

IN THE HIGH COURT OF TRIPURA
AGARTALA

MAC. APP. No. 87 OF 2010

Sahadeb Sutradhar,
son of Sri Sankar Sutradhar,
resident of Village & P.O. Harina,
P.S. Sabroom, Sub-Division : Sabroom,
Dist. South Tripura

(now resident at the house of Sri Dilip Sutradhar, son of late
Magha Chandra Sutradhar, Vill. Sarbadharma Mission, P.O.
Sarbadharma Mission , P.S. West Agartala, Dist. West Tripura)

..... Appellant

- V E R S U S -

1. Sri Abinash Nama,
son of Hachun Nama,
resident of Vill. Thaibang,
P.O. Harina, P.S. Sabroom,
Dist. South Tripura

(owner of the vehicle No. TR-03-2932, Commander Jeep)

2. National Insurance Company Ltd.,
Divisional Office at Akhaura Road,
P.O. Agartala, P.S. West Agartala,
Dist. West Tripura

(represented by the Divisional Manager, insurer of the vehicle No.
TR-03-2932, Commander Jeep)

.....Respondents

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

For the appellant	:	Mr. M. K. Roy, Advocate
For the respondent No. 2	:	Mr. P. Goutam, Advocate.
For the respondent No. 1	:	none appears.
Date of hearing	:	02.06.2015
Date of Judgement and order	:	16.06.2015
Whether fit for reporting	:	No.

JUDGMENT & ORDER

This is an appeal filed by the victim. In the motor vehicle accident, which took place on 06.03.2004 at a place called Jalefa Bazar on Harina-Subroom road leaving the victim namely, Sahadeb Sutradhar who was minor at the time of filing of the claim petition under Section 166 of the Motor Vehicles Act 1988 on 23.09.05, permanently disabled. Hence the claim petition was filed by the parents, namely Sankar Sutradhar and Smt. Gouri Sutradhar, but strangely not in the name of the victim or his behalf.

[2] The order dated 05.03.2015 has been passed by this Court on observing that:

As far as the present case is concerned, at the time of the accident i.e. on 06.03.2004 the injured-victim was about 15 years of age, therefore, now he is a major and 26 years of age. I fail to understand how the parents can continue with this appeal when the injured-victim himself is a major. Therefore, either the injured-victim should file an application to be brought on record otherwise the claim petition shall be dismissed. It has been further observed that the father and mother of the injured-victim have received the amount which was awarded by the tribunal. They have been directed to refund the said amount before 23.04.15.

It is beyond any amount of doubt that even the claim petition ought to have been in the name of the victim. But it is apparent from the records that the appeal has been preferred by the victim himself.

[3] On 21.04.15 the victim by filing an affidavit has stated that his parents out of ignorance filed the claim petition in their name instead of his name as he was a minor at the relevant point of time and they have spent the amount they had received for meeting up the loan they had taken from various persons for his treatment and they have setup a rice mill for his financial security. He has prayed for releasing his parents from any liability for the omission they committed.

[4] The parents by filing an affidavit have given an account how the money received from the tribunal as the compensation has been spent. The compensation they received, was in terms of the impugned judgment and order. They have prayed for mercy for their conduct.

[5] Having regard to that aspect of the matter, this Court is of the view that the parents of the victim was under wrong legal advice and as such the explanation given by them and supported by the victim who is now major and grownup is liable to be accepted inasmuch as, no claim has been extended by the victim against the parents.

[6] This appeal has been filed for enhancement of the compensation as awarded by the tribunal to the extent of Rs. 1,95, 133/- without any interest by the judgment and award dated 30.03.10 delivered in T.S. MAC. No. 542 of 2005.

[7] Mr. M. K. Roy, learned counsel appearing for the appellant has submitted that for reckless driving of the

commander jeep bearing registration No. TR- TR-03-2932 by its driver, the appellant suffered serious injury on 06.03.2004 at Jalefa Bazar on Horina, Subroom road. He was immediately rushed to the GBP Hospital, Agartala for treatment. He was operated there for fixing the shaft Femur(Rt) by implanting nails on 07.04.04 and he was released on 10.05.14, meaning he was treated in the GBP Hospital for the period from 07.03.04 to 10.05.14 as is evident from the discharge certificate issued by the GBP Hospital (**Ext.2 series**).

[8] Mr. Roy has further submitted that the victim was taken on reference to the SSKM Hospital, Kolkata by the referring note dated 06.07.04 (**Ext. 3**). As there was no accommodation he was immediately admitted in Arobindo Seva Kendra, Kolkata on 01.08.04. There the victim had undergone various tests for an operation for removal of implants interlocking with bone grafting. The victim was escorted by his brother, namely, Chandan Sutradhar. It can be gathered from the air tickets (Ext.7) that the victim was at Kolkata from 04.08.04 to 27.08.04.

[9] Mr. Roy, learned counsel, has further submitted that the victim was again treated in the Nightingale Hospital & Research Centre, Meherpur, Silchar for the purpose of treatment for fracture nonlinear and he was operated there again on 03.12.04. He had to undergo the various tests for the said operation which was conducted there.

[10] Mr. Roy, learned counsel, has submitted further that the tribunal when calculating the compensation has not taken care of the expenditure as incurred for travel and staying at Kolkata, Silchar and also at Agartala, even though all the original air tickets bills etc. were submitted. Mr. Roy, learned counsel for the petitioner has contended that even though such serious injury has been suffered by the victim the tribunal did not direct for any compensation for pain and suffering or loss of amenities and hence he has urged for interference with the said judgments and award for enhancing the compensation.

[11] Mr. Goutam, learned counsel appearing for the insurer, the respondent No. 2 has submitted that there is no infirmity in the impugned judgment and order as such the appeal be dismissed. He has further submitted that the awarded amount has been deposited by the respondent No. 2. They may not be saddled with further liability in this case.

[12] For the purpose of reference to the mode of calculation, Para 18 and 19 of the impugned judgment may be extracted:

"18. As per judgment of the apex court rendered in Sarla Verma and others v. Delhi Transport Corporation and Another, 2009 ACJ 1298, the multiplier for the age group 15 to 20 years is 18. The age of the victim being 15 years odd the multiplier in the present case would be 18. Now, multiplying Rs. 15,000/- by 18 it comes to Rs. 2,70,000/-. As already pointed out, the victim suffered permanent disability to the extent of 50%. Therefore, 50% of the total loss of income of Rs. 2,70,000/- would be Rs. 1,35,000/-.

So I award Rs. 1,35,000/- in favour of the claimants as compensation towards loss of future earning for suffering permanent disablement to the extent of 50%.

19. In total the claimant is entitled to a sum of Rs. 1,95,131/- (Rs.15,000+ Rs. 15,000 + Rs.18,749 + Rs.11,382 + Rs.1,35,000) as compensation which, I believe to be fair and equitable. It appears that apart from adding the cost of medicines charges of pathological tests, treatment receive from Private Nursing Home , cost of food and lodging, consultation fee the victim has been awarded a sum of Rs. 1,35,000/- for loss of income considering his notional income add Rs. 15,000/-.

[13] What Mr. Roy, learned counsel for the appellant has stated is substantially correct that no compensation for pain and suffering, loss of amenities, the cost of travel and lodging in various places except the nominal cost of the victim's lodging at Rs. 3,214/- has been awarded.

[14] **In Raj Kumar v. Ajoy Kumar**, reported in **(2011) 1 SCC 343** the apex court has laid down the different heads for compensation to be awarded for personal injuries as under:

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

Pecuniary damages (Special damages)

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

(ii) Loss of earning (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.

[15] There are two categories of damages which are broadly assessed in such cases pecuniary or special damages and non pecuniary or general damages. The challenge in this appeal hovers under both the categories. It is true that no amount as compensation has been added under the non-pecuniary damages. It is also on record that the victim, the appellant herein, has suffered 50% of permanent disability as is apparent from the disability certificate issued by the standing medical Board which has been appreciated by the tribunal.

[16] For treatment of the petitioner, the parents of the petitioner must have stayed at Agartala from 07.03.04 to 10.05.04. During that stay of that 64 days the expenditure of Rs. 32,000/- (Rs. 500/- per day) for fooding and lodging must have been incurred. This amount is in addition to the amount granted by the tribunal. For stay of the victim at Kolkata for a period from 04.08.04 to 27.08.04 (22 days) for treatment, the parents must have incurred a sum of Rs. 22,000/- (Rs. 1,000/- per day). That apart, from the air tickets for to and fro journey of the victim and one escort, it appears that a sum of Rs. 10,696/- has been incurred. Under the pecuniary or special damages the victim is therefore entitled to get another sum of

Rs. 64,696 (Rs. 32,000+22,000+10,696) rounded at Rs. 65,000/-. Under the non-pecuniary damages, the victim is entitled to get damage for pain and suffering as consequence of injuries at Rs. 50,000/- and another sum of Rs. 50,000/-, the victim is entitled to get for loss of amenities and expectation of life.

[17] Having regard to the nature of disability he has received from the accident, thus, the victim would be entitled to a further sum of Rs. 1, 65,000/- in addition to what has been awarded by the tribunal.

[18] Hence, the total compensation would be Rs. 3, 60, 131/- and this amount shall carry interest from the date of filing of the claim petition i.e. 23.09.05 at the rate of 9% per annum till the amount is paid. As Mr. Goutam, learned counsel has pointed out that Rs. 1,95,133 has already been paid the said amount shall not carry any interest only from the date when the said amount was deposited in the tribunal.

[19] The respondent No. 2 National Insurance Company Ltd, is directed to deposit the enhanced award within a period of 2 months from today in the tribunal. 90% of the deposited amount shall remain under the term-deposit and the victim would be entitled to receive its interest on monthly basis.

[20] Even though, no challenge has been projected against the permanent disability certificate issued by the Special Medical Board for Physically Handicapped Person, RGM

Hospital, Kailashahar, North Tripura this Court is shocked to observe that even though the victim is a resident of Harina, Sabroom by showing a temporary address at Fatikrai, Kailashahar, he has been assessed by the Special Medical Board for Physically Handicapped Persons. Such assessment by the Special Medical Board for Physically Handicapped Persons of another district is highly irregular, inasmuch as Rule 3 of the Persons with Disability (Equal Opportunities Protection of Rights and Full Participation) Rules, 1996, provides as under:

"3. Application for issue of disability certificate. (1) A person with disability desirous of getting a certificate in his favour shall submit an application in Form I, and the application shall be accompanied by –

(a) Proof of resident, and

(b) Two recent passport size photographs.

(2) The application shall be submitted to –

(i) A medical authority competent to issue such a certificate in the district of the applicant's residence as mentioned in the proof of residence submitted by him with the application, or

(ii) The concerned medical authority in a government hospital where he may be undergone or may have undergone treatment in connection with his disability.

Provided that where a person with disability is a minor or suffering from mental retardation or any other disability which renders him unfit or unable to make such an application himself, the application on his behalf may be made by his legal guardian...."

[21] The petitioner at no point of time was treated in the RGM Hospital, Kailashahar but the said hospital has issued the permanent disability certificate in favour of the victim, the appellant herein.

[22] Sub Rule 2 categorically provides that a medical authority is competent to issue such a certificate in the district of the applicant's residence as mentioned in the proof of residence submitted by him with the application, or the concerned medical authority in a government hospital where he may be undergone or may have undergone treatment in connection with his disability.

[23] It is plain that the RGM Hospital North Tripura District, now Unakoti district had no competence to issue such disability certificate. This Court by taking a lenient view is not taking a stern action against the issuing authority, but in future, if in breach of the specific provision of Rule 3, any disability certificate is issued, this Court would be compelled to take stern penal action against the erring Medical Officers, who are designated as the members of the special medical board for Physically Handicapped Persons, the medical authority competent to issue the disability certificate.

[24] Having held so, the appeal stands allowed to the extent as indicated above.

[25] A copy of this order shall be sent to the Secretary to the Government of Tripura, Health and Family Welfare Department for taking appropriate and corrective steps.

JUDGE

P. Ghosh.