

THE HIGH COURT OF TRIPURA
AGARTALA

MAC APP. 88 of 2010

Shri Kusha Tanti,
S/O. Sri Suresh Tanti,
C/O. Sri Manoranjan Uria,
Vill. – Indranagar, Sat Sangha Chowmuhani,
P.S. – East Agartala, Dist. West Tripura,
Permanent resident at Village & P.O. Durgapur,
P.S. Kalyanpur,
District – West Tripura.

..... *Appellant*

For and on behalf of his injured minor daughter Miss. Sangita Tanti.

..... *Injured*

- Vs. -

1. Smt. Basanti Debbarma,
W/O. Sri Anup Kumar Debbarma,
Vill. – Manaichara, P.S. Khowai,
Dist. West Tripura,
(Owner of offending vehicle No. TR-01-B
4352, MAX).

2. National Insurance Company Ltd.,
Represented by its Divisional Manager,
Divisional Office 42, Akhaura Road,
Agartala, P.S. West Agartala,
District – West Tripura.
(Insurer of the vehicle bearing No. TR-01-B-4352 (MAX).

..... *Respondents*

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant : Mr. R.R. Dutta, Advocate.

For the respondent : Mr. S. Lodh, Advocate.
No.2.

Date of hearing & : 09.06.2015.
delivery of
Judgment & order

Whether fit for reporting : No.

JUDGMENT & ORDER (ORAL)

By means of this appeal, the appellant-claimant has prayed for enhancement of the amount of compensation awarded by the learned Motor Accident Claims Tribunal in Case No. T.S. (MAC) 10 of 2009 vide award dated 13.09.2010.

2. The undisputed facts are that one minor girl Sangita Tanti received injuries in an accident with a motor vehicle i.e. TR01-B-4352 (MAX). It is alleged that this vehicle hit the victim Sangita from her behind and she suffered serious injuries. The learned Tribunal came to the conclusion that the accident had occurred and thereafter, assessed the compensation at Rs.42,500/- under the following heads:-

Loss of income – Rs.22,500/-

Mental shock, pain and sufferings - Rs.15,000/-

Cost of treatment – Rs.5,000/-

Aggrieved by this award, this appeal for enhancement of compensation is filed.

3. At the outset, I may note that neither the appeal nor the claim petition was properly constituted. The appeal and the claim petition both have been filed by the mother though it is stated that they are filed on behalf of the minor daughter. This

Court has repeatedly held that where the claimant is a minor or any other person under disability, the claim petition has to be filed in the name of the minor or the person under disability though it may be filed by the legal guardian or next friend. However, the title of the claim has to be in the name of the victim and the next friend or guardian cannot become the petitioner in his own capacity. Therefore, this appeal as well as the claim petition are treated to have been filed by Sangita Tanti, minor through her mother and next friend Smt. Kusha Tanti.

4. The discharge certificate shows that the minor girl was aged about 10 years. She was admitted in hospital on 4th July, 2008 and was discharged therefrom on 2nd August, 2008. Therefore, she remained in hospital for 29 days. She was diagnosed as having suffered fracture of the pelvis and one other fracture also but that is not clearly illegible. Even after discharge it was advised that she should be on bed rest for four weeks and should appear in the OPD after four weeks. After four weeks, the injury was found to have healed to a great extent, but the petitioner had to go back to the hospital for treatment. The claimant has also produced the disability certificate which shows that the claimant has suffered disability of 30% in relation to the left leg. Though this certificate is for 5 years, it is more than apparent that the injury has caused a permanent disability.

5. 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.

6. Applying the aforesaid principles I now proceed to assess the compensation under different heads. The claimant was hospitalized for 29 days. She being a small child would have required attendants round the clock. Therefore, at least 2 attendants would have been required to look after her. The cost of one attendant is taken to be Rs.250/- per day and the cost of two attendants is Rs.500/- per day and therefore for 29 days, the cost of attendants works out to **Rs.14,500/-**. In addition thereto, the

claimant was in bed rest for another one month and she would have required attendants at home also. Therefore, she is awarded **Rs.20,000/-** as costs of attendants.

7. As far as medical expenses are concerned, unfortunately, the appellant has produced very little evidence of medical expenditure. The expenditure proved by him is not even Rupees one thousand. Keeping in view of the nature of the injuries and the length of treatment, I assess the medical expenses at **Rs.10,000/-**.

8. The minor girl has not been awarded any amount for pain and sufferings. She was under acute pain for a period of one month when she was hospitalized. She was in bed rest for another one month. She is therefore, held entitled to **Rs.20,000/-** for pain and sufferings.

9. The girl has suffered a permanent disability. She was only 10 years old at the time of the accident. She cannot play around like children of her age and she has to be awarded certain amount for loss of amenities and enjoyment of life. She is, therefore, awarded **Rs.30,000/-** for loss of amenities of life.

10. The claimant has suffered physical disability and this will affect a marital prospects and she is awarded another **Rs.25,000/-** under this head.

11. With regard to loss of earning capacity, there is no clear cut proof. However, I am clearly of the view that even with the disability which the claimant had suffered, she would suffer at least 15% loss. Even if she was to be a daily wager, her income would be Rs.150/- per day or Rs.4,500/- per month. The loss would be Rs.675/- per month or Rs.8,100/- per year. Applying multiplier of 18 the compensation under this heads works out to **Rs.1,45,800/-**.

Therefore, the total compensation works out to Rs.2,65,300/- (Rs.14,500/- + Rs.20,000/- + Rs.10,000/- + Rs.20,000/- + Rs.30,000/- + Rs.25,000/- + Rs.1,45,800/-) (Rupees Two lakh sixty five thousand three hundred).

12. In view of the above discussion, the appeal is allowed and the award of the learned Tribunal is modified and the compensation is enhanced from Rs.42,500/- to Rs.2,65,300/-, i.e. by **Rs.2,22,800/-** (Rupees Two lakh twenty two thousand eight hundred). On this amount, the claimant shall also be entitled to interest @ 9% per annum from the date of filing the claim petition till payment/deposit of the awarded amount. It appears that the insurance company has already satisfied the awarded amount and,

therefore, the insurance company is directed to deposit the enhanced amount of compensation along with proportionate interest thereupon in the Registry of this Court within 8(eight) weeks from today. Obviously, the insurance company shall be entitled to adjust the amount(s), if any, which it has already paid or deposited.

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

14. Send down the lower court records forthwith.

CHIEF JUSTICE

sima