

THE HIGH COURT OF TRIPURA
AGARTALA

MAC App. No. 64 of 2009

Claimant-Appellant :

Sri Ratan Debnath,
S/o. Sri Swapan Debnath,
Resident of Village-Karilong,
P.S-Teliamura, District-West Tripura.

By Advocate :

Mr. S. K. Dutta, Adv.

Respondents :

1. Sri Prantosh Ghosh,
S/o. Lt. Girish Chandra Ghosh, Resident of
Village-Nandannagar, Bankumari, P.S-East
Agartala. District-West Tripura.
(Owner of the Vehicle No. TR-01-D-7823,
Hero Honda Bike)

2. Oriental Insurance Company Ltd.,
Divisional Office, Central Road, Agartala,
West Tripura. Represented by its Divisional
Manager. (Insurer of the vehicle No.TR-01-
D-7823, Hero Honda Bike)

By Advocate :

Mr. K. Bhattacharji, Adv.

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

Date of hearing &
Judgment & Order : **9th March, 2015.**

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER (ORAL)

This appeal for enhancement of compensation is directed
against the award dated 27.05.2009 passed by the learned of the Motor
Accident Claims Tribunal, West Tripura, Agartala in T.S(MAC) No. 169 of 2006

whereby the Tribunal awarded compensation of Rs.36,800/- along with interest @ 9% per annum to the claimant under the following heads:

- (i) Purchase of medicines = Rs. 5,400/-
 - (ii) expenses for attendant = Rs. 9,400/-
 - (iii) Loss of earnings = Rs.12,000/-
 - (iv) Pain and suffering = Rs. 5,000/-
 - (v) Mental shock & agony = Rs. 5,000/-
- Total : Rs.36,800/-

[2] The only dispute in this case is whether the compensation has been properly assessed or not?

[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 this case from the discharge certificate, Exbt.-1 I find that the claimant was admitted immediately after the accident to the hospital on 7th September, 2005 and remained there till 23rd October, 2005 i.e. for a period of

47(forty seven) days and the discharge certificate also show that the nail was inserted.

[5] The learned tribunal has awarded Rs.5400/- for purchase of medicines only on the basis of the vouchers. This Court has repeatedly held that those persons especially who belong to the poor strata of society and who do not get reimbursement of their claims do not retain all their medical expense slips and the Court must have a practical view of the matter. In a case where the claimant remained admitted in hospital for 47 days and had suffered injuries on the pelvis, even if a very conservative view is taken the medical expenses could not have been less than Rs.10,000/- and I assess accordingly.

[6] As far as attendant charges are concerned the learned Tribunal has assessed the attendant charges at Rs.100/- per day per shift and awarded Rs.9,400/- which in my view is on the lower side. The claimant remained in hospital for 47 days. He would have required attendants round the clock and even if the cost of one attendant in the year 2005 is taken at Rs.200/- per day, the cost of two attendants works out to Rs.400/- and for 47(forty seven) days the cost of attendants only works out to Rs.18,800/- which is rounded off to Rs.19,000/-.

[7] The learned tribunal has awarded only Rs.5000/- for pain suffering and Rs.5000/- for mental shock and agony. As held above, the claimant was hospitalized for almost 47 days and one nail was inserted. Keeping in view the nature of injuries and the length of treatment he is awarded Rs.15,000/- for pain suffering. As far as mental shock and agony is

concerned, the amount awarded by the Tribunal i.e. Rs.5,000/- is seems to be reasonable and calls for no enhancement.

[8] As far as the income is concerned, the claimant's income has been assessed at Rs.3,000/- per month which I find is on the lower side. Therefore, I assess the income of the deceased at Rs.4000/- per month. The claimant has not been awarded any amount for actual loss of income. He was in hospital for 47 days and it can reasonably be presumed that at least he could not have worked for 4 months and therefore, he is entitled to four months income which is assessed at Rs.16,000/-. Unfortunately, there is no disability certificate on record and there is nothing to show that the claimant has suffered a disability and is unable to work.

[9] It is urged by Mr. S. K. Dutta that the claimant is a labourer and he may not be able to work. In the absence of any medical evidence I am unable to award any amount on this head. However, I feel that the claimant is entitled to future medical expenses because at some stage of the other the nail which has been inserted has to be removed which will also require a operation and therefore, I awarded Rs.10,000/- for future medical expenses.

[10] The total compensation is, therefore, assessed at Rs. (10,000/- + 19,000/- + 15,000/- + 5,000/- + 16,000/- + 10,000/-) = Rs.75,000/-. The award is accordingly enhanced from Rs.36,800/- to Rs.75,000/ i.e. by Rs.38,200/- The claimant shall also be entitled to interest on the enhanced sum of Rs.38,200/- @ 9% 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 lower Court records forthwith.

CHIEF JUSTICE