

THE HIGH COURT OF TRIPURA
AGARTALA

MAC App. No. 83 of 2010

Appellant :

Sri Mani Saha,
S/o. Shri Rash Mohan Saha @ Khokan Saha,
Resident of Kamarpukurpar, Agartala, P.S-East
Agartala, District-West Tripura.

By Advocate :

Mr. H. K. Bhowmik, Adv.

Respondents :

1. Sri Pankaj Das,
S/o. Anil @ Paresh Das,
Resident of village-Jumerdepa, P.S- Melaghar,
District-West Tripura. (Owner of the vehicle No.
TR-01-B-3376, Max Jeep).

2. The New India Assurance Co. Ltd.
Hariganga Basak Road, P.S-West Agartala,
District-West Tripura (At present at Mantribari
Road, P.S-West Agartala, District-West Tripura)
(Insurer of the vehicle No.TR-01-B-3376, Max
Jeep)

By Advocate :

Mr. P. Gautam, adv.

B E F O R E
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

Date of hearing &
Judgment & Order : **27th March, 2015.**

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER(Oral)

This appeal for enhancement of compensation is directed against the award dated 31.08.2010 delivered by the learned Motor Accident Claims Tribunal, Court No.4, West Tripura, Agartala in T.S(MAC) No. 221 of 2006 whereby the Tribunal awarded compensation of Rs.76,714/- along with interest @ 6% per annum to the claimant under the following heads:

(i) Pain and suffering	= Rs.10,000/-
(ii) Loss of earnings	= Rs.12,000/-
(iv) Medical expenses	= Rs.44,714/-
(v) Loss of amenities of life	= <u>Rs.10,000/-</u>
Total : Rs.76,714/-	

[2] The undisputed facts are that the claimant received injuries in a motor vehicle accident on 21.08.2005. He was immediately shifted to the G.B.P Hospital where he remained admitted for one day and then went to the Life Line Nursing Home, a private nursing home in Agartala where he remained admitted from 22.08.2005 to 26.08.2005. The records of this hospital shows that the claimant had suffered fracture of the tibia. Thereafter the claimant went to Kolkata for treatment and got himself admitted in the Bhattaacharyya Orthopaedics and Related Research Centre (P) Ltd. where he remained admitted from 12.09.2005 to 22.09.2005. During this period surgical implants i.e. plate and screw were inserted to help the fracture heal. The claimant again went to Kolkata and was admitted in Bhattaacharyya Orthopaedics and Related Research Centre (P) Ltd. on 18.08.2008 and discharged therefrom on 22.08.2008 when the surgical implants inserted in the year 2005 were removed. The learned Tribunal has not taken the treatment of 2008 into consideration on the ground that it is not relatable to the accident. This finding of the learned Tribunal is absolutely wrong. In 2008 the claimant was admitted in hospital because the surgical implants which had been inserted in his body in the year 2005 to help his fracture heal had to be removed. This is a direct consequence of the accident and he is entitled to compensation on this ground.

[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] Applying the aforesaid principles I now proceed to assess the compensation under the different heads.

[5] As far as medical expenses are concerned, the Tribunal has awarded a sum of Rs.44,714/- but has not taken into consideration the sum of Rs.12,640/- incurred for the second time in Kolkata and the total therefore, comes to Rs.57,354/-. In addition thereto the claimant may have spent some small sums for which vouchers may not have been retained and I assess the medical expenses at Rs.65,000/-.

[6] The Tribunal has not awarded any amount to the claimant for attendant charges. The claimant remained admitted in hospital in Agartala for seven days. He would have required attendants round the clock and even if the cost of one attendant in the year 2005 is taken to be Rs.200/- per day, the cost of two attendants for seven days would work out to Rs.2800/- which is rounded off to Rs.3,000/-. The claimant also remained admitted in Kolkata for 14 days. In Kolkata the expenses per attendant would not be less than Rs.500/- per day because the boarding and lodging of the attendant had also to be taken into consideration. Therefore, the cost of attendant over these 14 days is assessed at

Rs.1000/- per day. As such the claimant is held entitled to Rs.17,000/- in all for cost of attendants alone.

[7] Next comes the question as to the transportation charges. The claimant has not been awarded any amount for the transportation to Kolkata and back on the specious plea that since the claimant was not referred by a Government Hospital he is not entitled to such transportation charges. This finding of the learned Tribunal is wholly erroneous. The claimant has produced one money receipt issued by some Agartala Travels but the tickets by which the claimant travelled have not been enclosed. One ticket enclosed by the claimant shows that the one way fare to Kolkata was Rs.3045/-. Since the claimant has not been able to produce all of the air tickets but taking the fare one way to be Rs.3000/- and accepting the averment that the claimant on his way to Kolkata for the first time may have travelled as a stretcher patient occupying three seats this calculation has been done. There must be some incidental charges of travelling from the city to the airport then from the airport to the hospital at Kolkata and back. Therefore, the claimant is awarded Rs.25,000/- for transportation charges.

[8] Now comes the question as to loss of income. The learned Tribunal has assessed the loss of income at Rs.12,000/- by taking income at Rs.4000/- per month. Though Mr. Bhowmik may be right that the income should be Rs.5,000/- per month, I feel that no change in the amount is called for since the learned Tribunal has granted loss of income for three months and there is nothing to show that the claimant could not work for three months. Interestingly the claimant has produced the certificate from his employer but in the said certificate it is stated that at the time of the accident the claimant, Mani Saha was working in the firm and he is still working but no period of leave has been

mentioned. If the owner could give the salary certificate he could have easily given the period of leave also. Therefore, I feel no enhancement on this count is required.

[9] Coming to the issue of non pecuniary damages i.e. for pain and suffering in all, I feel that Rs.10,000/- awarded is on the lower side and the same is enhanced to Rs.20,000/-. However, as far as the amount for future discomfort in all is concerned, the assessment of Rs.10,000/- is just and reasonable calling for no enhancement.

[10] The total compensation is, therefore, assessed at Rs. (65,000/- + 17,000/- + 25,000/- + 12,000/- + 20,000/- + 10,000/-) = Rs.1,49,000/-. The award is accordingly enhanced from Rs.76714/- to Rs.1,49,000/- i.e. by Rs.72,286/- which is rounded off to Rs.72,500/-.The claimant shall also be entitled to interest on the enhanced sum of Rs.72,500/- @ 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.

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

Send down the LCRs forthwith.

CHIEF JUSTICE