

THE HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

MAC APP. NO.103 of 2007

Sri Tarani Debnath,
S/o Late Ganga Sagar Debnath,
Vil. Meghali Para,
P.O Meghali Para Tea Garden,
District - West Tripura.

..... *Appellant.*

- Vs -

1. **Sherowali Service,**
(to be served upon the Manager),
Chandrapur, A.A. Road, Khayerpur,
District - West Tripura.
[Owner of the vehicle No.TR-01-J-0397- three wheeler
(Goods), Bajaj Make].
2. **The Divisional Manager,**
National Insurance Co. Ltd.,
Agartala divisional Office,
Agartala, West Tripura,
[Insurer of the vehicle No.TR-01-J-0397- Bajaj make].

..... *Respondents.*

_B_E_F_O_R_E_
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant : Mr. M K Roy, Advocate.
For the respondents : Mr. B N Majumder, Advocate,
Mr. G. K Nama, Advocate.
Date of hearing and
delivery of judgment : 09.01.2015.
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 5th June, 2007 passed by the learned Motor Accident Claims Tribunal, West Tripura, Agartala in Case No.TS(MAC)673 of 2004, whereby the learned Tribunal awarded total sum of Rs.2,63,400/- along with interest to the claimant as compensation under the following heads :

Loss of future income	: Rs.2,18,400/-
Medical expenses	: Rs. 30,000/-
Pain and suffering	: Rs. 15,000/-
Total Rs.2,63,400/-	

2. The undisputed facts are that the claimant was at the relevant time working as a ‘*driver*’ in a goods carrier. On 22.7.2004 when he was standing near the Sherowali Cold Storage at Kashipur he was hit by an auto goods vehicle bearing registration No.TR-01-J-0397 and sustained grievous injuries. Unfortunately, no doctor has been examined in the case but from the discharge certificate it is apparent that the claimant from the date of accident i.e. 22.7.2004 to 27.9.2004 was admitted in G.B.P Hospital, Agartala. This period works out to two months and five days. He was diagnosed as having suffered *fracture in the right femur and fracture over the upper third of the left tibia as well as fracture of the 7th rib*. The claimant was again readmitted in hospital on 09.11.2004 and operation was done on both bones of the left leg. Thereafter, the claimant was again admitted in hospital on 22.01.2005 for post operative care and

was discharged on 14.02.2005. Therefore, the total period of hospitalization works out to three months and eight days i.e. ninety eight days. The claimant has also produced on record the disability certificate which shows 40% disability. The claimant has produced some bills of expenses but they are for a few hundred rupees only.

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. Now I proceed to assess the compensation in accordance with the aforesaid well settled principles of grant of compensation.

The claimant remained in hospital on three different occasions for a period of more than three months. Unfortunately, the claimant who is virtually illiterate has neither examined a doctor nor produced many details of his expenses. Even so, keeping in view the fact that the treatment was long drawn out an operation was conducted and the claimant remained hospitalized for more than three months, I feel that he would have spent at least twenty thousand on his medical treatment and he is awarded **Rs.20,000/-** under this head.

5. The claimant was in hospital for almost 100 days during the period from 2004 to 2005 and he would have required attendance round the clock during this period. In the year 2004, the cost of one attendant in Agartala could easily be assessed at Rs.150/- per day and the cost of two attendants works out to Rs.300/- per day and therefore, he is awarded **Rs.30,000/-** as the amount for attendant charges.

6. The learned Tribunal assessed the income of the claimant at Rs.3,500/- per month which according to me is on the lower side because even in the year 2004 a driver who had about 18 years experience would not have earned less than Rs.5,000/- per month. The claimant admittedly was remained under treatment from 22.7.2004 to 14.2.2005 and it can be presumed that he could not have worked as a driver till at least one month thereafter and when

his income is taken Rs.5,000/- per month the loss of income is assessed at Rs.40,000/-.

7. The claimant was working as a ‘driver’ and claims that he cannot work as a driver any longer. As already mentioned above he has not produced any medical evidence nor has he examined any expert witnesses to show that he cannot work as a driver. A person with a disability in his leg can work as a driver. Be that as it may, he has suffered a grievous injury and his earning has definitely come down. In the absence of other material to show that he is totally at loss of income, I take the loss of income at 40% which is equal to the amount of disability. Therefore, the loss of 40% works out to Rs.2,000/- per month or Rs.24,000/- per year.

8. There was some dispute with regard to the age of the claimant and this Court had directed the claimant to file further documents and he has filed a copy of the Adhar Card, the Date of Birth Certificate etc. which clearly indicate that he was between the ages of 40 to 45 years at the time of accident and, therefore, the relevant multiplier in accordance to *Sarla Verma’s* case would be ‘14’. This comes to Rs.3,36,000/-. Therefore, future loss of income is assessed at **Rs.3,76,000/-** in all.

9. Next comes the issue of the non-pecuniary damages for pain & suffering and loss of amenities of life etc. As far as pain and

suffering is concerned, the claimant underwent various operations. He had suffered fractures in both his legs as well as of the ribs. He remained hospitalized for almost 100 days and remained under treatment for at least 7 months. Therefore, he is awarded **Rs.35,000/-** for pain and suffering. As far as loss of amenities of life is concerned, for the rest of his life the claimant cannot walk like a normal human being. His disability is 40%, his leg has been permanently damaged and therefore, he is awarded **Rs.50,000/-** under this head.

10. The total compensation is, therefore, assessed at Rs.(20,000 + 30,000 + 3,76,000 + 35,000 + 50,000) = **Rs.5,11,000/-** (Rupees five lakh and eleven thousand). The award of the learned Tribunal is modified and the compensation is enhanced from Rs.2,63,400/- to Rs.5,11,000/- i.e. by Rs.2,47,600/-. The claimant shall also be entitled to interest on the enhanced sum of Rs.2,47,600/- @ 7.5% per annum from the date of filing of the claim petition till payment/deposit of the awarded amount. It appears that the insurance company has already satisfied the awarded amount and, therefore, the insurance company is directed to deposit the enhanced amount of compensation along with proportionate interest thereupon in the Registry of this Court within 4(four) months from today. Obviously, the insurance company shall be entitled to adjust the amount(s), if any, which it has already paid or deposited.

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

CHIEF JUSTICE

Sukhendu