

THE HIGH COURT OF TRIPURA

AGARTALA

MAC App. No. 56 of 2008

Claimant-Appellant :

Sri Sudhir Paul,

S/o. Sri Sachindra Chandra Paul

Resident of vill-Nadilagh No.2, Chandranagar,

P.S-Bishalgarh, Dist.-West Tripura.

By Advocate :

Mr. S. K. Dutta, Adv.

Opposite Party-Respondent No.1 :

Sri Arabinda Roy,

S/o. Late A. M. Roy resident of Narsinghar 250 colony, P.S-Airport, Dist.-West Tripura.

(Owner of offending jeep bearing registration No. TR-01-4118)

Opposite Party-Respondent No.2 :

Sri Anup Kumar Saha,

S/o. Nirmal Chandra Saha resident of Melarmath, P.S-West Agartala, Dist.-West Tripura.

(Owner of non-offending motor cycle bearing registration No. TR-01-C- 8056)

Opposite Party-Respondent No.3 :

The Oriental Insurance Company Ltd.,

Divisional Office at Central road, Agartala, P.S-East Agartala, Dist.-West Tripura. (Represented by its Branch Manager)

(Insurer of both the vehicles bearing registration No.TR-01-4118 (Jeep) & TR-01-C8056(Motor Cycle).

By Advocate :

Mr. K. Bhattacharji, Adv.

B E F O R E

HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

Date of hearing &
Judgment & Order : **11th March, 2015.**

Whether fit for reporting :

Yes	No
	✓

JUDGMENT & ORDER (ORAL)

This appeal for enhancement of compensation is directed against the award dated 07.02.2008 delivered by the learned of the Motor Accident Claims Tribunal, West Tripura, Agartala in T.S(MAC) No. 396 of 2006 whereby the Tribunal assessed the compensation in favour of the claimant at Rs.1,50,000/- along with interest @ 9% per annum under the following heads:

(i) Medical treatment	= Rs.50,000/-
(ii) Pain and suffering	= Rs.10,000/-
(iii) for becoming 40% disabled.	= Rs.60,000/-
(iv) Loss of amenities and loss of enjoyment of <u>life</u>	= Rs.30,000/-
Total :	Rs.1,50,000/-

Here, it would be pertinent to mention that the Tribunal other than mentioning the various heads has not given any reasons or calculations nor referred to any of the evidence to show why he has determined the compensation at a particular amount. Therefore, with the assistance of the learned counsel for the parties, I have gone through the entire record.

[2] It would be pertinent to mention that during the pendency of this appeal it was prayed on behalf of the claimant that his medical disability has been enhanced from 40% to 60%. The matter was referred to the District Disability Rehabilitation Centre, West Tripura and after prolonged communications the District Disability Rehabilitation Centre has issued a disability certificate showing his disability at 60% but to the specific question raised by the Court the answer is in the following terms:

(i) What is the extent of disability?

Reply:- The disability is MILD DEFORMITY OF RT LL DUE TO RTA WITH SHORTENING RT LL 3 INCH" which is to the extent of 60% disability.

(iii) Whether the disability is in relation to the entire body or in relation to a particular limb?

Reply:- The disability is on relation to Right Lower Limb only.

(iii) What work the claimant appellant cannot do because of his disability?

Reply:- The disable person will be unable to run and to walk long distance because of 3" inch short of Right Lower Limb. He cannot stay I standing position for long time, cannot carry heavy weight, cannot climb high place. It will be difficult for him to do the work of daily labour.

(iv) What work can do?

Reply:- He will be able to do all works in sitting position."

[3] Coming to the facts of the case, the undisputed facts are that the claimant received injuries in a motor vehicle accident which took place on 7.4.2006. The claimant was a pillion rider on a motor cycle bearing no. TR-01-C-8056 which was hit by Jeep no. TR-01-4118. The learned Tribunal held that the driver of the Jeep was responsible for the accident and this finding is not under challenge.

[4] 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.

[5] In the present case, the discharge certificate shows that the claimant was admitted in G. B. P Hospital immediately after the accident on 7.4.2006 and was discharged therefrom on 11.5.2006 i.e. after 34 days. The diagnosis was that he had suffered compound commuted fracture of both bones of the right leg and external fixator had been applied on 29.04.2006. He was advised to visit the OPD ortho on 17.05.2006. Thereafter he was admitted for one day at South City Hospital, Silchar on 18.09.2006 and discharged on 19.09.2006. He was again admitted at South City Hospital on 24.09.2006 and discharged on 29.09.2006 i.e. for 6 days. Thereafter the claimant was again admitted in the South City Hospital, Silchar on 23rd December, 2006 and discharged therefrom on 26th December, 2006 i.e. after three days. This admission was for removing of the fixator which had been fixed earlier at Agartala. He was advised to continue traction as before. Therefore, the total hospitalization is for 44 days.

[6] The claimant has also produced various other documents but basically the documents with regard to his treatment show that he incurred an expenditure of Rs.64,244/- on medicines and treatment at the hospital at Silchar. I fail to understand how the learned Tribunal could have awarded him Rs.50,000/- totally for medical expenses, boarding, lodging, attendant charges when the bills proved on record for medical expenses and hospitalization expenses alone amount to Rs.64,244/-. This Court cannot lose sight of the fact that in cases of injuries like this, bills of many smaller medicines are not kept and some small bills are also misplaced, therefore, I assess the expenses for medical treatment alone at Rs.70,000/-.

[7] Next comes the question as to attendant charges. The claimant remained admitted both at Agartala and at Silchar for a total of 44 days. Taking the cost of one attendant to be Rs.250/- per day in the year 2006, the cost of two attendants works out to Rs.500/- per day and for 44 days, the cost of attendant works out to Rs.22,000/-.

[8] The claimant not only got treatment at Agartala but he also went to Silchar and had to remain in Silchar for fairly long time. He had to visit Silchar on at least three occasions. Even taking a conservative view of the matter and assessing the transportation charges of one visit to Silchar at Rs.5,000/- the cost of three visits to Silchar would be Rs.15,000/-. He is accordingly awarded Rs.15,000/- for transportation.

[9] Now coming to the loss of income. The learned Tribunal has come to the conclusion that the claimant was aged 32 years at the relevant time. The claimant claims that he was previously working as a mason. Even a daily wage worker in the year 2006 would earn not less than Rs.150/- per day and therefore, his income is assessed at Rs.4500/- per month. From the record, it is apparent that from June-2006 to November-2006 he was under treatment and I assess the loss of income for six months at Rs.27000/-.

[10] Now comes the crucial question as what is his future loss of income. According to Mr. S. K. Dutta since the claimant has suffered 60% disability, he has become virtually unable to work as a mason. I am unable to accept this argument because of the fact that the disability board in reply to the questions raised by this Court has clearly held that the disability is mild deformity of right lower leg and has also clearly held that this 60% disability is only in respect of the right lower limb and not in respect of the entire body. With regard to the work which the claimant can do or not do, it is stated that he can do all

work in sitting position. It has however also been found from the certificate that his right lower limb has been shortened by 3 inches, therefore all these aspects have to be taken into consideration. The disability of 60% is not in relation to the whole body. If it was a 60% disability in relation to the whole body it may have translated to a higher loss of earning capacity. This Court has repeatedly held that loss of earning capacity is different from medical disability. At the same time the fact remains that the claimant was a mason. He was engaged in a job which involves physical labour and if his leg has been shortened by 3 inches his working capacity is definitely going to suffer. Therefore, though I do not agree with Mr. Dutta that he has become incapable of earning. I am also of the view that 60% disability of the right lower leg is not equal to 60% loss of earning capacity. The deformity has been termed to be mild. The claimant can still work. Taking all factors into consideration, I am of the considered view that the loss of earning capacity of the claimant could easily be assessed at 25% which comes to Rs.1125/- per month or Rs.13,500/- per year. Since the claimant was aged 32 years the relevant multiplier would be 16 and the compensation works out to Rs.2,16,000/- on this count.

[11] Coming to the loss on account of pain and suffering. The learned tribunal has only awarded Rs.10,000/- for pain suffering. As held above, the claimant was hospitalized for almost 44 days in total. Keeping in view the nature of injuries and the length of treatment he is awarded Rs.20,000/- for pain suffering.

[12] As far as the future discomfort and loss of amenities of life are concerned. The claimant has to live for the rest of his life with a permanent disability. His leg has been shortened by 3 inches and he has to walk with a limb and therefore, he is awarded Rs.35,000/- for loss of amenities of life and future discomfort.

[13] The total compensation is, therefore, assessed at Rs. (70,000/- + 22,000/- + 15,000/- + 27,000/- + 2,16,000/- + 20,000/- + 35,000/-) = Rs.4,05,000/-. The award is accordingly enhanced from Rs.1,50,000/- to Rs.4,05,000/ i.e. by Rs.2,55,000/-. The claimant shall also be entitled to interest on the enhanced sum of Rs.2,55,000/- @ 7.5% per annum from the date of filing of the claim petition till deposit of the amount. The insurance company is directed to deposit the enhanced amount of compensation along with proportionate interest thereupon in the Registry of this Court within 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.

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

Send down the lower Court records forthwith.

CHIEF JUSTICE