

THE HIGH COURT OF TRIPURA

AGARTALA

MAC App. No. 30 of 2009

Appellant:

Smt. Urmila Shil Sharma,

Wife of Sri Gopal Shil Sharma, Resident of
Amtali, Madhya para, P.S. Amtali, district-west
Tripura.

By Advocate :

None.

Respondents :

1. Sri Makhan Lal Saha,,

S/o. Late Uma Charan Saha, Saha Nursing
Home, Old R.M.S to G. B. Road, between
Advisor Choumihini to Colonel Choumuhini, P.O-
Agartala, P.S-West Agartala.
(Owner of Vehicle No. WB-020-3926).

2. National Insurance Company Ltd.,

Akhaura Road, Agartala, West Tripura.

By Advocate :

Mr. P. Gautam, Adv.

B E F O R E

THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA

Date of hearing &
Judgment & Order : **9th February, 2015.**

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER (ORAL)

This appeal for enhancement of compensation has been filed by the mother of the injured and is directed against the award dated 31st October, 2008 passed by the learned Motor Accident Claims Tribunal, West Tripura, Agartala in T.S (MAC) 188 of 2006 whereby the Tribunal awarded a sum of Rs.1,15,000/- in favour of the claimant.

[2] The undisputed facts are that the injured person was a minor boy who was hit by a car bearing registration No. WB-020-3926 owned by Sri Makhan Lal Saha and insured with the National Insurance Company Ltd.

[3] The claim petition has been filed by the mother of the injured. She cannot be the claimant petitioner and, therefore, in this appeal it is directed that the claim petition as well as this appeal shall be treated to have been filed by Master Shaikat Shil Sharma through his mother. On 11.12.2014 when the matter listed none had appeared for the appellant-claimant but since it was stated that Mr. D. Chakraborty, learned counsel for the appellant-claimant was out of station the case was adjourned for today when also none appears for the appellant-claimant. Therefore, this Court has no other option but to decide the matter on merits.

[4] The appellant-claimant was a young boy. At the outset I may state that the manner in which the compensation has been assessed by the learned trial Court is totally wrong. Without any discussion of the evidence all that the Tribunal has said is that since the claimant remained under treatment for about 15 to 20 days he must have spent Rs.1,00,000/- on the treatment and other expenses. This is wholly incorrect and where evidence is available the claim petition must be decided on the basis of evidence.

[5] From the evidence on record, it is apparent that the claimant after his accident was admitted in the IGM Hospital, Agartala and remained there from 14th July, 2004 to 20th July, 2004. He was then referred to the SSKM, Hospital, Kolkata where he was taken and remained admitted there from 20th July, 2004 to 30th July, 2004. There is no disability certificate placed on record and nothing to show that the claimant had suffered permanent disablement.

Therefore, I proceed to decide the claim petition on the basis of material on record.

[6] The discharge certificate of the IGM Hospital, Agartala shows that the claimant was admitted with head injury with multiple lacerated scalp received in a road traffic accident. After some treatment including C.T Scan of the brain the young boy was referred to the S.S.K.M Hospital, Kolkata. There is a certificate to show that one Dr. Asim Debbarma accompanied the 12 year boy Master Shaikat Shil Sharma for his treatment at Kolkata and he remained there from 20th July, 2004 to 22nd July, 2004 and received Rs.10,000/- for his air fare, hotel and other necessary expenses. Therefore, Rs.10,000/- paid to Dr. Asim Debbarma is the first head for which payment has to be made.

[7] The discharge certificate issued by the SSKM Hospital shows that the claimant was admitted on 20th July, 2004 and discharged on 30th July, 2004 and was advised for further rest for 15(fifteen) days and he was to come back for a review to the OPD department of the hospital after four months. It appears that though the claimant was discharged on 30th July, 2004 till 15th of the next month his family lived in Kolkata because he had to be brought to the hospital within two weeks and it would not have been feasible for them to bring him back from Agartala. He was again taken to Kolkata in December, 2004 as is apparent from another OPD slip. Material has also been placed on record to show that the claimant was an active sports person when the accident took place. It appears that on this journey the claimant travelled from Agartala to Guwahati and back by road and travelled from Guwahati to Kolkata by train. But the tickets cannot be relied on because the tickets are for as many as 11 persons and at the best two attendants could have accompanied the claimant. As far as air fare is concerned the claimant has placed on record tickets of the

value of Rs.30,005/-, for the train journey also about Rs.3000/- must have been spent, in addition thereto, the claimants may have spent for local travel both at Agartala and Kolkata and also for transport from airport and railway station to the place of stay etc.. Therefore, the appellant-claimant is awarded Rs.40,000/- as transportation charge.

[8] Coming to the issue of attendant charges, the claimant was in Agartala for 6(six) days. At Agartala he would have required attendants round the clock since he was a young child and if three attendants were looking after him and if cost of each attendant is taken at Rs.200/- per day, cost of three attendants works out to Rs.600/- and for 6(six) days the same is works out to Rs.3,600/-. In addition thereto, in Kolkata two attendants would have been required and in Kolkata as I have said the attendants stayed up to 15th of the next month, therefore, the cost of attendants at Kolkata is for 25(twenty five) days and this cost must include the cost of boarding, lodging etc. of the parents and other family members who accompanied the claimant. Even in the year 2004 at least Rs.1000/- per day must have been spent by two attendants on looking after the claimant and also on their staying and boarding charges etc. Therefore, the cost of attendants at Kolkata works out to Rs.25,000/-. Thus, the total cost of attendants comes to Rs.28,600/- which is again rounded off to Rs.29,000/-.

[9] As far as medicines are concerned, the bills produced on record are only for a sum of Rs.4432/-. Considering the fact that some bills may not have been kept and keeping in view the nature of the injuries and period of treatment, I assess Rs.20,000/- for actual medical expenses.

[10] Now comes the question as to the pain and suffering. The claimant was a young boy and from the evidence it is obvious that for about four five months he was totally dependent on his parents and could not recovered fully at that stage. Therefore, he is awarded Rs.15,000/- for pain and suffering. The total compensation is therefore, works out to Rs.1,14,000/-.

[11] There is no iota of evidence to show that the appellant-claimant has been permanently disabled. Therefore, the award of Rs.1,15,000/- is reasonable calling for no interference and hence the appeal is rejected.

[12] The appeal is disposed of in the aforesaid terms. No order as to costs.

Send down the LCRs forthwith.

CHIEF JUSTICE