

THE HIGH COURT OF TRIPURA
AGARTALA

MAC APP. NO.89 OF 2009

Shri Sanjib Paul,
S/O. Sri Mantu Paul,
Vill.-Jalefa,
P.S.-Sabroom,
District-South Tripura.

..... Appellant-Claimant-Petitioner.

- V e r s u s -

1. Sri Laxman Debbarma,
S/O. Late Sukurai Debbarma,
Vill.-Murabari,
P.S.-Ranir Bazar,
District-West Tripura.
(Owner of the vehicle No.TR-01-A-2116 (Commander Jeep)).

2. The National Insurance Company Limited,
Represented by the Divisional Manager,
Having its office at 42, Akhaura Road,
Agartala, P.S.-West Agartala,
District-West Tripura.
(Insurer of the vehicle No.TR-01-A-2116 (Commander Jeep)).

..... Opposite Parties-Respondents.

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant : Mr. K. Nath, Advocate.

For the respondents : None.

Date of hearing and : 19.01.2015.
delivery of judgment
and order.

Whether fit for reporting : **NO.**

JUDGMENT & ORDER (ORAL)

This appeal for enhancement of compensation is directed against the award dated 19-09-2009 delivered by the learned Motor Accident Claims Tribunal, Court No.3, West Tripura, Agartala in case No. T.S.(MAC) 324 of 2008 whereby he awarded a sum of Rs.2,80,100/- to the claimant under the following heads:-

Cost of medicines	:- Rs. 1,700/-
Attendant charges	:- Rs. 13,600/-
Actual loss of income	:- Rs. 14,400/-
Future loss of income	:- Rs.2,30,400/-
Pain and suffering	:- Rs. 10,000/-
<u>Mental shock</u>	<u>:- Rs. 10,000/-</u>
Total	:- Rs.2,80,100/-

2. The only issue is whether this compensation is just compensation within the meaning of the Motor Vehicles Act. The undisputed facts are that the claimant remained admitted in hospital from 02-03-2004 to 08-05-2004, i.e. for 68 days. The discharge certificate shows that he had fracture of the right femur, fracture of the radius and other injuries following a road traffic accident. The claimant has also produced a disability certificate wherein his disability has been assessed at 50% permanent disability on the basis of Post Traumatic Monoplegia right upper limb.

3. 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.

4. Applying the aforesaid principles, I now proceed to assess the compensation. The claimant has produced receipts of medical expenses for a sum of Rs.1,639/- only. The Tribunal awarded him only Rs.1,700/- for medical expenses. In cases like the present one where the claimants are illiterate persons not entitled to any reimbursement, they do not normally keep a record of their day to day expenses of treatment. A lot of money is spent for which receipts are not kept. Keeping in view the nature and length of the treatment, I assess the medical expenses at **Rs.10,000/-**.

5. As far as attendant charges are concerned, the learned Tribunal has rightly held that the claimant would have required two attendants per day. However, in my opinion, his assessment of the cost of each attendant at Rs.100/- per day is on the lower side and I would assess the compensation even in the year 2004 at Rs.150/- per day and, therefore, the cost of two attendants works out to Rs.300/- per day and for 68 days, it works out to Rs.20,400/- which is rounded off to **Rs.20,500/-**.

6. As far as the assessment of income of the injured is concerned, the learned Tribunal held that in the year 2004, the assistant to a mason by no stretch of imagination could have earned more than Rs.80/- per day. I am not at all in agreement with this finding of the learned Tribunal. An assistant to a mason in today's date earns much more and even in the year 2004 the earning of an assistant to a mason would not be less than Rs.150/- per day. On the other hand, a labourer of this type does not get work throughout the year. Therefore, keeping in view the wages prevailed at that time, the fact that this wages may not be available on each and every day and also keeping in view the future prospects of the claimant, I assess the income at Rs.150/- per day or Rs.4,500/- per month. Since the claimant could not work for six months, he is awarded **Rs.27,000/-** for loss of income.

7. As far as his future loss of income is concerned, learned counsel for the claimant contends that since the injured was working as an assistant to a mason and was a labourer, this disability has caused him total loss of income. I am unable to accept this submission. It is true that the claimant may not be able to work as a mason but the injury is not of such a nature that he can do no work at all. As rightly held by the Tribunal, the Court while assessing the just compensation must also decide what can the claimant earn even despite the disability which he has suffered. The claimant has been disabled to only in respect of his upper arm and it is the medical expert who has assessed the loss at 50% and,

therefore, I agree with the learned Tribunal that the loss of income in this case can be taken at 50% only. Since the claimant can still walk around, he can still work with his left hand and even his right hand can be partially used by him. This is not a case of total loss of use of the right hand. Therefore, the loss of income is assessed at Rs.2,250/- per month or Rs.27,000/- per year and since the claimant was in the age group of 20 to 25, the multiplier would be 18 and the compensation on this count works out to **Rs.4,86,000/-**.

8. As far as pain and suffering is concerned, the amount of Rs.10,000/- awarded is on the lower side and he is awarded **Rs.20,000/-** for pain and suffering.

9. The claimant has not been awarded any amount whatsoever for future discomfort and loss of amenities of life. The claimant is permanently disabled and partially crippled for the rest of his life. He has lost the use of his right arm to a great extent. Therefore, he is awarded **Rs.50,000/-** under this head.

Therefore, the total compensation works out to Rs.(10,000 + 20,500 + 27,000 + 4,86,000 + 20,000 + 50,000) = Rs.6,13,500/- (rupees six lakh thirteen thousand five hundred).

10. 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.2,80,100/- to Rs.6,13,500/-, i.e. by Rs.3,33,400/-. 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.

11. The appeal is disposed of in the aforesaid terms.
12. Send down the lower court records forthwith.

CHIEF JUSTICE