

THE HIGH COURT OF TRIPURA
AGARTALA

MAC APP. 29 of 2009

Sri Balai Roy,
S/O. Late Debendra Behari Roy,
Vill. Damdama, P.O. & P.S.-Sabroom,
South Tripura District.

..... *Appellant*

By Advocate : Mr. K.K. Pal

- Vs. -

1. Sri Dibakar Gope,
S/O. Late Sachindra Ch. Gope,
Vill. Dhwanagar, P.O. Gokulpur,
P.S. R.K. Pur, South Tripura District,
(Owner TR-03-3497, Cruiser Jeep)
2. The Divisional Manager,
National Insurance Company Ltd.,
42 Akhaura Road, Agartala,
P.S. West Agartala, West Tripura District.
(Insurer TR-03-3497, Cruiser Jeep)
3. Sri Chitta Ranjan Debnath,
S/O. Late Khetra Mohan Debnath,
Vill. & P.O. Goachand, P.S. Sabroom,
South Tripura District.
(Owner TR-03-0598, Maruti Van).
4. The Divisional Manager,
National Insurance Company Ltd.,
42 Akhaura Road, Agartala,
P.S. West Agartala,
West Tripura District.
(Insurer TR-03-0598, Maruti Van).

..... *Respondents*

By Advocate : Mr. K. Bhattacharjee, (for respondent Nos. 2 & 4)

MAC APP. 80 of 2009

The National Insurance Company Ltd.,
Represented by its Divisional Manager,
Divisional Office, 42, Akhaura Road,

Agartala, West Tripura. (Insurer of Maruti
Van No.TR-03-0598 & Cusier Jeep No.TR-03-3497).

..... *Appellant*

By Advocate : Mr. K. Dey.

- Vs. -

1. Sri Balai Roy,
S/O. Late Debendra Behari Roy,
Resident of Vill. Dam Dama,
P.O. Sabroom, P.S.-Sabroom,
South Tripura District.
2. Sri Debakar Gope,
S/O. Late Sachindra Ch. Gope of
Vill. Dhajanagar, P.O. Gokulpur,
P.S. R.K. Pur (Udaipur),
South Tripura Dist. (Owner of
Cuiser Jeep No.TR-03-3497).
3. Sri Chitta Ranjan Debnath,
S/O. Late Kshetra Mohan Debnath,
Resident of Vill. & P.O. Goachand,
P.S.Sabroom, South Tripura Dist.
(Owner of Maruti Van No.TR-03-0598).

..... *Respondents*

By Advocate : Mr. K.K. Pal (for respondent No.1)

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

Date of hearing : 08.04.2015.

Delivery of : 30.04.2015.
Judgment & order

Whether fit for : Yes.
reporting

JUDGMENT & ORDER

These two appeals are being disposed of by a common judgment as they arise out of one award passed by the learned Motor Accident Claims Tribunal, West Tripura, Agartala on

05.02.2009 in Case No.T.S. (MAC) 73 of 2007 whereby, he awarded a sum of Rs.21,00,000/- as compensation to the claimant.

2. The admitted facts are that the claimant was travelling in Maruti Van bearing No.TR-03-0598 which was hit by one jeep bearing No.TR-03-3497. The claimant was injured and he filed the claim petition claiming compensation. The claimant is a contractor and compensation has been assessed by the Tribunal under the following heads:-

Cost of medical treatment	– Rs. 4,50,000/-
Pain and sufferings	– Rs. 50,000/-
Loss of income	– Rs.15,00,000/-
Loss of amenities of life	<u>– Rs. 1,00,000/-</u>
Total	– Rs.21,00,000/-

3. The claimant has filed this petition claiming enhancement of compensation whereas the insurance company has filed the appeal praying that the award is highly excessive and be suitably reduced. It has also been urged that insurance company was not liable since the petitioner was travelling in a Maruti vehicle in violation of the terms of the policy. It has also been urged that there was contributory negligence of both the vehicles, but the main thrust of the agreements of the insurance company is that the compensation is highly excessive.

4. In this case, the insurance company had prayed for and was granted permission by the Tribunal to contest the appeal on merits. The insurance company was also respondent in the appeal and is therefore entitled to challenge the award on merits also.

5. The manner in which the award has been passed is not at all proper. The learned Tribunal while passing the award under various heads has virtually given no reasons. The claimant produced vouchers of treatment and travelling for Rs.2,23,460/-, but the Tribunal has awarded Rs.4,50,000/- only because the Tribunal felt that he must have spent this much amount. Award of Rs.50,000/- was made for pain and sufferings without giving details of the treatment incurred. The award is totally silent with regard to the nature of the treatment. The Tribunal did not take into consideration the fact that there is no disability certificate on record. There is no medical evidence to show that the petitioner has suffered a permanent disability. Shockingly, the Tribunal has awarded a sum of Rs.15,00,000/- towards loss of income without even caring to call for the income tax record and without taken into consideration the age of the claimant. A sum of Rs.1,00,000/- has been awarded for loss of amenities of life without there being any evidence of permanent disability.

6. 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.

7. It is impossible to equate human suffering and personal deprivation with money. However, this is what the Motor Vehicles Act enjoins upon the Courts to do. The Court has to make a judicious attempt to award damages, so as to compensate the claimant for the loss suffered by him. Such compensation is what is termed as just compensation. On the one hand, the compensation should not be assessed very conservatively, but on the other hand, compensation should also not be assessed in so liberal a fashion so as to make it a bounty to the claimant. The Court while assessing the compensation should have regard to the degree of deprivation and the loss caused by such deprivation. The compensation or damages assessed for the personal injuries should be substantial damages to compensate the injured for the

deprivation suffered by him throughout his life. They should not be just token damages. There are numerous cases where the principles for grant of compensation have been enunciated. It would be relevant to quote pertinent observations from a few.

8. The following observations of *Lord Morris* in his speech in ***H. West & Son Ltd. V. Shephard, 1958-65 ACJ 504 (HL, England)***, are very pertinent:

"Money may be awarded so that something tangible may be procured to replace something else of the like nature which has been destroyed or lost. But money cannot renew a physical frame that has been battered and shattered. All that Judges and courts can do is to award sums which must be regarded as giving reasonable compensation. In the process there must be the endeavour to secure some uniformity in the general method of approach. By common assent awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that so far as possible comparable injuries should be compensated by comparable awards."

9. *Lord Denning* while speaking for the Court of Appeal in the case of ***Ward v. James, (1965) 1 All ER 563***, laid down the following three basic principles to be followed in such like cases:

"Firstly, accessibility: In cases of grave injury, where the body is wrecked or brain destroyed, it is very difficult to assess a fair compensation in money, so difficult that the award must basically be a conventional figure, derived from experience or from awards in comparable cases. Secondly, uniformity: There should be some measure of uniformity in awards so that similar decisions may be given in similar cases; otherwise there will be great dissatisfaction in the community and much criticism of the administration of justice. Thirdly, predictability: Parties should be able to predict with some measure of accuracy the sum which is likely to be awarded in a particular case, for by this means cases can be settled peaceably and not brought to court, a thing very much to the public good."

10. The assessment of damages in personal injury cases raises great difficulties. It is not easy to convert the physical and mental loss into monetary terms. There has to be a measure of calculated guess work and conjecture. An assessment, as best as can, in the circumstances, should be made.

11. In the case of ***Mediana, (1900) AC 113***, Lord Halsbury held: "Of course the whole region of inquiry into damages is one of extreme difficulty. You very often cannot even lay down any principle upon which you can give damages; nevertheless, it is remitted to the jury, or those who stand in place of the jury, to consider what compensation in money shall be given for what is a wrongful act. Take the most familiar and ordinary case: how is anybody to measure pain and suffering in moneys counted? Nobody can suggest that you can by any arithmetical calculation establish what is the exact amount of money which would represent such a thing as the pain and suffering which a person has undergone by reason of an accident. But, nevertheless, the law recognizes that as a topic upon which damages may be given."

12. In ***Perry v. Cleaver, 1969 ACJ 363 (HL, England)***, Lord Morris of Borth-y-Gest held thus: "*To compensate in money for pain and for physical consequences is invariably difficult but no other process can be devised than that of making a monetary assessment.*"

13. In ***Phillips versus Western Railway Co., (1874) 4 QBD 406***, Field, J., while emphasizing that damages must be full and adequate, held thus: "You cannot put the plaintiff back again into his original position, but you must bring your reasonable common sense to bear, and you must always recollect that this is the only occasion on which compensation can be given. The plaintiff can never sue again for it. You have, therefore, now to give him compensation once and for all. He has done no wrong, he has suffered a wrong at the hands of the defendants and you must take care to give him full fair compensation for that which he has suffered." Besides, the Tribunals should always remember that the measures of damages in all these cases "should be such as to enable even a tortfeasor to say that he had amply atoned for his misadventure". The observation of Lord Devlin that the proper approach to the problem or to adopt a test as to what contemporary society would deem to be a fair sum, such as would allow the wrongdoer to "hold up his head among his neighbours and say with their approval that he has done the fair thing", should be kept in mind by the court in determining compensation in personal injury cases.

14. ***Mc Gregor on Damages, 14th Edn.***, para 1157, referring to heads of damages in personal injury actions states: "*The person physically injured may recover both for his pecuniary losses and his non-pecuniary losses. Of these the pecuniary losses*

themselves comprise two separate items, viz., the loss of earnings and other gains which the plaintiff would have made had he not been injured and the medical and other expenses to which he is put as a result of the injury, and the courts have sub-divided the non-pecuniary losses into three categories, viz., pain and suffering, loss of amenities of life and loss of expectation of life."

15. In **Concord of India Insurance Co. Ltd. versus Nirmala Devi, 1980 ACJ 55 (SC)**, the Apex Court held: "*The determination of the quantum must be liberal, not niggardly since the law values life and limb in a free country in generous scales.*"

16. In **R.D. Hattangadi versus Pest Control (India) Pvt. Ltd., 1995 ACJ 366 (SC)**, speaking about the heads of compensation, the Apex Court held thus: "*Broadly speaking, while fixing the amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss.*

So far as non-pecuniary damages are concerned, they shall include:

(i) damages for mental and physical shock, pain and suffering already suffered or likely to be suffered in the future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to walk, un or sit; (iii) damages for loss of expectation of life, i.e. on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life."

17. In ***Rajkumar Vs. Ajay Kumar, (2011) 1 SCC 343***, the Apex Court laid down the heads for which compensation is to be awarded for personal injuries.

"6. The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii) (a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life."

18. In ***Sanjay Verma Vs. Haryana Roadways, (2014)3 SCC 210*** the Apex Court has granted compensation under the heads of medical expenses, future treatment, pain and suffering, cost of attendance etc. in a case of similar nature.

19. At the outset, I may state that the age of the claimant is at the time of the accident was about 59 years. He is working as a contractor and his income as noted down by the Tribunal in the year when the accident took place was approximately about Rs.9,00,000/- (Rupees Nine lacs) per year. While awarding compensation, the Court must decide what is the loss of income. There was no disability certificate and the learned Tribunal straightaway held without any medical evidence that the claimant could not have worked for 2 years and therefore awarded him Rs.15,00,000/-. This is not proper.

20. I had directed the parties to produce further material on record and counsel for the petitioner has produced the income

tax returns right from the assessment year 2007-08 to the assessment year 2014-15. The income of the claimant for these years is as follows:-

Assessment year	Total income
2007-08	Rs.8,58,250/-
2008-09	Rs.7,46,740/-
2009-10	Rs.5,79,410/-
2010-11	Rs.8,92,333/-
2011-12	Rs.3,75,110/-
2012-13	Rs.8,53,378/-
2013-14	Rs.8,89,401/-
2014-15	Rs.8,92,107/-

21. This shows that the income has remained by and large static. These documents also clearly proved that the petitioner is not incapable of earning and he continues to work as a contractor. Therefore, the award of Rs.15,00,000/- for loss of income is totally unjustified.

22. From the tabular statement made hereinabove, the income of the complainant did come down for a few years immediately after the accident. It is this loss of income which may have to be compensated and this works out to approximately Rs.8,00,000/- (Rupees Eight lacs)

23. Coming to the medical expenses, the claimant was admitted immediately after the accident in the hospital on 30th September, 2006 and there were multiple contusions to the brain. He was referred to the SSKM hospital, Kolkata on the same day. He went to Kolkata and got himself admitted in AMRI hospital and there his age is shown to be 59 years. He remained in hospital for 18 days. C.T. Scan of the brain was done and there was a hemorrhagic contusion in the frontal portion of the brain. It would be pertinent that the petitioner was already suffering from Diabetes and was taking insulin. This had nothing to do with this accident, but obviously such a patient takes longer time to recover. The claimant remained in hospital from 1st October, 2006 to 18th October, 2006 i.e. a period of 18 days. He again went to Kolkata in 2007 and 2008 for one one day to show himself again. He was not admitted in hospital on both these occasions, but he is definitely entitled to the travel expenses for these periods. As pointed out above, the claimant was a known diabetic patient even prior to his treatment and he has even claimed compensation for the treatment which has no connection with the accident, but is only related to the treatment of diabetes. In this regard, reference may be made to the cash receipt of the Manipal hospital wherein the claimant only got a diabetic check up. The claimant has in fact claimed huge amount of money which relate to blood sugar tests etc., but since that has been granted I do not want to interfere with the same. The total amount of the receipts produced by the

claimant amounts to Rs.2,23,460/-. In addition thereto the claimant is held entitled to attendant charges of Rs.1,000/- per day and as awarded another Rs.20,000/- under this head. As noticed above, the claimant has claimed amounts which have no connection with his injury, but are only related to treatment of his diabetes, but still I award him another Rs.5,000/- for miscellaneous expenses and the total medical expenses are assessed as **Rs.2,50,000/-** (Rupees Two lacs fifty thousand).

24. As far as pain and suffering is concerned, the claimant has not suffered any disability. He has not suffered any permanent disability. There is no proof that he has become disabled due to the accident and therefore he is only awarded **Rs.25,000/-** (Rupees Twenty five thousand) for pain and sufferings. The claimant is not entitled any amount whatsoever for loss of amenities of life or loss of discomfort.

25. One must also keep note of the fact that since the claimant was 59 years he could not have kept increasing his income as a contractor even now when he is more than 65 years old. His income is almost identical to what his income was at the time of the accident. Therefore, it is apparent that he has not suffered any loss of income.

26. In view of the above discussion, the appeal is partly allowed and the compensation reduced from Rs.21,00,000/- to

Rs.10,75,000/- (Rupees Ten lacs seventy five thousand) only.

The claimants on this amount shall also be entitled to interest @9% per annum from the date of filing of the claim petition till payment/deposit of the awarded amount. Obviously, the insurance company shall be entitled to adjust the amount(s), if any, which it has already paid or deposited.

27. The appeal filed by the claimant being MAC App 29 of 2009 is dismissed and the appeal filed by the insurance company being MAC App 80 of 2009 is allowed in the aforesaid terms.

28. Send down the LCRs forthwith.

CHIEF JUSTICE

sima