

IN THE HIGH COURT OF TRIPURA
AGARTALA

CRP No. 92 of 2010

United India Insurance Company Ltd.

Divisional Office, Ganaraj Chowmuhani,
P.S. East Agartala, District – West
Tripura, (represented by the Divisional
Manager of Agartala Division).

..... Petitioner

- V e r s u s -

- 1. Shri Makhan Malla,**
son of late Rai Mohan Malla
- 2. Sri Saptajit Malla alias Saptadip Malla,**
son of Sri Makhan Malla,

Both are residents of Village East Pilak,
P.O. Debbaru, P.S. Baikhora,
District – South Tripura

(Presently residing at Village Rajarbag,
P.S. R.K. Pur, Udaipur, District – South
Tripura,)

- 3. Md. Farid Miah**
son of Ali Ahmed, resident of village –
Bejimara, P.S. Sonamura, Sub-Division-
Sonamura, P.O. Sonamura, District –
West Tripura

(Owner of the vehicle bearing No.TR-01-
2977)

- 4. Kala Miah**
son of late Suraj Miah, resident of
village – N.C. Nagar, P.O., P.S. & Sub-
Division- Sonamura, District – West
Tripura

(Driver of the offending vehicle bearing
No.TR-01-2977)

..... Respondents

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner : Mr. R.C. Debnath, Advocate
Mr. S.B. Deb, Advocate

For the respondents : Mr. S.D. Choudhury, Advocate

Date of hearing : 03.02.2015

Date of delivery of Judgment & Order : **26.02.2015**

Whether fit for reporting:

YES	NO
	√

JUDGMENT & ORDER

A short question that has been raised in this petition filed under Article 227 of the Constitution of India is that whether the mode of determination of the quantum of compensation is accordance with law. If the grievance of the petitioner, the United India Insurance Company Ltd. is that the assessment of the compensation is unreasonable and whimsical inasmuch as the injured who suffered 10% disability is not expected to get the compensation to the extent of Rs.2,80,000/- (Rupees Two lakhs Eight thousand) with interest @ Rs.7% p.a. w.e.f. 16.03.2009.

[2] Mr. S.D Choudhury, learned counsel appearing for the petitioner has submitted that when this petition under Article 227 of the Constitution of India was filed, at that time, the insurance companies did not have the scope for filing an appeal under Section 173 of the Motor Vehicles Act, save and except, on the limited grounds as provided under Section 149(2) of the Motor Vehicles Act, 1988. Hence, the petitioner has been compelled to

approach this Court by filing this petition for converting the award to the just compensation in favour of the victims, the respondents. Mr. Choudhury, learned counsel has further submitted that from the certificate of disability as granted, the respondent No.2 has been shown to have suffered 10% disability, subject to review after 5(five) years. Apart that he was 13 years of age at the time of accident. According to him, the assessment as made by this respondent is absolutely unreasonable and perverse. For illustration, he has referred to a certain part of the impugned judgment and award dated 09.02.2010 delivered in TS(MAC) No. 15 of 2010 by the Motor Accident Claims Tribunal, West Tripura, Sonamura where it has been observed as under:

"The petitioner No.1 produced the cash memos supported by prescriptions in connection with the treatment of the petitioner No.2 for Rs.52,631/- which he (petitioner No.1) incurred towards the cost of medicine and x-ray, bed charges, and other charges in connection with treatment. Therefore, an amount of Rs.52,631/- is awarded for the cost of medicine, x-ray, the charge of operation purpose and nursing home charges etc. in favour of the petitioner No.1. It also appears that the petitioner No.1 incurred Rs.17,200/- to meet the conveyance allowance during treatment of the victim. To establish this point, the petitioner No.1 produced money receipt. Therefore, an amount of Rs.17,200/- is awarded for the conveyance allowance in favour of the petitioner No.1. It also appears that the petitioner No.2 was admitted as indoor patient at G.B.P. Hospital only one day on 24.07.08. Thereafter, on the following day i.e. on 25.07.2008 after taking discharge from the G.B.P. Hospital the petitioner No.2 further got admission as indoor patient at the Care and Cure Polyclinic & Medical Research Centre, Agartala from 25.07.08 to 04.08.08 and 14.08.09 to 19.08.09. Of course, the petitioner No.1 engaged one attendant to make care of the victim during his treatment at G.B.P. Hospital and in the Private Clinic, Agartala for

which an amount of Rs.100/ X 18 days = Rs.1800/- is awarded in favour of the petitioner No.1 for the charge of attendant @ Rs.100/- per day. Besides, the victim further admitted in the Care & Cure Polyclinic & Medical Research Centre, Agartala for removal of the plate from the (Rt) femoral region as indoor patient from 14.08.2009 to 19.08.2009 for which a further amount of Rs.100/- X 6 days = Rs.600/- is awarded in favour of the petitioner No.1 for the charge of attendant @Rs.100/- per day. It also appears that the petitioner attended private specialist doctor at Agartala for 7 days, for which an amount of Rs.150/- X 7 = Rs.1050/- is awarded in favour of the petitioner No.1 for the fees of private specialist Medical Officer @ Rs.150/- per day. It is a fact that the petitioner No.2 produced the injury certificate in respect of his injury and from the injury certificate it appears that the petitioner No.2 was suffering from fracture right femur proximal 1/3rd and swelling and pain which led inference that the petitioner No.2 was suffering fracture grievous injuries on his person due to alleged road traffic accident. If so, an amount of Rs.5000/- may be awarded towards his pain and sufferings as per second schedule of Section 163A of the M.V. Act, 1988. Therefore, an amount of Rs.5000/- is awarded in favour of the petitioner towards his pain and sufferings. The Medical Board issued a Certificate in favour of the victim showing 10% disablement. From physical observation of the victim it appears that he is suffering a lot and cannot move alone without help of scratch and other. Accordingly, it seems to me that it is impossible for the victim to get his normal life in future. Since the victim being minor had/has no income his notional income would be Rs.15000/- per annum. So considering all these factors, the petitioner is entitled to get Rs.15000/- per annum X 15 = Rs.2,25,000/- as awarded. Further considering physical position of the victim and his mental in tress, frustration, disappointment, discomfort, hardship, inconvenience and loss of career Rs.50,000/- is awarded in favour of the victim. It may be mentioned here that the petitioner No.1 is a cultivator and due to treatment of his minor son the petitioner No.1 has lost his profession for not less than 1(one) year. So, it will be convenient to assess his loss of income from guess work. Accordingly, Rs.50,000/- is awarded in favour of the petitioner No.1 towards his loss of income during the treatment period of the petitioner No.2, w.e.f. 24.07.08 to 19.08.09.

[3] As observed by the tribunal that the respondent No.2 will not be able to lead normal life in future. Mr. Choudhury, learned counsel has not raised any challenge as regards the compensation awarded in respect of the respondent No.1 but his challenge is focused on the compensation as awarded in respect of the respondent No.2. Mr. Choudhury, learned counsel has emphatically submitted that there is no medical evidence to show that the respondent No.2 shall not lead normal life for suffering his fracture of his right femoral region and other swelling pain but at the same time, he has not contended that the respondent No.2 would not get any compensation for treatment or for suffering pain or compensation for his suffering disability to the extent of 10% disability. According to him, the compensation would be much lower.

[4] From the other side, Mr. R.C. Debnath, learned counsel and Mr. S.B. Deb, learned counsel appearing for the respondents No.1 and 2 at the outset raised the jurisprudential objection as regards the maintainability of this petition in view of the law decided by the apex court in **Sadhana Lodh vs. National Insurance Co. Ltd.**, reported in **AIR 2003 SC 1561**, where the apex court has categorically observed that '*since the insurer has a remedy by filing an appeal before the High Court, the High Court ought not to have entertained the petition under Article 226/227 of the Constitution and for that reason, the judgment and order under challenge deserves to be set aside.*'

[5] Mr. S.B. Deb, learned counsel appearing for the respondents has placed a reference to the decision of this Court in **Sanjoy Acharjee vs. State of Tripura and Anr.**, reported in **(2014) 2 TLR 313** which has dwelled upon the principles in respect of determination of the compensation. Mr. Deb, learned counsel appearing for the respondents has submitted that the principles for determining the just compensation are well settled. Injuries caused deprivation of the body-dynamics, which entitles the respondent to claim damage. The damage may vary according to the gravity of the injuries sustained by the claimant in an accident. The claimant may suffer consequential loss, such as (i) loss of earning; (ii) expenses on treatment which may include medical expenses, transportation, special diet, attendant charges etc., (iii) loss or diminution to the pleasures of life by loss of a particular part of the body, and (iv) loss of future earning capacity. The damages can be pecuniary as well as non-pecuniary, but all have to be assessed in terms of money.

[6] Having referred to **Sanjoy Acharjee vs. State of Tripura and Anr.**, it has been asserted by Mr. Deb, learned counsel for the respondents that the human suffering on personal deprivation cannot be compensated by money. The entire exercise is directed for assessing the loss and to assess the loss suffered by the victim on the scale. He has further submitted that the compensation should not be assessed very conservatively at the

same time the compensation should also not be assessed in such a liberal fashion, so as to make it a bounty to the claimant. The tribunal while assessing the compensation should have recorded the nature of deprivation and loss. According to Mr. Deb, learned counsel, from the documents nature of injuries that has been suffered can be gathered. Even the fact of hospitalization, subsequent operation for further repair of the damage and the impact of the injury on the physical prowess of the victim are explicit therefrom.

[7] In **Rajkumar vs. Ajay Kumar**, reported in **(2011) 1 SCC 343**, the apex court has laid down the broader principles for determining the pecuniary and non-pecuniary damages which are as under:

“6. The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii) (a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.”

[8] Having regard to the respective submissions as advanced by the learned counsel for the parties, this Court is of the considered opinion that **Sadhana Lodh vs. National Insurance Co. Ltd.** does not shut the door absolutely for the judicial review. In **Sadhana Lodh vs. National Insurance Co. Ltd.** it has been enunciated that:

7. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior Court or Tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an Appellate Court or the Tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or re-weigh the evidence upon which the inferior Court or Tribunal purports to have passed the order or to correct errors of law in the decision.

[9] It follows therefrom that if only in an exceptional occasion where it appears that the inferior Court or the Tribunal

has exercised its jurisdiction in such a manner that has caused failure of justice then obviously the High Court can exercise its supervisory power for set the matter right, otherwise it shall not embark upon to re-weigh the issue. Hence, the question of maintainability is hereby dismissed. But it is at the same time to be analysed by this Court that whether the petitioners have made out such a case where there had been failure of justice.

[10] This Court has meticulously scrutinized the records and finds that the victim, the petitioner No.2 has been subjected to serious medical intervention leading to the medical expenditure to the extent of Rs.52,631/- (Rupees Fifty thousand Six hundred Thirty One) for which the vouchers have been produced and his income has been calculated on notional basis as he was of 13 years of age. Rs.50,000/- that has been awarded for his mental stress, loss of physical prowess etc. according to the Court is not such exorbitant that requires to be interfered with.

Hence, this Court does not find any merit in this petition and accordingly, the same stands dismissed. However, there shall be no order as to costs.

JUDGE

Sujay