

HIGH COURT OF TRIPURA

AGARTALA

MAC APP 33 OF 2024

The Divisional Manager,
Oriental Insurance Company Ltd.
44/2 Central Road, Agartala, Tripura West.
(Insurer of TR01-X-8707, motorcycle).

....Appellant.

Versus

1. Sri Dipak Debbarma,
S/o Sri Hari Debbarma, R/o Kalinagar, Madankobrapara,
P.O. Dinabandhu Kobra Para, P.S. Bodhjungnagar,
West Tripura, PIN-799035.

....Claimant-respondent.

2. Smt. Dipali Debbarma,
W/o Sri Dipak Debbarma, R/o Kalinagar, Madankobrapara
P.O. Dinabandhu Kobra Para, P.S. Bodhjungnagar,
West Tripura, PIN-799035.

....Petitioner-respondent.

3. Sri Biswajit Debbarma,
S/o Lt. Nikhil Debbarma, R/o Kalinagar, Madankobrapara,
P.O. Dinabandhu Kobra Para, P.S. Bodhjungnagar,
West Tripura, Owner of Motorcycle bearing No. TR01-X-8707),
PIN-799035.

..Driver respondent.

MAC APP 37 OF 2024

Sri Dipak Debbarma,
S/o Sri Hari Debbarma, R/o Kalinagar, Madankobrapara,
P.O. Dinabandhu Kobra Para, P.S. Bodhjungnagar,
West Tripura.

....Appellant-Claimant.

Claimant being mentally disabled to the extent of 80%
Due to accidental injury, the appeal is filed by his wife
And authorized agent as well as legal representative--

Smt. Dipali Debbarma,
W/o Sri Dipak Debbarma, R/o Kalinagar, Madankobrapara,
P.O. Dinabandhu Kobra Para, P.S. Bodhjungnagar,
West Tripura.

....Petitioner.

Versus

1. Sri Biswajit Debbarma,

S/o Lt. Nikhil Debbarma, R/o Kalinagar, Madankobrapara,
P.O. Dinabandhu Kobra Para, P.S. Bodhjungnagar,
West Tripura,
(Owner of motorcycle bearing No. TR01-X-8707),

2. The Divisional Manager,

Oriental Insurance Company Ltd.
44/2 Central Road, Agartala, Tripura West.
(Insurer of TR01-X-8707, motorcycle).

....Respondents.

**BEFORE
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA**

IN MAC APPEAL NO.33 OF 2024

For the Appellant(s) : Mr. Karnajit De, Advocate.
For the Respondent(s) : Mr. S. Kar Bhowmik, Sr. Advocate.
Mr. E.L.Darlong, Advocate.
Mr. N. Debnath, Advocate.
Mr. J. Das, Advocate.

IN MAC APPEAL NO.37 OF 2024

For the Appellant(s) : Mr. S. Kar Bhowmik, Sr. Advocate.
Mr. E.L.Darlong, Advocate.
Mr. N. Debnath, Advocate.
Mr. J. Das, Advocate.
For the Respondent(s) : Mr. Karnajit De, Advocate.

Date of hearing : 06.01.2026

Date of delivery of
Judgment & Order : **12.02.2026**

Whether fit for reporting :

YES	NO
✓	

JUDGMENT & ORDER

Both the appeals are heard together and are disposed of by this common judgment as both the appeals have arisen out of the same award, dated 02.12.2023, passed by the learned Member, Motor Accident Claims Tribunal No.2, West Tripura, Agartala in TS (MAC) 175/2018.

2. MAC Appeal No. 33/2024 has been preferred by the Oriental Insurance Company Limited and MAC Appeal No.37/2024 has been preferred by the original claimant-petitioner of the claim petition (victim of the accident).

3. The claim petition was filed by the claimant-petitioner, Dipak Debbarma [here-in-after referred to as the petitioner] through his wife, Smt. Dipali Debbarma alleging, inter alia, that on 08.11.2017, at around 2/2-30 pm, he was returning to his home as a pillion rider of motorcycle bearing Registration No.TR01-X-8707, driven by one Biswajit Debbarma. According to him, the rider of the motorcycle drove it at a very high speed and in rash and negligent manner. It is alleged that when they reached near 'Trinath point,' on Assam-Agartala road, suddenly one street dog crossed the road, and the rider pressed the brake but could not control the motorcycle due to such high speed and fell down on the left side of the road. The petitioner received severe head injury and was taken to GBP Hospital, Agartala. Thereafter, he was referred to SSKM Hospital, Kolkata, but due to non-availability of bed there, he was admitted to Peerless Hospital & Research Centre, Kolkata, on 09.11.2017. There he was also put in ventilation. On the next day, i.e. on 10.11.2017 the petitioner was shifted and admitted to National Neurosciences Centre, Kolkata wherein he was treated upto 06.12.2017 in the first spell. He also underwent one major surgery of brain called '*bilateral decompressive craniotomy*' on 10.11.2017. After discharge, he had to attend OPD and therefore, he stayed there for further period and also consulted with one Psychiatrist there and ultimately, returned to Agartala on 13.12.2017.

4. Again, on 16.05.2018, he went to Kolkata and underwent for another surgery called '*right fronto-temporo-parietal cranioplasty*' and was discharged on 24.05.2018 with further advise that left sided *cranioplasty* would be considered after another couple of months. On 26.05.2018, he returned to Agartala and thereafter got treatment locally under another Neurosurgeon. He also again visited said Neuro Centre, Kolkata on 08.01.2019 and in the OPD prescription, it was noted that left sided *cranioplasty* was pending.

5. According to the petitioner, he was aged about 39 years at the time of the accident, and he was a skilled mason working under 'Rudraksh Realtor,' a reputed construction company, and from such a profession, he would earn Rs.15,000/- per month. Moreover, he had a piggery in his house consisting of 7/8 pigs and in this way, he would further earn Rs.2,00,000/- each year and taking average of total income, he would at least earn Rs.31,000/- per month. He also claimed that further Rs.15,00,000/- was required for his future treatment including another 'cranioplasty' operation. It is alleged that he cannot now understand the normal transactions of his daily life and cannot sleep properly and constantly lives in a state of confusion, irritability, and impaired brain function with a lot of cognitive disability. He needs assistance of attendant constantly, at the cost of Rs.6000/- per month. The District Disability Board of West Tripura quantified his physical disability to be 80% with diagnosis of 'organic psychosis' and mental illness. In the disability certificate issued by the said Medical Board, the Board recommended for re-assessment again after 5 years.

6. The insurance company does not deny their liability to pay the compensation being the insurer of said motorcycle.

7. In the evidence, the petitioner also proved one monthly income certificate, issued by the Deputy Collector, Jirania, West Tripura certifying the monthly income of the petitioner to be Rs.25,000/- and finally, learned Tribunal awarded compensation of Rs.42,18,268/- along with interest at the rate of 7.5% per annum thereupon, from the date of filing of the claim petition.

8. While assessing the compensation, learned Tribunal taking into consideration the evidence of the Medical Officer treated the functional disability of the petitioner to be 100% of permanent nature. Learned Tribunal also assessed the age of the petitioner to be 40 years at the time of accident and by relying a notification bearing No.F.44(11)-HC/2003/19504, dated 04.08.2023, issued by the High Court giving guidelines for assessing monthly income of the victims of road traffic accident for settlement of motor accident claim cases in the Lok-adalats, assessed the monthly income of the petitioner to be Rs.12000/- and did

not rely on the said income certificate as was proved from the side of the petitioner.

9. For pain and suffering, learned Tribunal awarded Rs.1,00,000/- and for future treatment, further awarded Rs.1,00,000/-. Based on the bills and vouchers submitted by the petitioners, learned Tribunal found the total cost of treatment to be Rs.7,94,268/-. Learned Tribunal also again awarded a lump sum award of Rs.1,00,000/- for special diet and for engaging attendants and awarded Rs.1,00,000/- for loss of amenities of life.

10. Learned counsel Mr. K. De contends that the Disability Board issued the disability certificate only for 5 years and therefore, it was not at all a case of permanent disability though learned Tribunal has treated the case to be of 100% functional disability of permanent nature and moreover, the Tribunal also faulted by adding 40% of future increase of income of the victim by applying the principle laid down in ***National Insurance Company Ltd. vs. Pranay Sethi, (2017) 16 SCC 680.***

11. Learned senior counsel, Mr. S. Kar Bhowmik while challenging the award on the ground of inadequacy of amount, addresses his argument with all emphasis that learned Tribunal has committed serious error by rejecting the monthly income certificate issued by the Deputy Collector, Jirania. According to learned senior counsel, after thorough field inquiry, said certificate was issued by a public authority, and therefore, there was no reason to discard it. Moreover, admissibility of said certificate was also not challenged by the insurer on the ground that said Deputy Collector was not examined.

12. Learned senior counsel also contends that grant of Rs.1,00,000/- to the petitioner on the count of cost of his future treatment was totally inadequate. In this regard, one prescription dated 08.01.2019 [Exhibit-49], was put into pressing wherein it was indicated that left side cranioplasty was pending and right side cranioplasty was done on 21.05.2018. Finally, learned senior counsel submits that the petitioner is not in a position to deal with his own affairs by himself without the help of his wife, and more so, when for the rest of his life, he shall have to live

with the help of attendants and with treatment and medication, the order of the learned Tribunal for keeping 75% of the amount in fixed deposit was harsh. Learned senior counsel further submits that a huge amount is required for future treatment including the said left side cranioplasty, but due to lack of fund the petitioner is not being able to proceed with his said surgery. Learned counsel submits that the petitioner due to such severe injury in his brain does not understand his day-to-day affairs including official transactions and therefore, his wife may be allowed to operate the bank transactions and to withdraw the money on his behalf so that his treatment and other necessities can be met up. Learned senior counsel, Mr. Kar Bhowmik also grieves that the rate of interest as was granted on the awarded amount by the Tribunal was also not satisfactory and at least 10% interest ought to have been awarded in favour of the petitioner.

13. Mr. Kar Bhowmik, learned senior counsel, finally relies on few decisions of the Hon'ble Supreme Court and also of this Court, which are discussed here-under:

- I. In ***Chandra alias Chanda alias Chandraram & Anr. vs. Mukesh Kumar Yadav & Ors., (2022) 1 SCC 198***, the deceased was an employee as a driver having heavy vehicle driving license and it was claimed that he was earning Rs.15,000/- per month. The Tribunal determined the monthly income of the deceased to be Rs.5,746/-. In that context, the Hon'ble Supreme Court observed that the deceased was possessing heavy vehicle driving license and his wife categorically deposed before the Tribunal that his monthly income was Rs.15,000/- which was not accepted by the Tribunal on the ground that salary certificate was not produced and relied on a memorandum of minimum wages. In this regard, Hon'ble Supreme Court observed that in absence of salary certificate, the minimum wage notification can be a yardstick, but at the same time, it cannot be an absolute one to fix the income of the deceased. It was further observed by the Apex Court that in absence of documentary evidence

on record, some amount of guesswork is required to be done, but at the same time, the guesswork for assessing the income of the deceased should not be totally detached from reality just because the claimants were unable to produce documents to show the monthly income of the deceased and the same did not justify adoption of lowest tier of minimum wage while determining such income. In the said case, the monthly income of the deceased was taken to be Rs.8000/- by the Hon'ble Supreme Court.

- II. In ***Rajwati alias Rajjo & Ors. vs. United India Insurance Company Ltd. & Ors., 2022 SCC OnLine SC 1966***, the deceased was working as a driver in a private company and the Tribunal assessed his monthly income to be Rs.11,225/- based on a pay slip submitted by the claimants and added further 25% towards future prospect bringing his monthly income to be Rs.14,031.25. The High Court in appeal held that the Tribunal had erred in relying on the salary certificate and the pay slip to ascertain the income of the deceased as those documents were not proved as the persons who issued those documents were not examined before the Tribunal and accordingly, the High Court assessed the monthly income to be Rs.4,836/- in view of the minimum wages fixed by the State at the relevant time. The Hon'ble Supreme Court did not agree with the view taken by the High Court while rejecting the salary certificate and the pay slip of the deceased merely on the ground that the persons issuing those documents were not examined before the Tribunal. According to the Hon'ble Supreme Court, those documents were conclusive proof of the income of the deceased which was also corroborated by the statements of the deceased's wife and his co-workers. Ultimately, the Hon'ble Supreme Court affirmed the determination of the monthly income of the deceased

by the Tribunal to be Rs.11,225/- and re-assessed the compensation accordingly.

III. In **Kavin vs. P. Shreemani Devi & Ors., 2025 SCC OnLine SC 1786**, the claimant-victim suffered serious injuries in the accident resulting in 100% permanent disability. He was required to undergo treatment for a considerable period of time. He was a student pursuing his graduation in Arts. The Hon'ble Supreme Court after considering the materials on record observed that the claimant had suffered 100% disability and he was in vegetative state. The Tribunal taking into account his future medical expenses @ Rs.3000/- per month for a duration of next 25 years awarded Rs.9,00,000/- for future treatment which was reduced by the High Court. The Hon'ble Supreme Court in that case observed that granting of cost of future treatment @ Rs.3000/- per month was reasonable but restricting the same for next 25 years was not approved by the Hon'ble Supreme Court. The Hon'ble Supreme Court taking into account the overall expectancy, an amount of Rs.15,00,000/- in place of Rs.9,00,000/-, was awarded for future medical expenses.

IV. In case of **Samir Chandra Das vs. Md. Jamal Hossain & Anr., MAC Appeal No.03 of 2019**, decided on 31.01.2020, the District Disability Board assessed the disability of the victim for a limited period of 5 years like the present case and recommended review of the same after completion of such period. A Co-ordinate Bench of this Court, in that contexts, at Para Nos. 7 & 8, observed as follows:

"7. We have noticed the contents of the medical certificate issued by the District Disability Medical Board. This certificate states that the claimant was suffering from locomotor disability but certified that the same was only temporary. The certificate contains two further narrations "(i)

This condition is Progressive; (ii) Re-assessment is recommended after 5 years and validity of certificate is up to 06.12.2022". Quite a few disturbing things emerge from this certificate. We may recall the accident took place on 08.05.2016. The Board had examined the claimant on 06.12.2017, i.e. almost a year and a half later. On what basis the Medical Board certified that the injury is temporary is difficult to appreciate. If the injury had not healed for a year and a half and showed 60% disability after such a long time, the Medical Board had to indicate some reason why it believed that the injury was temporary. I am conscious that in the motor accident claim cases the Courts recognize injuries leading to disability which is either temporary or permanent and which is total or partial. In the present case, however, when the Medical Board certified a year and a half after the accident that the injury was temporary, there had to be some explanation to this.

8. Secondly, I have come across all injury certificates issued by the District Disability Medical Boards which routinely suggest that the validity of the injury certificate is for a period of 5(five) years and that the injured should appear before the Medical Board at the end of the said term. There is no provision under the Motor Vehicles Act, 1988 or the Rules framed thereunder to assess the disability of the injured for a fixed period and to work out his loss of future income on such basis. No decision of this Court or any other Court is brought to my notice under which such procedure is evolved. Such procedure thus has no authority in law.

14. Finally, this Court considered the said disability to be of permanent in nature in view of the fact that for almost a year and half after the accident, the Medical Board found the victim to be suffering from 60% physical disability without any improvement.

15. The issues as raised by the parties during their respective submissions, are now being discussed one after another here-in-below:

16. First of all, to discuss the issue of whether the disability of the present petitioner is to be treated as permanent or temporary, reference is made to the disability certificate of the petitioner, which was proved as Exhibit-6. The Disability Board has assessed the disability of the petitioner to the extent of 80% due to organic psychosis under the category of mental illness. Organic Psychosis generally refers to hallucinations, delusions, or severe thought disorders stemming from a specific,

identifiable physical brain dysfunction or disease. In that certificate, the Board has categorized such disability to be temporary with further remark that condition was likely to improve. They have also recommended re-assessment of the petitioner after 5 years. One of the members of the said Board, Dr. Sajal Gupta, Psychiatrist, mainly assessed the disability of the petitioner in the Board. The said Dr. Gupta as PW-4 stated before the Tribunal that it was most unlikely that the petitioner would be able to carry out his usual vocation and that he was not fit to carry out any such profession.

17. There is no denial or cross-examination from the side of any of the respondents on this part of his evidence. On the day of his evidence, the petitioner himself was also present in the Tribunal and the said doctor observing the petitioner in the Court also stated that apparently, the condition of the petitioner was the same as was in the year 2018. Such unrebutted evidence shows that even after completion of said 5 years from the date of issuance of said disability certificate, there was no apparent development or improvement of the condition of the petitioner. Thus, learned Tribunal rightly observed that it was a case of 100% functional disability of permanent nature. This issue is answered accordingly.

18. The next point as argued by learned counsel Mr. K. De was that in case of disability, addition of 40% of future increase of income was not permissible. This argument of learned counsel, Mr. De also cannot be accepted. In the second schedule of the Motor Vehicles Act as it was prevailing at the time of the accident as well as the filing of the claim petition, in the determination of disability in a non-fatal accident under Section 163A of the MV Act, it is indicated that in the case of permanent total disablement, the amount payable shall be arrived at by multiplying the annual loss of income by the multiplier applicable to the age on the date of determining the compensation, and therefore, it is quite discernible that the method which is adopted in case of awarding compensation in death cases on the count of loss of income will also be applied in the case of such disability. Practically, when a person has been held to be disabled permanently to the extent of 100% disability, certainly he would not be able to earn anything more in future and had he not been rendered

disabled due to such accident, certainly his income would rise day-by-day on the ground of money inflation amongst other grounds.

19. The object of awarding damages is to compensate the loss suffered as a result of wrong done upon the victim as far as the money can do so in a fair, reasonable and equitable manner. In other words, the victim is required to be compensated keeping in mind that the normal amenities which he would have enjoyed, if he would not have suffered such injuries and would earn in normal course and the amount which he is now being deprived of earning due to said accident is required to be taken into consideration.

20. In ***Rajkumar vs. Ajay Kumar & Anr., (2011)1 SCC 343***, it is held by the Hon'ble Supreme Court that compensation in such grave nature of injury cases can be granted on the following heads:-

“.....Pecuniary damages (Special Damages)

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising :

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General Damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).....”

21. Thus, the learned Tribunal committed no error in adding 40% of future income in the present case. Hence, it is held that the MAC

Appeal bearing No.33 of 2024 filed by the insurance company is liable to be dismissed for want of any merit.

22. The first point as raised from the side of petitioner was that learned Tribunal ought to have relied on the income certificate issued by the Deputy Collector on 23-09-2021. Admittedly, the said Deputy Collector, who issued the income certificate, was not examined in this case. On what basis and under what authority of law, he issued the said income certificate was also not disclosed in the said certificate. The said certificate was issued on 23.09.2021 having validity for 6(six) months certifying monthly income of the petitioner to be Rs.25,000/-. It is the specific case of the petitioner that after the accident he became disabled and completely incapable of earning anything. When it is the claim of the petitioner himself that in the year 2021 he was income-less, apparently, the said certificate is untrustworthy one as during the year 2021 he was income less and therefore, earning of Rs.25,000/- during the said period does not arise. It is written in the said certificate that as per field inquiry his monthly income was found to be Rs.25,000/-. But, who did the field inquiry and what was his report are also not disclosed in the certificate, nor the same was enclosed therewith.

23. In ***United India Insurance Co. Ltd. vs. Smt. Manju Saha, 2016 ACJ 2771***, learned Single Bench of this Court observed that there was no provision of law under which the SDM's issued such certificate and it was merely a practice. Learned Single Bench also further observed that it failed to understand as to how a SDM could assess the income of a stationary shop owner or a vegetable seller, and finally held that this type of certificate issued from the office of the SDM had no evidentiary value in the Court of law.

24. In view of above, this Court is also not impressed with the submission of Mr. Kar Bhowmik that the learned Tribunal had committed error by ignoring that income certificate. The case of the petitioner is that at the time of accident he was working as 'labour sardar' under Rudraksh Realtor Company, but no salary certificate or pay slip issued by the said company was placed in the evidence to enable the Tribunal to assess the monthly income of the petitioner with concrete evidence and in objective

manner. Learned Tribunal relying on the administrative instructions issued by the High Court for settlement in the Lokadalats has relied on the same and has determined the monthly income of the petitioner to be Rs.12,000/- in the year 2017. Even if the said administrative instruction is kept aside, the monthly income as assessed by learned Tribunal appears to be reasonable. Therefore, no modification is required regarding assessment of compensation by learned Tribunal on the count of future loss of income and the same is kept undisturbed.

25. Under the count of pain and suffering, only Rs.1,00,000/- was awarded by learned Tribunal, which according to this Court is not adequate enough. At the time of the accident, he was only 40 years old, and for the rest of his life, he will have to suffer and live with such disability that will prevent him from living independently without assistance. Therefore, Rs.2,00,000/- is awarded towards the count of his pain and suffering.

26. For future treatment also only Rs.1,00,000/- was awarded by the learned Tribunal. As per the medical papers as indicated earlier, the petitioner shall have to undergo another surgery at Kolkata for left side cranioplasty. From the vouchers submitted by him for his second round of treatment, it appears that he had incurred expenditure of Rs.1,62,200/- excluding the cost of air tickets for his right side cranioplasty. The right-side cranioplasty surgery was done in the year 2018, and meanwhile, due to price hike within these 8 years, at least he will now have to incur expenses to the extent of Rs.3,00,000/-, including the cost of airfare for himself and his three attendants for such surgery.

27. Apart from the cost of said left-side cranioplasty, the petitioner will also be required to live with medication for the rest of his life. Even if Rs.1,000/- per month is allowed for future medication and treatment for next 20 years, it will come to Rs.2,40,000/-. Thus, compensation on the count of his future cost of treatment is assessed at Rs.3,00,000 + 2,40,000= Rs.5,40,000/- apart from what has been awarded by learned Tribunal for cost of attendant and special diet.

28. A sum of Rs.1,00,000/- as awarded for the loss of amenities of his life by the learned Tribunal is affirmed and Rs.50,000/- further is awarded for the loss of expectation of his life.

29. Thus, the petitioner is now entitled to get compensation in the following manner:

Loss of future income as assessed by learned Tribunal	Rs.30,24,000.00
Pain and sufferings	Rs.2,00,000.00
Cost of treatment and hospitalization including Airfare as assessed by learned Tribunal	Rs.7,94,268.00
Cost of future treatment [plus cost of attendant and cost of special diet as awarded by learned Tribunal]	Rs.5,40,000.00 + Rs.1,00,000.00
Loss of amenities of life as assessed by learned Tribunal	Rs.1,00,000.00
Loss of expectation of life	Rs.50,000.00
Total	Rs.48,08,268.00

30. In view of above, the MAC Appeal No. 33 of 2024 is dismissed and MAC Appeal No.37 of 2024 is allowed.

31. The petitioner will now get compensation of **Rs.48,08,268/- [Rupees forty eight lakhs eight thousand two hundred sixty eight]** only along with 7.5% per annum thereupon from the date of filing of the claim petition till deposit in the Tribunal below.

32. It may be noted that already a considerable amount has been incurred by the petitioner for his treatment and further amount is also required for his future treatment, therefore, the Tribunal will release 40% of the total amount of compensation inclusive of interest to the petitioner and 30% amount shall be kept in fixed deposit scheme for next 5 years and another 30% shall be kept in fixed deposit for total 10 years. However, the periodical interest accrued thereupon, will be remitted to the

bank account of the petitioner periodically for his day-to-day expenses. The amount already released shall be adjusted accordingly. In case of any special reason and acute necessity, the Tribunal will be at liberty to release any part of the said fixed deposit amount in favour of the petitioner, even before completion of 5 years or 10 years respectively, on being satisfied about the existence of such necessity and urgency. No loan or any sort of encumbrance shall be permitted against the said fixed deposit amounts. If the petitioner is unable to operate his bank account independently without the help of his wife, necessary petition in this regard may be submitted from the side of the petitioner before the Tribunal, and after proper inquiry, the Tribunal will pass necessary order in this regard so that the petitioner faces no inconvenience in withdrawing or utilizing his money.

33. Interim application(s), if any, shall also stand disposed.

JUDGE

