

THE HIGH COURT OF TRIPURA
AGARTALA

MAC APP. NO.01 OF 2009

1. Sri Ranjan Deb,
S/O. Late Satish Deb,
Of North Aralia, Subhas Palli,
P.O. Aralia, School Chowmuhani,
P.S. East Agartala,
District-West Tripura.

2. Smt. Laxmi Deb,
W/O. Sri Ranjan Deb,
Of North Aralia, Subhash Palli,
P.O. Aralia, School Chowmuhani,
P.S. East Agartala,
District-West Tripura.

..... Appellants.

- V e r s u s -

1. Sri Sadhan Debnath,
S/O. Late Ramani Mohan Debnath,
Of East Noagaon, P.S. Ranirbazar,
District-West Tripura.
(Owner of TR-01-A-2071-Commander Jeep).

2. The National Insurance Co. Ltd.,
Agartala Branch, Agartala,
P.S. West Agartala,
District-West Tripura.
Represented by the Manager.

..... Respondents.

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellants : Mr. A. Bhowmik, Advocate.

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

Date of hearing and
delivery of judgment
and order. : 02.03.2015.

Whether fit for reporting : **YES.**

JUDGMENT & ORDER (ORAL)

This appeal is directed against the award dated 31-01-2008 passed by the learned Motor Accident Claims Tribunal, Court No.2, West Tripura, Agartala in case No. T.S.(MAC) 336 of 2004 whereby he dismissed the claim petition on the ground that the claimants had failed to prove that the accident had occurred.

2. The claim petitioners Sri Ranjan Deb and Smti. Laxmi Deb filed the petition under section 166 of the Motor Vehicles Act (M.V. Act) claiming compensation on account of injuries suffered by their minor 5(five) year old son.

3. At the outset, I may state that the claim petition as constituted is not properly constituted. Section 166(1) of the M.V. Act reads as follows:-

“166. Application for compensation.—(1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made—

(a) by the person who has sustained the injury; or

(b) by the owner of the property; or

(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) by any agent duly authorized by the person injured or all or any of the legal representatives of the deceased, as the case may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the

application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.”

4. An application for compensation arising out of a motor vehicle accident can be filed (a) by the person who has suffered injuries, (b) by the owner of the property whose property has been damaged, (c) by the legal representative of the deceased where death has resulted from the accident and (d) lastly, any agent duly authorized by the person injured or by the legal representatives can file a case. However, there must be a proper and valid authorization.

5. In the case of a minor, the natural guardian or next friend may be entitled to file the case being the natural guardian and next friend of the minor. However, that case has to be filed in the name of the minor and the claimants cannot take away the compensation which is due and payable to the minor. In the present case, compensation, if any, awarded will be the property of the minor and not the property of his parents. The manner in which the claim petition has been drafted indicates as if the claimants, i.e. the parents of the injured are entitled to the compensation.

6. Though the Code of Civil Procedure (CPC) may not strictly apply to proceedings under the M.V. Act, the principles must and will apply. Rule 1 of Order XXXII reads as follows:-

“1. Minor to sue by next friend.—Every suit by a minor shall be instituted in his name by a

person who in such suit shall be called the next friend of the minor.”

It provides that a suit by a minor has to be instituted in his name by a person who should be called the next friend of the minor.

7. Rule 2 of Order XXXII reads as follows:-

“2. Where suit is instituted without next friend, plaint to be taken off the file.—(1) Where a suit is instituted by or on behalf of a minor without a next friend, the defendant may apply to have the plaint taken off the file, with costs to be paid by the pleader or other person by whom it was presented.

(2) Notice of such application shall be given to such person, and the Court, after hearing his objections (if any) may make such order in the matter as it thinks fit.”

8. This rule provides that where a suit is instituted by or on behalf of a minor without a next friend, the same can be taken off the file. Therefore, where the plaintiff is a minor, the suit or proceedings have to be filed in the name of the minor. The proceeding may be filed through his next friend. However, the next friend cannot elevate himself to such a status that he becomes the claimant and the name of the minor is not even shown in the array of parties.

9. These proceedings have been pending for more than 10(ten) years and under the M.V. Act, the Tribunal itself has power to initiate suo-motu proceedings under section 158 of the Act.

Therefore, I treat these proceedings to be filed by the minor and the claim petition as well as the appeal shall be titled as "Rupam Deb, S/O. Sri Ranjan Deb, a minor through his next friend and mother Smti. Laxmi Deb, W/O. Sri Ranjan Deb, resident of North Aralia, Subhash Palli, P.O. Aralia, School Chowmuhani, P.S. East Agartala, District-West Tripura".

10. Coming to the merits of the case. The main ground which weighed with the learned Tribunal in rejecting the claim petition was that the certified copy of the FIR in question had not been filed. The mother is not an eye witness to the accident but an FIR was lodged at her instance and the certified copy of the FIR has been placed on record in these proceedings along with an application under Order XLI Rule 27. The police record has also been produced which shows that a criminal case was lodged against the driver of the vehicle and that this vehicle was involved in the accident. The medical record also supports the claimant inasmuch as in the contemporaneous record of treatment, it is mentioned that the minor claimant suffered injuries in a motor vehicle accident. In fact, the owner had not denied the accident and had admitted the same. Therefore, I hold that the claimant suffered injuries in the accident in question. Now, comes the question of compensation.

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. The claimant remained admitted in hospital from the date of accident, i.e. 10-05-2004 to 22-05-2004. There is also record to show that he was taken as an outdoor patient to a private doctor on 25-05-2004. Other than that, there is no other medical record. Though in examination-in-chief, the mother has stated that the minor was treated at Kolkata also but not a shred of evidence has been placed on record either before the Tribunal or even before this Court though this Court granted opportunity by permitting the petitioner to file an application under Order XLI Rule 27. Therefore, the matter has to be decided only on the basis that the claimant remained in hospital for 12 days and remained under treatment for about 15 to 20 days. The claimant's injury was serious in the sense that he had suffered an injury to the head. It has also come in evidence that CT-Scan was performed which initially showed some minor abnormalities but finally the claimant

has been discharged and no record worth the name has been placed on record to show that he has suffered any permanent disability.

The claimant remained in hospital for 12 days. He would have been attended to by his parents and for 12 days even if the cost of one attendant is taken as Rs.250/- per day or Rs.500/- per day for two attendants, the cost of two attendants comes to **Rs.6,000/-**.

13. The claimants had produced very little evidence of medical expenses. Keeping in view the nature of the injuries and the fact that a number of CT-Scans were performed, I assess the compensation for medical expenses at **Rs.10,000/-**.

14. The claimant has suffered a grievous injury and I award him **Rs.10,000/-** for pain and suffering.

Therefore, the total compensation is assessed at Rs.(6,000 + 10,000 + 10,000)=Rs.26,000/- (rupees twenty six thousand).

15. In view of the above discussion, the appeal is allowed. The award of the learned Tribunal is set aside and the claimant is held entitled to compensation of Rs.26,000/-. On the amount of compensation so awarded, 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 awarded amount. The Insurance Company is directed to deposit the entire awarded amount along with interest in the Registry of this Court within

8(eight) weeks from today after deducting/adjusting the amount, if any, already paid or deposited by them along with proof of such earlier deposit.

16. Since the claimant is a minor, the amount deposited shall be kept in a fixed deposit till he attains the age of 21 years. However, the interest accruing thereupon shall be paid on quarterly basis to the mother on the welfare of the minor by remitting it to her bank account, details whereof along with photocopy of the first page of the passbook be filed in the Registry of this Court within four weeks from today.

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

18. Send down the lower court records forthwith.

CHIEF JUSTICE