

THE HIGH COURT OF TRIPURA

A G A R T A L A

MAC App. No. 50 of 2009

Appellant :

Sri Biswajit Debroy,
S/o. Sri Dilip Debroy,
Resident of Santipur, P.O & P.S-Pecharthal,
Dist.-North Tripura.

By Advocates :

Mr. D. K. Biswas, Adv.
Mr. G. K. Nama, Adv.

Respondents :

1. Smt. Arpita Chakraborty,
W/o. Kishore Roy Acharjee, Resident of
Village-West Laxmibil, P.O & P.S- Bishalgar,
Distt.-West Tripura.
[Owner of Vehicle No. TR-02-B-1220(Bus)].

2. Shri Swapan Chandra Kar,
S/o. Late Naresh Chandra Kar, Resident of
Village & P.O-Manughat, P.S-Manu, Distt. –
Dhalai.
[Driver of vehicle No. TR-02-B-1220(Bus)]

3. The Branch Manager,
The National Insurance Company Ltd.,
Dharmanagar Branch, Thana Road, P.O &
P.S-Dharmanagar, District- North Tripura.
[Insurer of vehicle No.TR-02-B-1220(Bus)]

4. The Branch Manager,
Oriental Insurance Company Ltd.,
Dharmanagar Branch, Rajbari, P.O-Rajbari,
P .S-Dharmanagar, District-North Tripura.
[Insurer of vehicle No.TR-02-B-5115]

By Advocate :

Mr. P. Gautam, Adv.

B E F O R E

HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

Date of hearing : **17th December, 2014.**

Judgment & Order : **13th January, 2015.**

Whether fit for reporting :

Yes	No
✓	

JUDGMENT & ORDER

This appeal for enhancement of compensation is directed against the award dated 25th April, 2009 passed by the learned Motor Accident Claims Tribunal, North Tripura, Dharmanagar in T.S(MAC) No. 54 of 2008 whereby the Tribunal has awarded a sum of Rs.1,70,757/- along with interest @ 6% per annum in favour of the claimant under the following heads:

(i) Pain and suffering	= Rs.25,000/-
(ii) Medical expenses	= Rs.92,998/-
(iii) Loss of income	= Rs. 2759/-
(iv) For special damage	= Rs.50,000/-

Total : Rs.1,70,757/-

[2] Sri D. K. Biswas, learned counsel for the claimant submits that the award is very much on the lower side and prays that the same may be suitably enhanced.

[3] 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.

[4] 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.

[5] 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."

[6] 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."

[7] 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.

[8] 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."

[9] 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."

[10] 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.

[11] *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.”

[12] 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.”

[13] 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.”

[14] 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."

[15] 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.

[16] Applying the aforesaid principle, I now proceed to assess the compensation under the various heads:

[17] From the evidence on record it is apparent that the claimant-injured suffered injuries in a motor vehicle accident and his arm at the elbow level was severed as a result of the accident at the spot itself when the accident take place on 23.04.2008. Thereafter the claimant received preliminary treatment at Pecharthal and then was shifted to the G.B.P Hospital, Agartala where he remained admitted till 27.04.2008. He was then referred to the SSKM Hospital, Kolkata and went to Kolkata on 28.04.2008. According to him, he could not get admission in the Government hospital, Kolkata and therefore, went to the AMRI Hospital, Kolkata where he remained admitted on 28th April, 2008 and discharged therefrom on 9th May, 2008 i.e. after 12 days.

[18] The claimant is a Govt. employee and working as Tehsildar at Pecharthal on a fixed pay basis. According to the claimant he will suffer in future because he may not be promoted. The other witnesses are only witnesses to the accident and not relevant for the purpose of assessing the compensation.

[19] Applying the aforesaid principles, I now proceed to assess the compensation under the different heads.

Medical expenses:

[20] The claimant has produced documentary evidence to show that the discharge certificate of the G.B.P Hospital shows that the claimant was admitted there on 23rd April, 2008 and was discharged therefrom on 27th April, 2008 and referred to the SSKM Hospital, Kolkata with serious injuries including amputation of the left upper hand just below the elbow joint and fractures of both bones of the right flora and fracture of the pelvis. Keeping in view the serious injuries the claimant was referred outside the State for treatment.

Even on discharge he was advised dressing on alternate days and directed to appear for review before the doctors at Kolkata after one week and thereafter 2(two) weeks. It is apparent that the claimant thereafter was admitted in the Medical Rehabilitation Center, T.R.A. General Hospital, Kolkata on 9th May, 2008 and remained admitted there till 8th June 2008 and returned with his brother to Agartala on 9th June, 2008. Therefore, the claimant and his brother remained in Kolkata for 42 days. Even after his discharge he kept receiving treatment. The petitioner has placed on record the photocopy of a bill for Rs.1,01,989.93 issued by the AMRI Hospital. He has also placed on record a bill of Rs.49,255/- issued by the Medical Rehabilitation Center, T.R.A. General Hospital, Kolkata. The learned Tribunal did not allow these expenses only on the ground that the claimant was referred to the SSKM Hospital, Kolkata and should not have got himself treated in a private hospital. This part of the judgment is totally illegal and unsound. It is for the claimant to decide where he gets his treatment. Therefore, the claimant is entitled to a sum of Rs.1,01,989.93 paisa as treatment at AMRI Hospital and another sum of Rs.49,255/- i.e. sum of Rs.1,51,244.93. In addition thereto the claimant has placed on record expenses on medicines etc. and medical expenses in his case are assessed at Rs.2,25,000/-.

[21] Coming to the transport expenses, the claimant was entitled to go to Kolkata along with one escort and the value of the transportation has rightly been assessed at Rs.16,100/- which is rounded off to Rs.20,000/-.

[22] The claimant was not awarded any amount for attendant charges. Admittedly his brother remained with him till his return from Kolkata. Even taking the boarding, lodging expenses of the brother and loss of income of the brother in the year 2008 at Rs.1,000/- per day the award under this

head is assessed at Rs.42,000/-. In addition thereto, the claimant awarded Rs.8,000/- as attendant charges at Agartala and therefore, he is entitled to Rs.50,000/- for attendant charges.

[23] The claimant was working on fixed pay basis drawing salary of Rs.2759/- per month. He remained in Kolkata till 8th June, 2008 from 28th April, 2008 and thereafter also could not have joined duty for some time and therefore, he is awarded compensation for loss of income for three months at Rs.8277/- which is rounded of Rs.9000/-.

[24] As far as future loss of income is concerned. The claimant being a Government servant has suffered no loss of future income. Under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 the claimant cannot be discriminated only on the ground of disability with regard to future promotion etc. and therefore, there is no financial loss to him. However, he shall be entitled to further amount for loss of amenities of life etc.

[25] The claimant has been awarded only a sum of Rs.25,000/- for pain and suffering. In my view this amount is very low keeping in view the fact that one arm of the claimant has been amputated just below the elbow, both bones of the second arm was fractured and he also suffered fracture of the pelvis. Therefore, the claimant was virtually immobile for 1½ months and he is awarded Rs.50,000/- for pain and suffering.

[26] Unfortunately, the claimant has not been awarded any amount whatsoever under the head of loss of amenities of life and future discomfort in life. The claimant has lost one arm. He has permanent disability because his left arm is amputated. His right arm was also fractured. His pelvis was

fractured. The claimant cannot live like a normal human being. He is crippled for the rest of his life. He will suffer a lot later in life. Though the claimant may not have suffered any loss of income, he cannot carry on many pursuits in addition to his Government service which may have added to his income. Keeping all these facts into consideration, I award a sum of Rs.1,50,000/- under the head of Loss of amenities of life and future discomfort in life.

[27] The total compensation is, therefore, assessed at Rs.5,04,000/-. The award is accordingly enhanced from Rs.1,70,757/- to Rs. 5,04,000/- i.e. by Rs.3,33,243/-. The claimant is also entitled to interest on the awarded sum @ 7.5% per annum from the date of filing of the claim petition till deposit of the amount. Therefore, the insurance company is directed to deposit the entire awarded amount of compensation along with proportionate interest thereupon after adjusting the amount already paid/deposited by it in the Registry of this Court within four months from today.

[28] This Court has awarded compensation to the claimant for the amount of transportation and medical expenses on the basis of the photocopies of the bills produced by him. It is not clear whether the claimant has claimed any amount from his employer as reimbursement of the amount spent on treatment. He cannot have both the benefits, therefore, if he has been reimbursed any medical or transportation expenses by his employer, the employer shall be entitled to recover the same from the claimant.

[29] A copy of this judgment shall be sent to the Secretary, Finance, Govt. of Tripura. Therefore, before releasing any amount to the claimant he shall file an affidavit in this Court stating whether he has received any amount

as reimbursement under the above head expenses. He shall also file a certificate of his employer in this regard.

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

Send down the lower Court records forthwith.

CHIEF JUSTICE