife

Smt. Anita Chowdhury (Majumder)

W/O Sri Dipak Majumder of Nandan Nagar,
P.S. NCC., District-West Tripura.

(As the injured Dipak Majumder can't move properly,
the wife of the injured namely Smt. Anita Chowdhury
(Majumder) will represent her husband Dipak
Majumder

..... Claimant Respondent

2. (A) Smt. Sadhana Chakraborty (Sharma),

W/O Late Nepal Sharma

2. (B)Nayan Sharma,

S/O Late Nepal Sharma

2. (C)Smt. Nisha Sharma,

D/O Lt. Nepal Sharma

All are residing at Gandhigram, Airport, Mohanpur,
West, P.S.-Airport, District-West Tripura.

(Legal heirs of the registered owner of the vehicle No.TR-01-H-2593 Auto Rickshaw namely Lt. Nepal Sharma, S/O Lt. Rai Haran Sharma)

.....Owner Respondents

For Appellant(s) : Mr. Subhajit Chakraborty, Adv.

For Respondent(s) : Mr. Sankar Lodh, Adv.

Date of Hearing
of Judgment and
Order : 19.09.2025

Date of
Delivery of
Judgment and
Order : **24.09.2025**

Whether fit for
Reporting : **YES**

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

Both the appeals are taken up together for hearing and disposal as because both the appeals have arisen out of the common judgment and award dated 12.10.2023 delivered by Learned Member, Motor Accident Claims Tribunal No.5, West Tripura, Agartala.

02. The MAC App. No.24 of 2024 is preferred by the claimant-petitioner as appellant for enhancement of the award and the MAC App. No.97 of 2024 has been preferred by the appellant Insurance Company i.e. Bajaj Allianz General Insurance Company Limited for setting aside/modification of the judgment and award dated 12.10.2023 delivered by Learned Member, Motor Accident

Claims Tribunal No.5, West Tripura, Agartala in the said case. Both the appeals are filed under Section 173 of MV Act, 1988.

03. Heard Learned Counsel, Mr. S. Lodh appearing on behalf of the claimant-petitioner-appellant (in MAC App. No.24 of 2024) and respondent-claimant (in MAC App.97 of 2024). Also heard Learned Counsel, Mr. S. Chakraborty appearing on behalf of the respondent (in MAC App. No.24 of 2024) and appellant-Insurance Company (in MAC App.97 of 2024) (hereinafter referred to as "respondent-Insurance Company").

04. By the said judgment and award, Learned Tribunal below has awarded a sum of Rs.69,55,000/- with interest @7% per annum from the date of filing the claim petition i.e. w.e.f. 29.04.2022 to till the date of realization and fastened the liability of payment of compensation upon the respondent-Insurance Company.

05. Taking part in the hearing, Learned Counsel, Mr. S. Lodh appearing on behalf of the appellant in connection with MAC App. No.24/2024 (hereinafter referred to as "appellant-claimant petitioner) first of all drawn the attention of the Court, referring Para No.4 of the judgment and award delivered by the Learned Tribunal below, wherein in Para No. 4 it was specifically mentioned that no written statement is

filed by the respondent-Insurance Company, though summon/notice was duly served upon them.

06. Similarly, in Para-6, Learned Tribunal below at the time of deciding Issue No.(ii) came to the observation that none appeared on behalf of the OP No.2 during argument. So, referring the said observation of the Learned Tribunal below, Learned Counsel, Mr. S. Lodh appearing on behalf of the appellant-claimant petitioner submitted that in view of the settled position of law there is/was no scope on the part of the Insurance Company to prefer the appeal i.e. MAC App. No.97 of 2024 before this Court.

07. In this regard, Learned Counsel for the appellant-claimant petitioner referred the judgment of a coordinate bench of this High Court in MAC App. No.61 of 2025, dated 07.07.2025, wherein in Para No.-7, the coordinate bench of this High Court observed as under:-

"[7] It is also seen from the record that to deny the case of claimant (respondent herein) the insurance company has not taken any steps to lead their evidence and to demolish the claimants case. It is not open for the insurance company to improve their case in appeal when there was no witness on behalf of the insurance company. It is also not open for insurance company to prefer an appeal when they have not taken their defense and to prove their case for dismissing the claim before the tribunal."

Referring the same, Learned Counsel has drawn the attention of the Court that since the respondent-Insurance Company before the Learned Tribunal below did not file any written statement nor adduced any

oral/documentary evidence on record. In such a situation, there is no scope for the respondent-insurance company to prefer any appeal before this Court. Since the claimant has made the Insurance Company as party so without going to that aspect by a common judgment the appeals are disposed of on merit.

08. Learned Counsel for the appellant-claimant petitioner thereafter drawn the attention of the Court that in Para No.-22 of the judgment Learned Tribunal below opined that the claimant petitioner submitted that he used to earn Rs.35,000/- from his business and relied upon the income certificate issued by DCM which was marked as Exhibit-19. But, the Learned Tribunal below determined the monthly income of deceased at Rs.15,000/- only on the ground that the salary certificate (Exbt.19) could not be proved by the appellant by adducing the evidence of the issuing authority i.e. the authority who issued the income certificate. Situated thus, Learned Tribunal below failed to appreciate Exhibit-19 i.e. the income certificate in accordance with law in absence of contrary evidence on record from the other side and thus, came to an erroneous observation for which the interference of this Court is required.

09. Learned Counsel, Mr. S. Lodh appearing for the appellant-claimant petitioner again drawn the attention of the Court referring Exhibit-19 i.e. the income certificate

wherein the monthly income of the petitioner was shown at Rs.35,000/- from all sources and the claimant petitioner relied upon the same, but the contesting OP did not dispute the same. Even the respondent-Insurance Company as already stated also did not adduce any oral/documentary evidence on record to rebut the same.

10. Learned Counsel, Mr. S. Lodh further submitted that though the Learned Tribunal below did not consider Exhibit-19 i.e. income certificate, but the Learned Tribunal below treated the same as salary certificate. Thereafter, Learned Counsel also relied upon the examination-in-chief in affidavit of one Smt. Anita Choudhury (Majumder) wife of petitioner who in her examination-in-chief in affidavit in Para No.12, specifically stated that the monthly income of the appellant-claimant petitioner was Rs.35,000/- which remain un rebutted by the contesting OP.

11. Learned Counsel further referred Para No.23 of the judgment wherein the Learned Tribunal below awarded a sum of Rs.30,000/- towards actual loss of income and further submitted that the appellant was admitted in the ILS hospital and Manipal Hospital, Bangaluru w.e.f. 04.04.2022 to 19.04.2022, 18.05.2022 to 30.05.2022, 17.08.2022 to 20.08.2022, 25.11.2022 to 29.11.2022 and 06.12.2022 to 20.12.2022. The factual condition was that the appellant was totally in bedridden condition during that period. But, the

Learned Tribunal below only considered actual loss of income for 53 days when he was admitted in the aforesaid hospitals which needs to be interfered with.

12. Further, referring Para No.27, Learned Counsel for the appellant drawn the attention of the Court that towards pain and suffering, the Learned Tribunal below only awarded Rs.2,00,000/- in favour of the appellant-claimant petitioner which was too less and the said amount needs to be enhanced. Finally, in summing up, Learned Counsel, Mr. Lodh drawn the attention of the Court that considering the materials on record, the judgment and award delivered by Learned Tribunal below needs to be enhanced and modified and urged for allowing this appeal.

13. On the other hand, Mr. Subhajit Chakraborty, Learned Counsel appearing on behalf of the respondent-Insurance Company drawn the attention of the Court that the Insurance Company has challenged the appeal towards computation of personal disability, which could not be properly appreciated/ assessed by the Learned Tribunal below. In support of his contention, Learned Counsel relied upon one citation of the Hon'ble Supreme Court of India in **Raj Kumar vs. Ajay Kumar & Anr.** reported in **(2011) 1 SCC 343**, wherein in para No.19, Hon'ble the Apex Court observed as under:-

"19. We may now summarise the principles discussed above:

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that the percentage of loss of earning capacity is the same as the percentage of permanent disability).

(iii) The doctor who treated an injured claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors."

Referring the same, Learned Counsel submitted that in view of the principle of law laid down by the Hon'ble Apex Court, the Learned Tribunal failed to assess the percentage of disability at the time of delivery of judgment in favour of the claimant-petitioner for which interference of this Court is required. Learned Counsel also submitted that in Para No.28, Learned Tribunal below awarded attendant charges in favour of the claimant-petitioner, but surprisingly applied multiplier of 13, resulting which a huge amount of Rs.15,60,000/- has been awarded towards attendant charges erroneously in absence of any law for which the interference

of this Court is also required and urged for setting aside and modification of the judgment delivered by the Learned Tribunal below.

14. To counter the submission, Learned Counsel, Mr. Lodh drawn the attention of the Court that the cross-examination part of PW-2, Dr. Manik Jamatia who in his examination-in-chief in affidavit, in the last para, submitted that the injury occurred due to spine and spinal cord damage, and he further submitted that after five years improvement may happen and patient can work with support, but injured cannot work normally in future and functional disability is 100%. So, Learned Counsel, Mr. Lodh submitted that there was no infirmity in the judgment delivered by Learned Tribunal below, save and except determination of monthly income and as such, urged for enhancement of the award.

15. In this case, the appellant-claimant petitioner, Dipak Majumder filed one claim petition before the Learned Tribunal seeking compensation due to injury sustained by him due to a road traffic accident on 04.04.2022 at about 18.00 hours to 18.30 hours at Nandannagar near Quarter Complex market under NCC PS District-West Tripura. It was the assertions of the appellant that on 04.04.2022 at about 18.00 hours to 18.30 hours, the appellant-claimant petitioner Dipak Majumder was standing with his friend at

Nandannagar near Quarter Complex market on the extreme left side of the road. That time a vehicle bearing registration No.TR-01-H-2593 (Auto) was coming rashly and negligently and the driver lost control over the vehicle and dashed against the claimant petitioner for which the accident took place. As a result, the injured Dipak Majumder sustained grievous injury on his head, waist, back and also got injury in his private parts of his body. Immediately with the aid of local people he was taken to AGMC and GBP hospital, Agartala but considering the injuries he was referred to ILS hospital for better treatment and at ILS hospital, he was admitted as an indoor patient w.e.f. 04.04.2022 to 19.04.2022 and during treatment in the said hospital an operation was held on his backbone by the doctor of the said hospital. After discharge he undergone treatment by private doctors. In this regard, NCC PS Case No.38 of 2022 under Section 279/338 of IPC was registered. Hence the claimant petitioner filed the case.

16. The claim petition was contested by OP number 1 being the owner of the offending Auto by filing written statement denying the assertions of the claimant petitioner and it was further submitted that on the alleged day of accident, the vehicle was duly insured with the respondent-Insurance Company i.e. Bajaj Allianz General Insurance Company Limited. No written statement was filed by OP No.2

i.e. the present respondent-Insurance Company inspite of serving of notice/summon. Upon the pleadings of the parties Learned Tribunal below framed the following issues:-

- (i) **Whether the case is maintainable?**
- (ii) **Whether claimant sustained injury due to rash and negligent driving of Auto TR-01-H-2593 on 04.04.2022 at Nandannagar near Quarter Complex under NCC PS?**
- (iii) **Whether claimant is entitled to get compensation?**
- (iv) **What should be the amount of just compensation?**
- (v) **Who is liable to pay compensation?**

To substantiate the issues, the claimant petitioner and the OP No.1 i.e. the owner of the offending vehicle adduced oral/documentary evidence. For the sake of convenience the names of witnesses and exhibited documents are mentioned herein below:-

Claimant Witness:-

PW.1- Smt. Anita Chowdhury (Majumder)

PW.2- Dr. Manik Jamatia

Claimant Exhibits:-

Ext.1- Certified copy of Printed FIR.

Ext.2- Certified copy of FIR/Ejahaar.

Ext.3- Certified copy of Seizure list.

Ext.4-Certified copy of injury report.

Ext.5- Certified copy of charge sheet.

Ext.7 series- Discharge summary along with bill.

Ext.8 series- Discharge summary along with bill.

Ext.9 series- Discharge summary along with bill.

Ext.10 series- Discharge summary along with bill.

Ext.11 series- Discharge summary along with bill.

Ext.12 series- Prescriptions.

Ext.13 series- Bills/vouchers/pay slop from ILS hospital and Manipal Hospital.

Ext.14- Cash memo of patients bed.

Ext.15- Bill/voucher/Air ticket.

Ext.16- Trade licence.

Ext.17-Pan Card of Dipak Majumder.

Ext.18- School certificate of Dipak Majumder.

Ext.19-Income certificate.

Ext.20- Guest house bill from Bengaluro.

Ext.21- Aadhar Card of Dipak Majumder.

Ext.22- ID card.

Ext.23- Disability certificate.

Ext.23/1- Signature of PW.2 in the disability certificate.

Opposite party's Witness:-

OPW.1- Smt. Sadhana Chakraborty.

Exhibits by Opposite party No.1-

Ext.A- Registration certificate.

Ext.B- Driving licence.

Ext.C-Insurance certificate.

Ext.D-Road permit.

17. Finally on conclusion of inquiry Learned Tribunal below allowed the claim petition filed by the appellant-claimant petitioner. The operative portion of the judgment and award runs as follows:-

ORDER

"32. It is ordered that, a total amount of Rs.69,55,000/- (Rupees sixty nine lakhs fifty five thousand) is awarded in favour of the petitioner as compensation. The OP No.2, the Bajaj Allianz General

Insurance Company Lt., the insurer of the vehicle bearing registration No.TR-01-H-2593(Auto) is hereby directed to pay the compensation as awarded. The OP No.2 is also directed to pay the interest @7 per annum on total awarded sum from the date of filing of this petition i.e. on 29.04.2022 till the date of realization.

Huge amount has been spent during treatment and which is continued till date and considering this aspect, forty (40) 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.

33. Thus, the claim petition is allowed on contest."

Challenging the judgment and award both the parties have preferred the appeals.

18. I have heard detailed argument of both the sides and gone through the record of the Learned Tribunal below including the judgment delivered by the Learned Tribunal below. Since, Learned Counsels of both the parties have confined their arguments to limited points so let us confine to those relevant points only. The first contention of the appellant-claimant petitioner is that Learned Tribunal below inspite of producing and proving income certificate (Exbt.-19) only determined the monthly income of the appellant-claimant petitioner at Rs.15,000/- in this regard on the ground that the issuing authority was not produced as witness. In this regard, the OP No.1 before the Learned Tribunal below, in course of cross-examination, did not dispute anything. Even the respondent-Insurance Company nor filed any written statement nor adduced any

oral/documentary evidence on record. The respondent-Insurance Company also did not come forward to cross-examine the claimant petitioner to challenge the document. So, in the considered opinion of this Court the determination of monthly income at Rs.15,000/- in absence of examination of the issuing authority was not proper.

19. Since Exbt.-19 was unrebutted by the contesting opposite parties and there is also no contrary evidence on record from the side of the contesting opposite parties that the same was not genuine. So, in the considered opinion of this Court, the monthly income of the appellant during that relevant point of time should be assessed to Rs.35,000/- in place of Rs.15,000/- and there is/was no cogent ground to disbelieve the same. So, in view of the above, towards actual loss of income, the appellant-claimant petitioner would be entitled to get Rs.(35,000X2)/- = Rs.70,000/-. Now, regarding future loss of income, Learned Tribunal below added 25% towards future loss of income since he was self employed thus calculated Rs.18,750/- (Rs.15,000/- + 25% of Rs.15,000/- i.e. Rs.3750/-) which actually should be Rs.35,000/- + (25% of Rs.35,000/- i.e. Rs.8750/-) i.e. Rs.43,750/-. As the claimant petitioner was 47 years old at the time of accident so, relying upon the judgment of **Smt. Sarla Verma and Ors. Vs. Delhi Transport Corporation and Anr.** reported in **2009 AIR SCW 4992** here, in this

case multiplier 13 would be applied. So, the loss of income comes to Rs.(43,750 x 12 x 13)/- = Rs.68,25,000/- (Rupees Sixty Eight Lakh Twenty Five Thousand). Further, towards medical treatment, hospitalization, medicine, nursing food, etc. Learned Tribunal below awarded Rs.18,50,000/- and since there is no contrary evidence on record, so, I also award this amount in favour of the claimant petitioner. Towards special diet Learned Tribunal below awarded Rs.40,000/- and towards transportation cost Learned Tribunal below awarded Rs.50,000/-. In absence of contrary evidence on record, the said amount is also awarded in favour of the appellant-claimant petitioner. Learned Tribunal below also awarded Rs.2,00,000/- towards pain, suffering and trauma relying upon the judgment of the Hon'ble Supreme Court in **Ramesh Vs. Karan Singh and Anr.** in Civil Appl. No.6365 of 2022 dated 16.09.2022.

So, after hearing both the sides it appears to this Court that Learned Tribunal below also rightly awarded the said amount in favour of the appellant-claimant petitioner. Towards future medical expenses Rs.3,00,000/- was awarded since the appellant-claimant petitioner did not dispute to that, so the same amount is also awarded in favour of the present claimant petitioner. Now, regarding attendant charges it appears that Learned Tribunal determined Rs.10,000/- per month for 2 persons as an

attendant charges and further determined annual attendant charges of Rs.1,20,000/- and with that amount applied multiplier 13 and thus awarded a sum of Rs.15,60,000/- which in my considered view was wrongly decided/calculated by the Learned Tribunal below. He was admitted in the hospital for a period of 60 days and due to accident he has suffered 100% permanent disability and without the support of assistant he could not perform daily functions and he has become paralyzed. So, considering the nature and gravity of the injury, in my considered view, the claimant petitioner would be only entitled to attendant charges for the period of his admission in the hospital and thereafter for a further period of 1 (one) month i.e. for 3 (three) months only and taking 3 (three) months into consideration fixing 2 attendants Rs.500/- per head i.e. 2 (two) attendants at the Rs.1000/- per day for 90 days it amounts to Rs.90,000/- which the claimant petitioner would be entitled to get in place of Rs.15,60,000/-. Further, towards the attendants charge there is no scope to apply any multiplier in view of the judgment of **Sarla Verma and Anr. (supra)**. Thus, the claimant petitioner after final calculation would be entitled to get Rs.(30,000 + 70,000 + 68,25,000 + 18,50,000 + 40,000 + 50,000 + 2,00,000 + 90,000 + 3,00,000)/- =Rs.94,55,000/- from the appellant Insurance Company.

20. In the result, the appeal filed by the appellant-claimant petitioner is hereby allowed and modified. The appeal filed by the Insurance Company is also partly allowed with modification that the claimant petitioner shall be entitled to get Rs.94,55,000/- in total which is the respondent-Insurance Company shall pay the appellant-claimant petitioner with interest @7.5% per annum in place of @7% with effect from date of filing the claim petition that is w.e.f. 29.04.2022 to till the date of realization. As ordered by the Learned Tribunal 40% of the awarded amount as aforesaid be kept in fixed deposit certificate for a period of 5 years and the rest amount of compensation be released in favour of the claimant petitioner to his respective bank account by the Learned Tribunal. The respondent-Insurance Company be asked to deposit the amount, if not deposited to the Learned Tribunal below within a period of 2 months from the date of delivery of the judgment.

With this observation, both the appeal stands disposed of.

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

Supply a copy of this judgment/order to Learned Counsel for the appellant Insurance Company for information and compliance and also a copy of this judgment/order be

furnished to Learned Counsel for the respondent claimant petitioners for information.

Pending application(s), if any, stands disposed of accordingly.

JUDGE



Amrita

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DEB**

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