

THE HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

MAC APP. NO.52 of 2008

Shri Nirmalendu Das,
S/o Shri Nityabihari Das,
Resident of village - Gouranga Tilla,
P.S. - Teliamura, District - West Tripura.

..... *Appellant.*

- Vs -

The Managing director,
Tripura Road Transport Corporation (TRTC),
Krishnanagar, Agartala,
District - West Tripura.

..... *Respondent.*

_B_E_F_O_R_E_
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant : Mr. S K Dutta, Advocate.

For the respondent : Mr. P Dutta, Advocate.

Date of hearing and
delivery of judgment : 12.01.2015.

Whether fit for reporting : No.

JUDGMENT & ORDER(ORAL)

This is an unfortunate case which has been pending in the Court since 1994. The claimant who was aged about 25 years filed the claim petition alleging that on 26.7.1993 he was travelling in vehicle No.TRS-732 a 'bus' belonging to the Tripura Road Transport Corporation (TRTC). According to the claimant, the passengers in the bus requested the driver not to ply the bus through the Ompi-Teliamura shortcut road which was infested with extremists but to

take it by the longer road i.e. Ompi-Amarpur-Udaipur-Agartala-Teliamura road. The driver replied that the short route was safe and much shorter and, therefore, he took the bus on the Ompi-Telimura shorter road.

2. It is not disputed that this bus was attacked by extremists and at the relevant time Tripura was under the grip of extremist violence. The extremists fired bullets at the passengers and the claimant suffered bullet injuries on his face and, therefore, prayed for compensation.

3. Initially the claim petition was rejected on 10.02.1995 without even recording evidence holding that the accident did not arise out of the use of a motor vehicle. This award of the Tribunal was set aside by a Division Bench of the Gauhati High Court (Agartala Bench) on 22.8.2000 by holding that the Tribunal could not have decided this matter without recording evidence. The Division Bench, however, did not decide the question whether the accident arose out of the use of a motor vehicle and left this matter open to the Motor Accident Claims Tribunal to decide. After recording evidence the Tribunal has again decided the question against the claimant. Hence the present appeal.

4. The sole question which arises is whether the accident can said to have arisen out of the use of a motor vehicle. The phrase arising out of the use of a motor vehicle has been the subject matter

of a number of decisions. The Apex Court in *Shivaji Dayanu Patil and another v Smt. Vatchala Uttam More (AIR 1991 SC 1769)* was dealing with a matter in which a collision had taken place between a petrol tanker and truck. The petrol tanker turned turtle and was lying on its side at some distance from the road. It was not moving. But some inflammable liquid leaked out of the motor vehicle. The inflammable liquid caught fire due to the negligence of some other party and the Apex Court in these circumstances held that the word used has a vital connotation to cover the period when the vehicle is not moving and is stationary and the use of a vehicle does not cease on account of the vehicle having been rendered immobile on account of brake down or mechanical defect or accident. It held that even in such circumstances, the accident had arisen out of the use of the motor vehicle.

5. The Himachal Pradesh High Court in the case of a bomb blast in *Himachal Road Trans. Corpn. and ors. V. Om Prakash and others (1992 ACJ 40)* held that the accident arose out of the use of a motor vehicle since the duty lay upon the driver and the conductor to ensure the safety of the passengers.

6. A Division Bench of the Kerala High Court in *Babu Vs. Remesan and others (AIR 1996 KERALA 95)* dealing with the word ‘use’ held as follows :

“Such use need not necessarily be so intimate and closely direct as to make it ‘a motor accident’ in the sense in which that expression is

used in common parlance. The expression employed by the Legislature is employed by the legislature is 'accident arising out of the use of a motor vehicle' in the place of 'accident caused by the use of a motor vehicle'. Evidently the Legislature wanted to enlarge the scope of the word 'use' and not to restrict it for denying compensation in deserving cases. The test should be whether the accident was reasonably proximate to the use of a motor vehicle, whether or not the motor vehicle was in motion then. After all the provisions for dealing with the compensation case are intended for a sublime social objective. We are, therefore, not inclined to adopt a restrictive interpretation for the word 'use' in the present context."

7. The Andhra Pradesh High Court in ***Medikonda Narasamma and others v Shaik Basheer Ahmed and others*** (AIR 2001 AP 114) dealing with the word 'use' held as follows :

"The word 'use' should be given a wider connotation to cover the period when the vehicle is not moving and is stationary and the use of a vehicle does not cease on account of the vehicle having been rendered immobile on account of a breakdown or mechanical defect or an accident such 'use' need not necessarily be so intimate and closely direct as to make it a motor accident in the sense in which that expression is used in common parlance. The expression employed by the Legislature is 'accident arising out of a motor vehicle' in the place of 'accident caused by the use of a motor vehicle'. So, the Legislature intended to enlarge the scope of the word 'use' and it should not be given a restrictive meaning. As such, the expression use of the vehicle should reasonably mean proximate to use of the motor vehicle whether or not the vehicle was in motion..[Para.10]."

8. A learned single Judge of the Agartala Bench of the Gauhati High Court by a judgment in ***Smt. Basu Mati Debbarma and ors. Vs Smt. Anita Debbarma and ors.*** (MAC APP. No26 of 2001) etc. held that in the cases where vehicles are taken into extremist

ridden areas third parties cannot be denied compensation on the ground that the accident had not arisen out of the use of the motor vehicle.

I am in respectful agreement with the judgment delivered by the learned single Judge of the Gauhati High Court, Agartala Bench following the law laid down by the High Court of Himachal Pradesh and the Apex Court and hold that even in a case arising out of extremist violence where the person is travelling in a vehicle the accident arises out of the use of a motor vehicle.

9. In view of the above discussion, it is apparent that this claim petition was maintainable and, therefore, the next issue which has to be decided is to what compensation is the claimant entitled to. Mr. S K Dutta, learned counsel for the claimant has drawn my attention to the document which is a certificate issued by the Medical Board on 29.8.1993 whereby the claimant who had suffered bullet injury on the left maxilla has been referred to the SSKM Hospital, Calcutta for treatment. Another document relied upon by the claimant is the Discharge Card, issued by the Ramakrishna Mission Seva Pratisthan, Calcutta which shows that the claimant was admitted in the said hospital on 1.11.1993 and discharged there from on 12.11.1993 after 12 days and an operation was conducted on 5.11.1993. The medical notes of this Discharge Card reveal that the claimant had suffered gunshot injury. *Left Corronoidectomy was done*

and pellets were removed from the left side of the face. The advice on discharge is normal diet and visit to the hospital on 15.11.1993 for removal of the sutures(stitches). This is the entire medical evidence on record. The bills which have been placed on record show that an amount of Rs.1,405/- was spent for treatment. It is urged by Mr. Dutta that due to this bullet injury the face of the claimant has been permanently disfigured and he has suffered a permanent disablement and he unable to earn any amount.

10. The claimant in his affidavit stated that at the relevant time he was doing business and was also imparting tuitions to students and was earning Rs.1,500/- per month and due to the injury suffered he has become crippled and permanently disabled. Unfortunately, no medical disability certificate has been placed on record to prove the disability, if any, suffered by the claimant. No doctor has been examined to show whether any disability has been suffered. From the medical record and even from the statement of the claimant it is apparent that he did suffer a bullet injury on his face. It is not clear whether his face is left totally disfigured or not because the discharge certificate is totally silent in this regard. In fact all that is stated in the discharge certificate is that sutures have to be removed. However, the fact that the claimant suffered a bullet injury clearly indicates that the injury was serious. This fact is also apparent because though the accident took place on 26th July, 1993

the claimant remained in hospital at Agartala for almost one month and thereafter was referred to Calcutta where he remained in hospital for 12 days. Therefore, the period of hospitalization is about 47 days. This itself indicates the serious nature of the injuries suffered by the claimant.

11. It is well settled law that in a case of injuries compensation is awarded under two heads; pecuniary damages and non-pecuniary damages. Under the head of pecuniary damages, the expenses of treatment, attendants, special diet, transportation, hospitalization will be covered. Under the head of pecuniary losses, the claimant will also be entitled to the amount of income which he has actually lost due to his being unable to attend his work and in case, the injury has caused a permanent disability, then the future loss of income shall also have to be considered. Under the head of non-pecuniary damages, normally damages will be awarded under the head of pain and suffering and in cases of permanent disability also for loss of amenities of life and future discomfort in life. In cases where the claimant is a young unmarried person and the injuries affect his marital prospects, damages for loss of marital prospects can also be awarded.

12. Now I proceed to assess the compensation in accordance with the aforesaid well settled principles of grant of compensation under the different heads. The claimant remained admitted for 47

days in hospital out of which 32 days was in Agartala and he would have required at least 2(two) attendants round the clock during this period. We are dealing with a matter where the accident had taken place in the year 1993 and, therefore, if the cost of each attendant is conservatively assessed at Rs.100/- per day and the cost of two attendants comes to Rs.200/- per day and for 33 days the cost of attendants itself works out to Rs.6,600/- which is rounded off to **Rs.7,000/-**.

13. The claimant has led no evidence to prove what was the amount he spent on travelling to Calcutta and back. He has not even stated in his affidavit whether he was accompanied by any attendant. However, this Court can take judicial notice of the fact that at least one attendant would have accompanied him. There is no evidence with regard to the amount spent at Calcutta but since the claimant remained admitted for 10 days in Calcutta and had to arrange for his treatment as well as for attendant, I award a sum of **Rs.10,000/-** as transportation expenses and expenses of attendant at Calcutta.

14. As far as medical expenses are concerned, the bills placed on record are only for a sum of Rs.1,405/-. This Court can taken judicial notice of the fact that receipts of some expenses may not have been kept and since the occurrence took place in the year 1993 the amount of medical expenses is assessed at **Rs.7,500/-**.

15. The claimant claimed that he was earning Rs.1,500/- per month. There was virtually no cross-examination to this effect. The claimant was in hospital for 45 days and it can reasonably be assumed that he could not have worked for 45 days even thereafter and, therefore, he is awarded loss of income for three months which works out to **Rs.4,500/-**.

16. As far as future loss of income is concerned, there is no evidence worth the name to show that there is any loss of future income. The claimant claimed that he was a businessman and imparting tuitions. Even if he has suffered disfigurement of the face this will in no manner affect his earning capacity as either a businessman or a tutor. There is no medical evidence or even other evidence except the bald statement of the claimant that he cannot earn any amount. Every injury or disablement does not lead to loss of earning capacity. That will depend on the facts of each case. Supposing a government servant suffers amputation of a leg he does not suffer monetarily since he continues to be in service. On the other hand, if a poor manual labourer who was to suffer the same injury it would amount to 100% loss of income. As far as the present case is concerned, even if it is presumed that there was disfiguration of the face there is no proof that this disfiguration has led to loss of any earning capacity and, therefore, no amount can be awarded under this head.

17. Though the claimant has not been awarded any amount for loss of earning capacity he has to be awarded compensation both for pain and suffering and for loss of amenities and disfiguration of his face. As far as pain and suffering is concerned, keeping in view the fact that the claimant remained in hospital for 45 days he is awarded **Rs.10,000/-** for pain and suffering. This award would have been much higher if this amount of treatment had been undergone today but the claimant suffered this injury in the year 1993 and the compensation has to be assessed by taking into consideration the monetary value of the rupee in the year 1993 because the claimant will get interest on the amount awarded to him. The face of the claimant has also been disfigured but it is not clear what is the extent of disfiguration since no evidence has been led in this regard. However, taking an overall view of the matter, a sum of Rs.7,500/-, keeping in view the monetary value of the rupee in the year 1993, is awarded to the claimant under this head.

18. The total compensation is, therefore, assessed at (Rs.7,000 + 10,000 + 7,500 + 4,500 + 10,000 + 7,500/-) = **Rs.46,500/-** (Rupees forty six thousand and five hundred). On this amount the claimant shall also be entitled to interest @ 7.5% per annum from the date of filing of the claim petition till payment/deposit of the entire awarded amount. The TRTC is directed to deposit the amount of compensation along with proportionate interest thereupon in the

Registry of this Court within 12(twelve) weeks from today. On the amount being so deposited the same shall be released to the claimant by remitting it to his personal Bank account details whereof along with photocopy of the first page of the passbook be submitted in the Registry of this Court within 8(eight) weeks from today.

The appeal is disposed of. Send down the LCRs forthwith.

Therefore

CHIEF JUSTICE

Sukhendu