

THE HIGH COURT OF TRIPURA
A G A R T A L A

MAC APP. NO.124 OF 2011

- 1. Miss. Solanki Saha,**
Daughter of Sri. Tapan Saha,
- 2. Smt. Bina Saha,**
Wife of Tapan Saha, and
- 3. Sri Tapan Saha,**
Son of Late Suresh Ch. Saha.

All are Resident of Sonamura Town,
P.O. Sonamura, P.S. Sonamura,
District- West Tripura.

(Appellant No.1 being a minor represented
by her parents, Appellant No.2 & 3 as her natural
guardian).

..... Appellants

- V e r s u s -

- 1. Sri Mohan Lal Das,**
Son of Late Surendra Ch. Das,
Of Purba Chandigarh,
P.S & P.O. Melaghar,
District- West Tripura,
(Owner of TR-01B-2795, Auto Rickshaw).
- 2. The Branch Manager,**
The New India Assurance Co. Ltd.,
Mantribari Road, P.O. Agartala,
P.S. West Agartala,
District- West Tripura,
(Insurer of TR01B-2795, Auto Rickshaw)
- 3. Sri Pallab Kr. Sutradhar,**
Son of Late Haribhusan Sutradhar,
Of Chandigarh, P.S. & P.O. Melaghar,
District- West Tripura,
(Owner of TR01-F-6031, Bike).
- 4. The Branch Manager,**
The New India Assurance Co. Ltd.,
Mantribari Road, P.O. Agartala,
P.S. West Agartala,
District- West Tripura.
(Insurer of TR01-F-6031, Bike).

..... Respondents.

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellants : Mr. K. Roy, Advocate,

For the respondents
No.2 & 4 : Mr. P. Chakraborty, Advocate

Date of hearing &
delivery of judgment : **10.8.2015**

Whether fit for reporting: **NO**

JUDGMENT & ORDER(Oral)

This appeal for enhancement of compensation is directed against the award dated 28.7.2009 passed by the learned Motor Accident Claims Tribunal, Sonamura, West Tripura Whereby, the learned Tribunal has awarded a sum of Rs. 4,415/- only to the claimants under the following heads :-

cost of Medicine - Rs.515/-,

conveyance allowance - Rs. 1200/-,

doctor charges - Rs.100/-,

pain and sufferings - Rs.1000/-,

loss of income - Rs.600/-,

suffering simple injury - Rs.1000/-,
Total- Rs. 4,415/-

The method applied by the learned Tribunal of assessing the compensation is totally illegal.

(2) The principles with regard to determination of just compensation contemplated under the Motor Vehicles Act, 1988 are well settled. Injuries cause deprivation to the body which entitles the claimant to claim damages. The damages may vary according to the gravity of the injuries sustained by the claimant in an accident. On account of the injuries, the claimant may suffer consequential losses such as, (i) loss of earning; (ii) expenses on treatment which may include medical expenses, transportation, special diet, attendant charges etc., (iii) loss or diminution to the pleasures of life by loss of a particular part of the body, and (iv) loss of future earning capacity. The damages can be pecuniary as well as non-pecuniary, but all have to be assessed in rupees and paisa.

(3) The injured girl was only about 8(eight) years old at the time of accident. This claim petition was filed by her as well as her parents. The parents are not entitled to any compensation whatsoever because this is a claim petition on behalf of the injured, who alone is entitled to compensation.

(4) The learned Tribunal held that the claimant has suffered a simple injury. This is not correct. The claimant may not have been

hospitalized and may not have been treated as an indoor patient but the fact remains that she has suffered fracture of the upper 1/3rd of the right humerus and a plaster was put on her. After plaster, strapping on the arm was also done and this continued for a long time. Thereafter, the claimant also attended by the doctors. The claimant may not have suffered a permanent disability but she suffered a fracture and for 6(six) weeks she was under plaster. These facts have been totally ignored by the learned Tribunal. For about 2(two) months, the mother who would have been not able to do any other work but to look after the child. In addition thereto, the cost of treatment has to be taken into consideration.

(5) We cannot lose sight of the fact that claimants belonging to the poorest section of society do not keep records of the amount, expenditure in spare and even from the records I find that there is hardly any voucher immediately after the accident and the most of the vouchers are dated one or two months after the accident.

(6) Unfortunately, the evidence in this regard is not very satisfactory but the claimant minor girl has suffered a fracture. She could not go to school for about 2(two) months and keeping all these factors into consideration I award a lump sum amount of **Rs.20,000/-** to the claimant.

(7) Therefore, the award is enhanced from 4415/- to 20,000/- i.e. by 15,585/-. The Insurance Company has already satisfied the award of the Tribunal. It is directed to deposit the enhanced amount Rs. 15,858/- (fifteen thousand eight hundred & fifty eight only) along with interest @ 9% per annum from the date of filing of the claim petition in the Registry of this Court within 8(eight) weeks from today. On such deposit being made, the amount shall be kept in a fixed deposit for a period which is coterminous with the minor claimant attaining the age of 21 years and, thereafter, the amount shall be released.

(8) Though the two vehicles were involved in the accident since both the vehicles are insured with the New India Assurance Company, it is liable to pay the entire amount.

The appeal is disposed of in the aforesaid terms.

Send down the LCRs forthwith.

CHIEF JUSTICE

Dipesh