

THE HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

MAC APP. NO.8 of 2009

Shri Nalinashan alias Nalinakshan Acharya,
S/o Anni Krishnan Acharya
Head Quarter 2nd Battallion, R. K. Nagar,
P.S. East Agartala, Dist. West Tripura.

..... *Appellant.*

- Vs -

1. **Smt. Sabita Das,**
w/o Sri Babul Das resident of Chandrapur
Reshambagan, P.S. - East Agartala,
Dist. West Tripura.
[Owner of TR-01-J-0460 (auto rickshaw)].
2. **The Branch Manager,**
The Oriental Insurance Company Ltd.,
Central Road, Agartala, P.S - West Agartala,
District - West Tripura.
[Insurer of TR-01-J-0460 (auto rickshaw)].
3. **Sri Ratan Saha,**
S/o Lt. Sachindra Saha resident of East Pratapgarh,
(Subhash nagar) P.S. - East Agartala,
District - West Tripura.
[Owner of TRT-1687 (auto rickshaw)].
4. **The Branch Manager,**
The New India Assurance Company Ltd.,
Banamalipur, Agartala, P.S. - East Agartala,
Dist. - West Tripura,
[insurer of TRT-1687 (auto rickshaw)].

..... *Respondents.*

_B_E_F_O_R_E_
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant : Shri A Nandi, Advocate.

For

Respondent Nos.1 to 3 : None

respondent No.4 : Shri G S Das, Advocate.

Date of hearing and
delivery of judgment : 14.01.2015.

Whether fit for reporting : No.

JUDGMENT & ORDER(ORAL)

This appeal by the claimant-appellant has been filed for enhancement of compensation and is directed against the award, dated 19th November, 2008 passed by the learned Motor Accident Claims Tribunal(Court No.3), West Tripura, Agartala in Case No.TS(MAC)267 of 2006, whereby he awarded a sum of Rs.1,70,000/- only as compensation in favour of the claimant.

2. The undisputed facts are that the claimant along with two other colleagues was going to the Head Quarter of the 2nd Battalion, T.S.R., R. K Nagar from Kaman Chowmuhani by auto rickshaw No.TRT-1687. At Kalyani another auto rickshaw bearing No.TR-01-J-0460 came from the opposite direction. It is alleged that the second auto rickshaw was being driven at a high speed in rash and negligent manner and both the vehicles collided and the claimant suffered injuries. The second auto rickshaw, bearing No.TR-01-J-0460, is owned by Smt. Sabita Das and insured with the Oriental Insurance Company. The Tribunal came to the conclusion that the accident had occurred due to the negligence of the driver of this auto rickshaw and only held the Oriental Insurance Company liable to pay the compensation. This part of the award is not under challenge before this Court. The only issue raised is that the compensation awarded is very much on the lower side.

3. From the documents on record it is revealed that the claimant remained admitted in G.B.P Hospital, Agartala w.e.f 20.01.2005 to 30.01.2005 as indoor patient. He was diagnosed as having *head injury and fracture of the right hip*. He had suffered many other injuries on the rest of his body. He was referred to the S.S.K.M Hospital, Kolkata for treatment. He, however, got himself treated at the Bhattacharya Orthopedic and Related Research Centre (P) Ltd. at Kolkata where he remained admitted from 31.01.2005 to 23.02.2005. He again went for treatment to Kerala from 04.01.2007 to 12.01.2007 but there is no documentary evidence to support this fact and it is also not clear whether the treatment, if any, at Kerala was relatable to the injury suffered in the accident or not.

4. The Tribunal awarded compensation of Rs.1,70,000/- to the claimant under the following heads :

Medical treatment	: Rs.1,00,000/-
Pain and suffering	: Rs. 20,000/-
Loss amenities and loss of happiness	:Rs. 50,000/-.
	<u>Rs.1,70,000/-</u>

5. The claimant has suffered 40% disability on account of the injury suffered. As far as costs of treatment are concerned, the claimant has produced documentary evidence to show that he spent Rs.1,44,798/- on his treatment. In addition thereto, the claimant may have spent some other amounts for which receipts may not have been

kept and therefore, I assess the cost of medical treatment alone at **Rs.1,60,000/-**.

6. The claimant admittedly went from Agartala to Kolkata along with an escort for treatment and he has placed on record the tickets and the value of these tickets works out to Rs.6,000/- and he must have spent a similar amount for his return. In addition thereto there would have been other expenses of transportation in Kolkata and at Agartala and therefore, he is awarded **Rs.15,000/-** for his transportation.

7. Coming to the head of attendance charges, the claimant remained in Agartala for eleven days and he would have required at least two attendants round the clock. He was in hospital in the year 2005 and therefore, if the cost of each attendant is taken at Rs.200/- per day, the cost of two attendants comes to Rs.400/- and the cost of attendants for 11 days works out to Rs.4,400/-. The claimant remained in hospital at Kolkata for 24 days. In Kolkata he was accompanied by one attendant and boarding and lodging of the attendant also had to be arranged. Therefore, the cost of one attendant in the year 2005 at Kolkata is taken at Rs.500/- per day and for 24 days the cost of attendant is assessed at Rs.12,000/-. Therefore, the total cost of attendants is assessed at **Rs.16,400/-**.

8. The learned Tribunal has granted no loss of income to the claimant. Admittedly, the claimant remained on leave for 120 days.

He has to be compensated for this period. His salary as per the certificate place on record is Rs.7,978/- and for 4 months it works out to Rs.31,912/- which is rounded off to **Rs.32,000/-**.

9. As far as future loss of income is concerned, the learned was right since the claimant continues to be in job he has not lost any future income. He is a government servant and is getting the same salary. No evidence has been led to show that he has in any way been adversely affected and, therefore, no loss of future income is assessed.

10. Coming to the non-pecuniary damages the claimant remained in hospital for more than a month and also remained under treatment for at least 4 months. Therefore, he is awarded **Rs.30,000/-** for pain and suffering.

11. Though the claimant has not been awarded any amount for loss of future earnings this Court cannot lose sight of the fact that the claimant has become permanently disabled for life. He cannot walk like a normal human being and at the young age of 36 he has suffered a permanent disability. Therefore, he is awarded a sum of **Rs.1,00,000/-** for future discomfort and loss of amenities in life.

12. The total compensation is, therefore, assessed at
Rs.(1,60,000 + 15,000 + 16,400 + 32,000 + 30,000 + 1,00,000/-) =

Rs.3,53,400/- which is rounded off to **Rs.3,54,000/-** (Rupees three lakh fifty four thousand).

13. 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.1,70,000/- to Rs.3,54,000/- i.e. by Rs.1,84,000/- The claimant shall also be entitled to interest on the enhanced sum of Rs.1,84,000/- @ 7.5% per annum from the date of filing of the claim petition till payment/deposit of the awarded amount. The owner and insurance company of the auto rickshaw No.TR-01-J-0460 are held jointly and severally liable to pay the compensation. Since the vehicle was duly insured it shall be the primary responsibility of the insurance company to pay the compensation. Obviously, the insurance company shall be entitled to adjust the amount(s), if any, which it has already paid or deposited.

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

CHIEF JUSTICE

Sukhendu