

THE HIGH COURT OF TRIPURA
AGARTALA

MAC APP. NO.110 OF 2007

Sri Naresh Chandra Paul,
S/O. Late Nabadip Chandra Paul,
Milan Chakra, Adarsha Palli,
Madhya Badharghat, P.S.-West Agartala,
West Tripura District.

..... Appellant.

- V e r s u s -

1. Sri Babul Datta,
S/O. Late Manindra Chandra Datta,
A.D. Nagar Road No.1, Agartala,
P.S.-West Agartala,
West Tripura District.
(Owner of TRS 568, bus)
2. The Divisional Manager,
National Insurance Company Limited,
42 Akhaura Road, Agartala,
P.S. West Agartala, West Tripura.
(Insurer of TRS 568, bus)
3. Smt. Kalyani Debnath (Basak),
W/O. Sri Khokan Debnath,
C/O. Tripura Motor Sramik Union
Office-Nagerjala, Battala,
P.S.-West Agartala, West Tripura.
(Owner of TR-01-4052, commander jeep)

..... Respondents.

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant	: Mr. K.K. Pal, Advocate.
For the respondent No.1	: Mr. A. Das, Advocate.
For the respondent No.2	: Mr. G.K. Nama, Advocate.
Date of hearing and delivery of judgment and order.	: 17.08.2015.
Whether fit for reporting	: NO.

JUDGMENT & ORDER (ORAL)

This appeal by the claimant for enhancement of compensation is directed against the award dated 22-08-2007 delivered by the learned Motor Accident Claims Tribunal, Court No.3, West Tripura, Agartala in case No. T.S.(MAC) 199 of 2004 whereby the learned Tribunal awarded a sum of Rs.3,25,000/- to the claimant under the following heads:-

Cost of treatment	:- Rs. 2,00,000/-
Shock and pain	:- Rs. 50,000/-
<u>On account of disablement</u>	<u>:- Rs. 75,000/-</u>
Total	:- Rs.3,25,000/-

2. The learned Tribunal has given no reasons while assessing the amounts and has just awarded various amounts under the various heads. Briefly stated, the facts of the case are that the claimant who at the relevant time was working as an Assistant Sub-Inspector of Police in the Tripura Police Department had boarded a commander jeep vehicle bearing registration No.TR-01-4052. This jeep had a head on collision with bus No.TRS-568. The bus was insured with the National Insurance Company Limited but it appears that the commander jeep was not insured.

3. The claimant stepped into the witness box and stated that the accident had occurred due to the rash and negligent driving of both the vehicles but the learned Tribunal held that since criminal case was registered against the driver of the bus, therefore, only the bus driver could be held liable.

4. I am afraid that the method followed by the Tribunal is totally illegal. The record of the criminal case had not even been exhibited in the claim proceedings and the same could not be read in evidence. The claimant had specifically stated that drivers of both the vehicles were driving the vehicles rashly and negligently. He was not cross-examined on this aspect. Neither the driver nor the owner of the bus stepped into the witness box and, therefore, I am of the view that both the drivers were equally responsible for the accident.

5. 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.

6. Following the aforesaid principles, I now proceed to assess the quantum of compensation afresh. The claimant was hospitalized in Agartala from 28.7.2003 to 04.8.2003. He thereafter was shifted to Kolkata where he remained admitted from 05.8.2003 to 17.8.2003. Thereafter, he was again admitted in Kolkata on 27.9.2003 and was discharged on 29.9.2003. He was lastly admitted on 01.10.2003 and discharged on 08.10.2003 and then from 15.11.2003 to 17.11.2003. Therefore, he was admitted for 4(four) times in Kolkata but it is obvious that he had to stay in Kolkata from August, 2003 to November, 2003. The claimant, however, did not fully recover even after that. His diagnosis shows that he suffered dislocation of both hips with fracture of both bones of the leg and fracture of the shoulder bone also. His legs were put under plaster but he did not recover even after four spells of hospitalization. He thereafter came back to Agartala and later he got his treatment done at CMC, Vellore. An application being C.M. Application No. 59 of 2014 has been filed along with documents which show that in respect of the same injuries the claimant went to Vellore after being referred from the Agartala Government Medical College and remained admitted in Vellore from 08.9.2009 to 18.9.2009. Therefore, there are various spells of treatment. His total hospitalization is over six different spells. The claimant has proved expenses of Rs.1,89,652/- for the first spell of treatment at Agartala and Kolkata and Rs.1,72,864/- for his second spell of treatment at Vellore. Therefore, the total amount spent by him on hospitalization and medicines alone is about Rs.3,62,516/-. He would have spent some other amounts and since it is very difficult

to calculate different amounts and, therefore, I assess his medical expenses by taking into consideration future medical expenses also at **Rs.4,00,000/-**.

7. Now, comes the question of attendant charges. The claimant required attendant for about 4(four) months in Kolkata. Even in the year 2003, the cost of one attendant at Kolkata would not be less than Rs.7,500/- per month including boarding, lodging and, therefore, for 4(four) months he is awarded **Rs.30,000/-** under the said head.

8. The claimant spent Rs.47,975/- on his air fare in the first round on going to Kolkata and back and spent Rs.43,585/- for the air fare when he went to Vellore. The total expenditure is Rs.91,560/-. He would have spent other amounts on local transportation, taxi charges, ambulance charges etc. and, therefore, he is awarded **Rs.1,00,000/-** under this head.

9. The claimant remained hospitalized for 4(four) months in the first stage. He has not been awarded any amount for loss of income. He had to remain on leave for at least 4(four) months and, therefore, he is awarded four months' salary. His salary at the relevant time was Rs.9,417/- per month and for 4(four) months' loss of salary works out to Rs.37,668/- which is rounded off to **Rs.38,000/-**.

10. The claimant has not suffered any future loss of income because he is a Government Servant and he continues to be in

service and no evidence has been led to show that his service has been adversely affected by the injuries.

11. As far as pain and suffering is concerned, the claimant suffered dislocation of both hips, fracture of both bones of both the legs and also fracture of the shoulder. He remained under treatment for 4(four) months at the first stage. He did not recover and had to go for treatment at least to Vellore. His treatment has continued for almost 6(six) years and, therefore, I award him **Rs.50,000/-** for pain and suffering.

12. Though the claimant has not been held entitled to any amount for loss of future income but the fact remains that the claimant has suffered a permanent disability which will affect him throughout his life. The disability certificate shows that the disability is 30% in relation to the entire body. The claimant has become almost crippled and, therefore, he is awarded **Rs.1,00,000/-** under this head.

Therefore, the total compensation works out to Rs.(4,00,000 + 30,000 + 1,00,000 + 38,000 + 50,000 + 1,00,000) = Rs.7,18,000/- (rupees seven lakh eighteen thousand).

13. 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.3,25,000/- to Rs.7,18,000/-, i.e. by Rs.3,93,000/-. On this amount, the claimant is also entitled to interest @ 9% per annum from the date of filing of the claim petition till payment/deposit of the awarded amount.

14. Now comes the question who is to pay the amount. This is a case of composite negligence where a third party claims damages on account of loss caused to him by the negligence of two other persons. He is entitled to claim the damages from any one of them. The claimant chose to claim damages from both of them. Therefore, though the Insurance Company is held liable to pay the entire amount, it is entitled to recover 50% of the amount from the owner of the commander jeep No.TR-01-4052.

15. The Insurance Company has already satisfied the award of the Tribunal and, therefore, it is directed to deposit the enhanced amount of compensation along with interest @ 9% per annum from the date of filing of the claim petition till payment/deposit of the awarded amount in the Registry of this Court within 4(four) months from today after deducting/adjusting the amount, if any, already paid/deposited by them along with proof of such earlier deposit.

16. The appeal is disposed of in the aforesaid terms. No costs.

17. Send down the lower court records forthwith.

CHIEF JUSTICE