

THE HIGH COURT OF TRIPURA
AGARTALA

MAC APP. NO.65 OF 2011

Sri Sukanta Choudhury,
S/O. Sri Sukesh Choudhury,
Village-South Uboua, Kameswar,
P.S.-Dharmanagar,
North Tripura.

..... **Claimant-Appellant.**

- V e r s u s -

1. Sri Ashutosh Chanda,
S/O. Lt. Prahlad Chanda,
Village-Kameswar,
P.S.-Dharmanagar,
District-North Tripura.
(Owner of the Truck bearing No.TR-02-1588).
2. The Branch Manager,
National Insurance Company Ltd.,
Dharmanagar Branch,
Kalibari Road, P.S.-Dharmanagar,
Tripura (N).
3. The Divisional Manager,
National Insurance Company Ltd.,
Divisional Office at Akhaura Road,
P.S.-West Agartala,
District- Tripura West.
(Insurer of the Offending Truck bearing No.TR-02-1588).

..... **Respondents.**

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant : Mr. S. Saha, Advocate.

For the respondents
No.2 & 3 : Mr. P. Gautam, Advocate.

Date of hearing and
delivery of judgment
and order. : 30.07.2015.

Whether fit for reporting : **YES.**

JUDGMENT & ORDER (ORAL)

This appeal for enhancement of compensation has been filed by the claimant in respect of award dated 29-01-2010 passed by the learned Motor Accident Claims Tribunal, Court No.1, West Tripura, Agartala in case No. T.S.(MAC) 393 of 2004 whereby the learned Tribunal awarded a sum of Rs.98,000/- in favour of the claimant, i.e. Rs.72,000/- for loss of future income, Rs.6,000/- for actual loss of income and Rs.20,000/- for medical treatment, conveyance allowance, special diet etc.

2. The Insurance Company has not challenged the award though a feeble attempt was made by Mr. P. Gautam, learned counsel appearing for the Insurance Company, to urge that the accident itself is not proved. I am not permitting the Insurance Company to raise this issue because having satisfied the award passed by the Tribunal, the Insurance Company cannot now turn around and argue that there was no accident at all. The only question is to what amount of compensation is the claimant entitled to.

3. The evidence on record clearly reveals that the claimant was admitted in the Silchar Medical College Hospital in two spells over 51 days. His index finger was amputated and there was injury to the middle finger also. Disability certificate has been issued in which the disability has been assessed at 40% but it is not clear whether the extent of disability has been calculated in relation to the entire body or in relation to the limb in question.

4. The fact of the matter is that the claimant remained admitted in hospital for 51 days. The claimant belongs to Dharmanagar and the claimant would have required at least two attendants round the clock to attend him. Even in the year 1997 the cost of one attendant who would go from Dharmanagar to Silchar would not be less than Rs.150/- per day and, therefore, I take the cost of two attendants at Rs.300/- per day and for 51 days it comes to **Rs.15,300/-**.

5. The claimant unfortunately did not prove any vouchers with regard to the expenses of his treatment. The claim petition was filed in the year 2004, 7(seven) years after the accident had taken place. This Court can take judicial notice of the fact that persons belong to the lower strata of society who do not get any reimbursement may not retain the vouchers with regard to their treatment because they are unaware that they require the same in legal proceedings. Keeping in view the nature and length of treatment, I award the claimant **Rs.10,000/-** for medical expenses.

6. The claimant belongs to Dharmanagar and had to go twice to Silchar for his treatment. His attendants would have also had to go from Dharmanagar to Silchar for treatment and, therefore, I award **Rs.5,000/-** on account of transportation expenses.

7. Now comes the question as to the loss of income. The learned Tribunal assessed the income of the claimant at Rs.3,000/-

per month which I accept to be correct. However, I am of the view that a person who remained hospitalized for 51 days would not be out of job for only two months. A person cannot be expected to jump out of the hospital bed and start working the next day. He would require some bed rest and keeping all these factors into consideration, I think the loss of income should be awarded to him for 4(four) months and accordingly, **Rs.12,000/-** is awarded in his favour.

8. Next comes the question as to the future loss of income. The learned Tribunal has assessed the loss at 40% of Rs.3,000/- but has awarded the same for only 5(five) years on the ground that the disability certificate is only for 5 years. Sri S. Saha, learned counsel for the petitioner, has placed reliance on the judgment of a learned Single Judge of the Gauhati High Court in WP(C) 41 of 2000 wherein the learned Single Judge held that in a case of a mason even though the disability was 40% but because the person was incapable of working as a mason, his disablement would be taken to be 100%. This judgment does not discuss any law point nor does it lay down any specific law. Only an observation has been made that the finding of the Tribunal that the claimant could not work cannot be said to be arbitrary or capricious.

9. The Apex Court in ***Raj Kumar vs. Ajay Kumar and another, [(2011) 1 SCC 343]*** has clearly laid down that the claimant must prove the disability by leading medical evidence if the claimant wants to show that the disability is much more than

assessed. Reference may be made to paras-9, 11, 13 and 15 of the judgment which read as follows:-

“9. The percentage of permanent disability is expressed by the doctors with reference to the whole body, or more often than not, with reference to a particular limb. When a disability certificate states that the injured has suffered permanent disability to an extent of 45% of the left lower limb, it is not the same as 45% permanent disability with reference to the whole body. The extent of disability of a limb (or part of the body) expressed in terms of a percentage of the total functions of that limb, obviously cannot be assumed to be the extent of disability of the whole body. If there is 60% permanent disability of the right hand and 80% permanent disability of left leg, it does not mean that the extent of permanent disability with reference to the whole body is 140% (that is 80% plus 60%). If different parts of the body have suffered different percentages of disabilities, the sum total thereof expressed in terms of the permanent disability with reference to the whole body, cannot obviously exceed 100%.

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11. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that the percentage of loss of earning capacity as a result of the permanent

disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation (see for example, the decisions of this Court in Arvind Kumar Mishra v. New India Assurance Co.Ltd. [(2010) 10 SCC 254] and Yadava Kumar v. National Insurance Co. Ltd. [(2010) 10 SCC 341].

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13. *Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.*

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15. *It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a*

result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may.”

10. As far as the present case is concerned, no doctor was examined and only the disability certificate has been proved on record. From the disability certificate, it is apparent that there was amputation of the index finger and the middle finger at the second joint is disoriented. The disability has been assessed at 40% but it is obvious that this disability is in relation to the limb and not to the entire body. While holding so, I may make reference to the provisions of the Employee's Compensation Act, 1923 in which for the loss of an index finger the loss of earning capacity is stated to be 14%. 40% disability is stated to be caused when there is total loss of thumb and the metacarpal bone. It is, therefore, obvious that the Medical Officers who issued the disability certificate had issued it in relation to the right limb and not in relation to the body.

11. It is true, as contended by Mr. Saha, that disability is not always equal to loss of earning capacity. This Court has repeatedly held that merely because a person is gravely disabled, it does not necessarily mean that his earning capacity has come down by the same percentage. To give an example, if the person is an employee of a Bank and his leg is amputated, he continues to work in the Bank. His earning capacity is not reduced though he may be awarded heavy amount under other heads but not for loss

of earning. On the other hand, a labourer who loses an arm or a hand virtually becomes incapacitated from earning and in such a case, even a disability of 25% or 30% may lead to loss of earning capacity ranging from 80 to 100%. Each case has to be decided on its own peculiar facts.

12. As far as the present case is concerned, the claimant is not a manual labourer. He is the assistant on a vehicle. He is not required to do hard manual work except changing of punctured tyre or loading or unloading the vehicle. The loss of an index finger will not cause him 100% loss of earning capacity. He can continue to work. His earning capacity may be impaired but it cannot be said that he has become incapable of earning. Loss of one finger of an assistant in a vehicle can never be termed as 100% loss of earning capacity. In the Workmen's Compensation Act, the loss is stated to be 14%. In addition, there is loss of some movement of the middle finger and, therefore, I assess the loss of earning capacity at 20%.

13. The claimant was earning Rs.3,000/- per month. The learned Tribunal gravely erred in limiting the loss of earning capacity to only 5 years. Once there is amputation, this loss of earning capacity is permanent. An amputated finger cannot grow back and it was expected that at least an officer of the level of a Motor Accident Claims Tribunal will know that an amputated finger does not grow back and there is no question of the disability being there only for 5 years. 20% of Rs.3,000/- works out to Rs.600/- per month or Rs.7,200/- per year. Since the claimant was about 20

to 25 years old, multiplier of 18 is applied and the compensation under this head works out to Rs.1,29,600/- which is rounded off to **Rs.1,30,000/-**.

14. The claimant remained in hospital for 51 days. He had to get treatment outside the State and, therefore, I award him **Rs.10,000/-** for pain and suffering. I am awarding a lesser amount of Rs.10,000/- because this amount has to be awarded keeping in view the fact that the accident took place in the year 1997 and if I was to assess this compensation for an accident which took place in the year 2007, it may be much higher.

15. The next question is with regard to the amount to be awarded to the claimant for loss of amenities of life and future discomfort in life. The claimant has lost his index finger for life. His middle finger is also damaged. He is maimed for life and this situation can never improve. He cannot indulge in many activities like a normal human being and, therefore, I award him **Rs.25,000/-** for loss of amenities of life and future discomfort in life.

Therefore, the total compensation works out to Rs.(15,300 + 10,000 + 5,000 + 12,000 + 1,30,000 + 10,000 + 25,000)=Rs.2,07,300/- (rupees two lakhs seven thousand three hundred).

16. In view of the above discussion, the appeal is allowed. The award of the learned Tribunal is modified and the compensation is enhanced from Rs.98,000/- to Rs.2,07,300/-, i.e.

by Rs.1,09,300/-. Since the Insurance Company has already satisfied the award of the Tribunal, it is directed to deposit the enhanced amount of compensation along with interest @ 7.5% per annum from the date of filing of the claim petition till payment/deposit of the awarded amount in the Registry of this Court within 4(four) months from today after deducting/adjusting the amount, if any, already paid/deposited by them along with proof of such earlier deposit.

17. The appeal is disposed of in the aforesaid terms.

18. Send down the lower court records forthwith.

CHIEF JUSTICE