

**THE HIGH COURT OF TRIPURA
AGARTALA**

Mac App No.75 of 2011

Sri Ranjan Majumder,
S/O. Sri Sushil Majumder,
Of Melaghar, P.S.- Melaghar,
District- West Tripura.

..... Appellant

VERSUS

- 1.** Sri. Amal Saha, S/O. Lt. Atal Saha of
Rangamura, P.S.- P.R. Bari,
P.O. Belonia, South Tripura.
Owner of TR01-A-2019(Bus),
(New No.TR03-1298).
- 2.** The Branch Manager,
The New India Assurance Co. Ltd.
Mantri Bari Road, P.O. Agartala,
West Tripura.
(Insurer of TR01 A 2019 Bus),
(New No. TR03-1298).
- 3.** Sri Helan Deb,
S/O. Sri Manindra Ch. Deb
Bordowali, P.O.A.D. Nagar, Kalyan Samiti,
P.S. West Agratala, District-, West Tripura,
Owner of TR01-B-3215(MAX).
- 4.** The Branch Manager,
National Insurance Co. Ltd.
42, Akhaura Road, P.O. Agartala
P.S. West Agartala, District-
West Tripura of TR01-B-3215(MAX).

..... Respondents

**BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA**

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

For

respondent No. 1 : None.

respondent No. 2 : Mr. P Gautam, Advocate.

respondent No. 3 : None.

respondent No. 4 : None.

Date of hearing and
delivery of judgment : **08.07.2015.**

Whether fit for reporting : **No.**

JUDGMENT AND ORDER (ORAL)

This appeal under section 173 of the Motor Vehicles Act, 1988 is directed against the award, dated 14th March, 2011 passed by the learned Motor Accident Claims Tribunal, Sonamura, West Tripura, in Case No. TS (MAC) No.36 of 2009 whereby the claim petition filed by the claimant was dismissed.

2. The claimant alleged in the claim petition that on 10th July, 2006 he was travelling in a 'Max' vehicle bearing Registration No.TR-01-B-3215. This vehicle had a head on collision with a Bus bearing Registration No.TR-01-2019. The petitioner along with many other passengers received injuries in the accident. He was taken to the Melaghar Hospital from where he was referred to the G.B.P Hospital, Agartala and finally he went to Kolkata for further treatment.

3. The learned Tribunal rejected the claim petition holding that the claimant had failed to prove the fact that he had received injuries in a motor vehicle accident. The learned Tribunal mainly

relied upon the fact that though the accident had taken place on 10th July, 2006 in some of the records issued from the hospital at Kolkata the date of occurrence was stated to be 2nd July, 2006.

4. I have gone through the entire records. The first document which needs to be referred to is the slip issued by the hospital at Melaghar where the claimant was taken immediately after the accident. In this slip it is clearly mentioned that the claimant Sri Ranjan Majumdar, S/o. Sushil Majumdar was admitted at Melaghar Hospital on 10th July, 2006 with history of Road Traffic Accident (RTA). He was referred to the AGMC, Agartala on the same day, i.e. 10th July, 2006.

5. The second document to which reference needs to be made is the injury report from AGMC, Agartala which shows that the claimant was found suffering from fracture of right forearm and the claimant was discharged on 10th July, 2006 itself with advice.

6. The claimant was then treated as an outdoor patient for some days and he then went to the Bhattacharyya Orthopaedics & Related Research Centre (P) Ltd, Kolkata on 28th July, 2006. Here the mistake appears to have taken place as it was mentioned that the date of accident was 2nd July, 2006. The claimant then went to the hospital on 2nd August, 2006 and he was admitted there and remained admitted for one week up to 9th August, 2006. Here also the same error was repeated and it was shown that he had suffered trauma in the right forearm on 2nd July, 2006. Thereafter, the claimant again went to the Bhattacharyya hospital, Kolkata on 17th

August, 2006 as an OPD patient and here, for the first time, the date of accident was mentioned as 10th July, 2006. There are other records to show that the claimant then visited the Bhattacharyya hospital and other hospitals time and again.

7. In the present case, it is not denied that an accident took place. The claimant was taken immediately after the accident to the hospital at Melaghar. He was found suffering from a fracture and, therefore, I am of the considered view that the claimant has proved that he suffered the injuries in a motor vehicle accident.

8. There are two vehicles involved and none of the drivers of the two vehicles have appeared in the witness box and, therefore, I hold both vehicles equally responsible for the accident. The insurance companies of both the vehicles, i.e. the New India Assurance Company Ltd. and the National Insurance Company Ltd. shall be liable to pay the compensation in equal shares.

9. Coming to the quantum of compensation, I find that the claimant suffered a fracture and he was initially treated by putting his arm in a plaster cast. Thereafter, he went to the hospital at Kolkata where operation was done and surgical implant was inserted in his forearm. The period of hospitalization is about eight days but the claimant has been thrice to Kolkata in respect of his treatment. The claimant has produced on record bill of the Bhattacharyya hospital dated 9th August, 2006 which shows that the total amount he spent there on this visit is Rs.12,330/-. In addition thereto, the claimant has proved medical expenses of Rs.9,247/- i.e. in total

Rs.21,557/-. In addition thereto, the claimant may have spent some amount for his treatment and he is awarded Rs.25,000/- for cost of treatment.

10. The claimant remained hospitalized in Kolkata for 7/8 days. He needed an attendant there. The accident had taken place in the year 2006 and therefore, he is awarded Rs.5,000/- for attendant charges at Kolkata.

11. The claimant has also placed on record certain documents with regard to his traveling expenses and this amount works out to Rs.5,668/-. The claimant has been to Kolkata on more than one occasion and I rounded off the transportation expense at Rs.10,000/-.

12. The claimant has not suffered any permanent disability. He remained in hospital for about a week. He was thereafter visiting Kolkata for outdoor treatment and I can reasonably assume that he could not have worked for two months. Taking his income to be @ Rs.3,000/- per month he is awarded Rs.6,000/- for loss of income.

13. The claimant remained in hospital for about seven days and his treatment was continued for 2/3 months and, therefore, I award Rs.15,000/- for pain and sufferings.

14. The total compensation is, therefore, assessed at Rs.(25,000 + 5,000 + 10,000 + 6,000 + 15,000/-) = **Rs.61,000/- (Rupees sixty one thousand)**. In view of the above discussion, the appeal is allowed. The claimant-appellant is entitled to a sum of

Rs.61,000/-. On this amount the claimant-appellant shall also be entitled to interest @ 7.5% per annum from the date of filing of the claim petition till payment/deposit of the awarded amount. Both the insurance companies, which have been held equally liable to pay the amount, shall deposit the amount of compensation in the Registry of this Court within a period of 3(three) months from today. Obviously, the insurance company shall be entitled to adjust the amount(s), if any, which it has already paid or deposited.

Send down the LCRs forthwith.

CHIEF JUSTICE

Satabdi/Sukhendu