

THE HIGH COURT OF TRIPURA

A G A R T A L A

MAC App. No. 65 of 2010

Appellant:

Sri Nitai Dey,

Son of Khagendra Ch. Dey, resident of Vill./P.O.
Ranirgazar, P.S- Ranir Bazar, Dist. West
Tripura.

By Advocates :

Mr. K. N. Bhattacharji, Sr., Adv.
Mr. R. Debnath, Adv.

Respondents :

1. Sri Gautam Paul,

Son of Sri Bakul Chandra Paul, Vill/P.O- East
Howaibari, P.S- Trliamura, Dist. West Tripura.
(Owner of the Commander Jeep bearing No.
TR-01-2956).

2. Sri Subrata Chaudhury,

Son of Nripendra Ch. Chaudhury, resident of
Nalgaria (Krishna Talli), P.O & P.S-Ranirbazar,
Dist.-West Tripura. (Owner of the Auto Van No.
Tr-01-2956).

3. The National Insurance Co. Ltd.

Akhaura Road, P.O-Agartala, P.S-West Agartala,
Dist.-West Tripura.

4. The Oriental Insurance Co. Ltd.

44/2, Central Road, P.O- Agartala, P.S- West
Agartala, Dist.-West Tripura.

By Advocates :

Mr. P . Gautam, Adv.
Mr. R. C. Debnath, Adv.

B E F O R E

THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA

Date of hearing : **28th April, 2015.**

Date of Judgment & Order : **6th May, 2015.**

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER

This appeal for enhancement of compensation is directed against the award dated 3rd April, 2010 by the learned Motor Accident Claims Tribunal, West Tripura, Agartala in T.S (MAC) 374 of 2006 whereby the Tribunal awarded compensation of Rs.1,21,385/- along with interest @ 6% per annum to the claimant under the following heads:

(i) Mental agony, pain & suffering	= Rs.15,000/-
(ii) Loss of earning	= Rs.18,000/-
(iii) Medical expenses	= Rs.78,385/-
(iv) loss of amenities, enjoyment of life	= Rs.10,000/-
	<u>Total :Rs.1,21,385/-</u>

[2] Since there is no dispute with regard to the accident, the only question is whether the compensation of Rs.1,21,385/- granted by the Tribunal under the different heads as above is just and reasonable.

[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] In the present case the claimant was a businessman. He did not prove any proof of his income. He, however, claimed that his income was Rs.6,000/- per month. But the learned Tribunal has assessed the income at Rs.3000/- per month. It has also come on record that the claimant immediately after the accident was admitted in G.B. P. Hospital, Agartala on 07.10.2004 itself. He had a fracture on the femur shaft, the condyle of the femur and basically he sustained injury in the right lower limb. He remained in Tripura as a patient for some days and finally he was discharged from the hospital on 12.10.2004. He went to Kolkata for treatment where he was admitted in the Bhattacharyya Orthopaedics and related Research Centre (P) Ltd. on 13.10.2004 and was discharged therefrom on 09.11.2004. During the period in hospital, surgery was done and nail was inserted. The petitioner again had to go Kolkata on 27.12.2004 and this time he remain admitted till 8th January, 2005. No disability certificate has been produced on record and, therefore, applying the aforesaid principles now I proceed to assess the compensation under the various heads.

[5] The claimant remained in hospital in Tripura for 5(five) days. He would have required attendants round the clock. The accident took place in the year 2004 and if the cost of one attendant is taken at Rs.200/- per day cost of two attendants works out to Rs.400/- and for five days it was Rs.2000/-. Thereafter the claimant went to Kolkata in two stages. First time, he stayed there from 13.10.2004 to 9.11.2004 i.e. for a period of 27 days. Next time he stayed there from 27.12.2004 to 8.01.2005 i.e. for a period of 12 (twelve) days, in total 39 days. In Kolkata the attendant would have had to arrange for his board and lodging also. At Kolkata cost of one attendant is assessed at Rs.500/-

per day and for 39 days the cost of attendants is assessed at Rs.19,500/-. The claimant might have required attendants after hospital for some days and therefore, the total attendant charges is fixed at Rs.25,000/- .

[6] Coming to the issue of medical expenses. There is no dispute with regard to the same. The learned Tribunal has awarded Rs.78,385/- towards medical expenses. I am of the view that the claimant may not have kept some bills and keeping the nature of the treatment, he is awarded Rs. 90,000/- for cost of treatment.

[7] The learned Tribunal was not awarded any amount to the claimant for travelling expense on the ground that the claimant had not been referred to Kolkata. This is totally illegal. The claimant has spent Rs.32640/- on air fare for himself and attendants on his various visits to Kolkata, Rs. 2694/- for taxi fare from Agartala to Guwahati and train tickets of Rs.1000/-. There may have been some additional local expenses of transport. Therefore, the claimant is awarded Rs.40,000/- under this head.

[8] The claimant has been awarded Rs.15,000/- as compensation towards mental agony, pain and suffering. Keeping in view the long treatment the claimant should be awarded Rs.25,000/- for pain and suffering.

[9] The learned Tribunal has assessed the income claimant at Rs.3,000/- per month. In view of the fact that he was a businessman, I assess his income at Rs.5000/- per month and loss for six months is assessed at Rs.30,000/-. However, I do not award any other expenses for loss of amenities etc. since the claimant has not suffered any permanent disability.

[10] The total compensation is, therefore, assessed at Rs. (25,000/- + 90,000/- + 40,000/- + 25,000/- + 30,000/-) = Rs.2,10,000/-. The award is accordingly enhanced from Rs.1,21,385/- to Rs.2,10,000/- i.e. by Rs.88,615/-

which is rounded off to Rs.89,000/-.The claimant shall also be entitled to interest on the enhanced sum of Rs.89,000/- @ 9% per annum from the date of filing of the claim petition till deposit of the amount.

[11] As two vehicles i.e. Auto Van and Commander Jeep were involved in the accident and since the Auto Van violated the terms and conditions of the insurance policy as contained in Section 147 of the Motor Vehicles Act by carrying passenger, the insurer of the Auto Van i.e. the Oriental Insurance Company Ltd. is not liable to indemnify the owner. Therefore, the insurer of the commander jeep i.e. the National Insurance Company Ltd. and the owner of the Auto Van, Sri Subrata Choudhury, respondent no.2 are held jointly and severally liable to pay the enhanced amount of compensation. Accordingly, both the insurance company i.e. the National Insurance Company Ltd. and the owner of the Auto Van, Sri Subrata Choudhury, respondent no.2 are directed to deposit the enhanced amount of Rs.89,000/- in equal shares along with interest @ 9% per annum from the date of filing of the claim petition till deposit of the amount in the Registry of this Court within 4 (four) months from today. Obviously, the National Insurance Company Ltd. and the owner of the Auto Van, Sri Subrata Choudhury, respondent no.2 shall be entitled to adjust the amount(s), if any, which they had already paid or deposited.

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

Send down the LCRs forthwith.

CHIEF JUSTICE