

THE HIGH COURT OF TRIPURA
AGARTALA

MAC APP. NO.70 OF 2010

Sri Babul Saha,
S/O. Lt. Harimohan Saha,
Resident of Central Road Extension,
Town Pratapgarh, P.S. East Agartala,
District-West Tripura.

..... Appellant.

- V e r s u s -

1. Sri Manik Das,
S/O. Sri Junu Das,
of Durganagar, P.S. Khowai,
District-West Tripura.
(Owner of the offending vehicle bearing its
Regd. No.TR-01-B-1213, OMNI, Canter Bus).

2. National Insurance Company Ltd.,
Represented by its Branch Manager,
Having its Branch Office at
42 Akhaura Road,
P.S.-West Agartala, District-West Tripura.

..... Respondents.

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant	: Mr. S.B. Debnath, Advocate.
For the respondent No.2	: Mr. K. Bhattacharji, Advocate.
Date of hearing and delivery of judgment and order.	: 20.02.2015.
Whether fit for reporting	: NO.

JUDGMENT & ORDER (ORAL)

This appeal for enhancement of compensation has been filed by the claimant and is directed against the award dated 15-09-2010 delivered by the learned Motor Accident Claims Tribunal, Court No.3, West Tripura, Agartala in case No. T.S.(MAC) 147 of

2008 whereby he awarded compensation of Rs.1,38,400/- to the claimant under the following heads:-

Pain and suffering	:- Rs. 10,000/-
Loss of income	:- Rs. 30,000/-
<u>Medical expenses</u>	<u>:- Rs. 98,400/-</u>
Total	:- Rs.1,38,400/-

2. Sri S.B. Debnath, learned counsel for the appellant, urges that the learned Tribunal has not at all considered the entire evidence on record. He submits that the claimant has proved on record medical expenses of Rs.2,06,379/-, air tickets of Rs.25,948/- and rail tickets of Rs.2,431/- directly connected with his treatment. He also submits that the claimant has also placed on record material to show that he had to spend on the boarding and lodging of his attendants and, therefore, he submits that the award is very much on the lower side. It is also urged that the income has been taken on the lower side.

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.

I now proceed to assess the compensation under the various heads.

4. **Medical expenses:**

As far as medical expenses are concerned, the claimant has proved on record the expenses of Rs.2,06,379/- for his treatment at Agartala, Chennai and again at Agartala. He met with the accident on 15-07-2007 when he was taken to the hospital at Teliamura. From there he was referred to the G.B. Hospital but since there was no Specialist available at G.B. Hospital, he was taken to the Dr. B.R.A.M. Hospital at Hapania. Not satisfied with his treatment, the petitioner sought discharge and went to Chennai on 19-07-2007 where he remained admitted in the Apollo Hospitals at Chennai till 25-07-2007. It appears that the learned Tribunal has totally disregarded the expenses incurred in Chennai because according to the Tribunal since the claimant was not referred for treatment outside the State of Tripura, he is not entitled to claim this amount.

5. The reasoning given by the learned Tribunal is totally incorrect. It is the choice of the claimant where he should get his treatment. This Court can also take judicial notice of the fact that even now the level of medical aid available in Tripura is primitive

when compared to the rest of the Country. Most people who can afford do not get treatment in Tripura but go outside Tripura even with regard to minor ailments. When the State cannot provide proper medical aid, why should the claimant be denied compensation for the treatment he may have received outside the State. The tortfeasor or the wrongdoer cannot dictate that the claimant must get treatment at the cheapest possible place. That will depend on the facts of each case. In cases like the present where the claimant was a contractor and a taxpayer, he would like to get treatment of his choice. Unless it is proved that the amount claimed is exorbitant or not at all justified, the tortfeasor cannot avoid its liability to pay the compensation. As far as the present case is concerned, the claimant had suffered a serious injury and he went to the private hospital in Chennai along with escorts travelling by air. It is not disputed that he did not get his treatment at Apollo Hospitals in Chennai. The expenses are commensurate with what are charged in private hospitals and, therefore, I see no reason why he should be denied the amount which he has actually spent. There may be rare cases where the patient stays in luxury rooms or presidential suites of the hospitals where the tortfeasor may claim that the claimant is not entitled to such exorbitant claims. Normally the claimant should be awarded what he has spent.

In this view of the matter, I hold that the claimant is entitled to full of refund of Rs.2,06,379/- spent on medical treatment. In addition thereto, the claimant may have spent some

small amounts for which receipts may not have been kept and he is awarded **Rs.2,15,000/-** in all for medical expenses alone.

6. As far as travelling expenses are concerned, the claimant has proved on record air tickets for a sum of Rs.25,948/- and rail tickets for Rs.2,431/-. In addition thereto, the claimant must have spent some money on taxis, rickshaw etc. and, therefore, he is awarded **Rs.30,000/-** in all for transportation expenses.

7. The claimant was in hospital in Tripura for about 4(four) days. He would have been attended round the clock for 4(four) days by two attendants. In Tripura, the cost of one attendant is taken at Rs.250/- per day or Rs.500/- per day for two attendants and for four days it works out to **Rs.2,000/-**.

In Chennai, the claimant remained in hospital from 19-07-2007 to 25-07-2007, i.e. for 7 days but he went back to Chennai also once and, therefore, I assess the cost of attendants for 10(ten) days and in Chennai the cost of attendant is taken at Rs.1,000/- per day and **Rs.10,000/-** is awarded to him for cost of attendants at Chennai.

8. Now comes the question as to what is the income of the claimant. The claimant claimed that his income was Rs.12,000/- per month and he has produced one tax clearance certificate which shows that till the year 2008-2009, he was paying Tripura Professional Trade Tax @ Rs.1,500/- per month. He was obviously not an income tax assessee till that time. The learned Tribunal has assessed the income at Rs.10,000/- per month which

cannot be said to be totally wrong. The income tax return produced by the claimant is of the year 2009, i.e. for the year ending 31-03-2009 which shows that he had earned Rs.3,67,065/- in that year and this clearly indicates that there has been no future loss of income. Therefore, though the claimant may have suffered a permanent disability, he being a Contractor has not suffered any future loss of income and, therefore, no amount is granted to him for future loss of income. The award of **Rs.30,000/-** for loss of income is upheld.

9. Now coming to the head of non-pecuniary damages. The claimant remained in hospital for about 15(fifteen) days in Agartala and Chennai in the first instance. He had to visit Chennai again for one day and thereafter, he was operated upon at Agartala to remove the fixator which had been fixed at Chennai. Keeping into view all these factors, I award him **Rs.15,000/-** for pain and suffering.

10. The claimant has suffered a permanent disability. Though this may not cause him any financial loss, he for the rest of his life is going to live with a wrist which is partially immobilized. It is the certificate of PW-2, the doctor, produced by the claimant which shows that he has stiffness of the right wrist. For the rest of his life the claimant has to live with this disability and, therefore, he is awarded **Rs.25,000/-** for loss of amenities of life and future discomfort in life.

Therefore, the total compensation works out to Rs.(2,15,000 + 30,000 + 2,000 + 10,000 + 30,000 + 15,000 +

25,000) = Rs.3,27,000/- (rupees three lakh twenty seven thousand).

11. 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.1,38,400/- to Rs.3,27,000/-, i.e. by Rs.1,88,600/-. On the amount of compensation so awarded, the claimant shall also be entitled to interest @ 7.5% per annum from the date of filing of the claim petition till payment/deposit of the awarded amount. Since the Insurance Company has already satisfied the award of the Tribunal, it is directed to deposit the enhanced amount of compensation along with interest in the Registry of this Court within 8(eight) weeks from today after deducting/adjusting the amount, if any, already paid/deposited by them along with proof of such earlier deposit.

12. The appeal is disposed of in the aforesaid terms.

13. Send down the lower court records forthwith.

CHIEF JUSTICE