

THE HIGH COURT OF TRIPURA

A G A R T A L A

MAC App. No. 26 of 2010

Claimant-Appellant:

- 1. Sri Panchadip Debbarma,**
S/o. Sri Fatik Debbarma of Vill-Shantipara,
P.S-Ambassa, Dhalai, Tripura.

By Advocates :

Mr. S. Deb, Sr. Adv.
Mr. B. Majumder, Adv.

Respondents :

- 1. Sri Abhijit Dey,**
S/o- Ranjit Dey of Vill-Hatipara, P.S-Airport,
Tripura, West.
- 2. The Divisional Manager,**
Oriental Insurance Co. Ltd., Central Road,
Agartala, Tripura, West.

By Advocate :

Mr. P. Gautam, Adv.

CO (FA) No. 05 of 2010

Respondent - Cross Objector :

The Oriental Insurance Co. Ltd.
Represented by its Sr. Divisional Manager,
Agartala Divisional Office, Central Road,
P.S. East Agartala, District-West Tripura.
(Insurer of vehicle bearing No.TR-01G-1766
Truck)

By Advocate :

Mr. P. Gautam, Adv.

Claimant-Appellant-Respondent :

- 1. Sri Panchadip Debbarma,**
S/o. Sri Fatik Debbarma of Vill-Shantipara,
P.S-Ambassa, District-Dhalai, Tripura.

Owner-Respondent :

- 2. Sri Abhijit Dey,**
S/o- Ranjit Dey of Vill-Hatipara, P.S-Airport,
Tripura, West.

By Advocate :

Mr. S. Deb, Sr. Adv.
Mr. B. Majumder, Adv.

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

Date of hearing : **20th April, 2015.**

Date of Judgment & Order : **6th May, 2015.**

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER

Both the appeal and the cross objection are being disposed of by a common judgment since they both arise out of the award of the learned Motor Accident Claims Tribunal, Agartala, West Tripura dated 16.03.2010 in Case No. T.S(MAC) 286 of 2008 whereby the learned Tribunal awarded compensation of Rs.12,85,262/- to the claimant under the following heads:

- (i) Loss of income for
Six months = Rs. 24,000/-
- (ii) Medical expenses = Rs.4,38,612/-
- (iii) Transportation charges = Rs.1,22,650/-
- (iv) Loss of future income = Rs.3,00,000/-
- (v) Loss of amenities of life= Rs.3,00,000/-
- (iv) For pain and suffering = Rs.1,00,000/-
- Total :Rs.12,85,262/-

[2] The only dispute is whether the awarded amount is just and reasonable.

[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] The facts of the present case are that the claimant received injuries in an accident which took place on 2nd February, 2008. During the accident itself the left lower limb of the claimant appears to have been amputated below the knee. He also suffered fracture of the femur of the right leg. He was admitted in hospital at Tripura on 2nd February, 2008 and discharged from the hospital on 8th February, 2008. He was referred to the SSKM Hospital, Kolkata for further treatment outside the State. It however appears that the claimant got himself treated at the Holy Spirit Hospital at Mumbai. He was examined in the Holy Spirit Hospital on 10.02.2008, admitted there on 11.02.2008 and discharged there from on 23.04.2008. It appears that during this period at Mumbai he also suffered from chickenpox. The claimant had various other injuries and remained admitted for a long time. He again was treated at the hospital at Mumbai on 2nd May, 2008 but that is on account of chickenpox and convulsion and nothing to do with the accident. The claimant was again admitted in the hospital on 14.5.2008 at Mumbai for skin grafting etc. and was discharged from the hospital on 2nd June, 2008. The claimant has also produced his disability

certificate which shows that he has suffered 80% disability in respect to his left leg. This disability is obviously not in relation to his entire body. It would be pertinent to mention that the claimant has also purchased artificial limb and, therefore, he cannot be said to be totally incapacitated.

[5] The claimant remained in hospital at Agartala for only six days. He is awarded Rs.10,000/- for attendant charges, treatment expenses etc. during this period. As far as his visit to Mumbai is concerned that is directly connected to the accident. The claimant has produced total vouchers showing that he spent Rs.4,38,612/- for his treatment at Mumbai. He may not have kept vouchers for the treatment at Agartala and also some of the smaller vouchers at Mumbai. Therefore, I, awarding Rs.4,50,000/- i.e. a total of Rs.4,60,000/- for medical expenses.

[6] The claimant has produced air tickets for a sum of Rs.1,22,650/-. In my view he and his attendant may have spent some other amounts for local travelling at Mumbai etc. and he is awarded Rs.1,30,000/- under this head.

[7] The claimant remained in Mumbai from 10.2.2008 to 2.6.2008 i.e. for almost 4(four) months. Mumbai is a very expensive city. His attendant would have also had to look after himself and the cost of the attendant in Mumbai is worked out at Rs.500/- per day or Rs.15,000/- per month and for a period of 4(four) months he is awarded Rs.60,000/- under this head.

[8] The claimant has lost his leg. He is now dependent to use artificial limb. These limbs required to be changed time to time and one

limb cannot be used for the rest of his life. Therefore, I awarding Rs.2,00,000/- for further medical treatment including the change of his limb.

[9] The claimant has been awarded Rs.1,00,000/- for pain and suffering. In my view this amount is on the lower side keeping in view the fact that the claimant lost his leg below the knee and he remained hospitalized for about 4(four) months. Therefore, I assess the compensation for pain and suffering at Rs.2,00,000/-.

[10] The claimant has also been awarded Rs.3,00,000/- for loss of amenities in life. In my opinion this portion of the award is on the higher side. The claimant no doubt in the accident has lost his leg below the knee and must be adequately compensated. He has been awarded Rs.2,00,000/- for pain and suffering and in my view it would be sufficient to award him Rs.2,00,000/- for loss of amenities of life etc.

[11] The learned Tribunal relying upon the certificate issued by the Deputy Collector, Ambassa, Dhalai, has held that the claimant used to earn Rs.6,000/- per month. In my view this certificate cannot be relied upon. The Collector has no means of assessing the income of a businessman. However, I am of the view that in the year 2008 even a petty businessman would have earned at least Rs.150/- per day or Rs.4500/- per month. The learned Tribunal has assessed the loss of income for only 4(four) months. The claimant remained in hospital for four months and thereafter at least for two months more he could not have worked, therefore, I award him loss of income for six months i.e. Rs.27,000/-.

[12] The most crucial aspect of the matter is what should be awarded to the claimant for future loss of earnings. Sri S. Deb, learned senior counsel has relied upon the judgment of the Apex Court in ***Smt. Neeta Kallappa Kadolkar and Others Etc. Vrs. Div. Manager, MSRTC, Kolhapur : (2015) 3 SCC 590*** but in my opinion that judgment has not much relevance to the present case. Reliance has also been placed on the judgment delivered by this Court in ***Master Sanjoy Acharjee Vrs. The State of Tripura and another : (2014) 2 TLR 313*** and I propose to rely upon the same and I have assessed the income of the claimant at Rs.4500/- per month. While assessing for future loss, 50% have to be added for future prospect which would mean that the income would be $\text{Rs.4,500} + 2250 = \text{Rs.6750/-}$.

[13] The next question is what is the loss of earning. According to Sri S. Deb, learned senior counsel, the loss of earning is 80%. I cannot agree with the same. The percentage of disability is not necessarily equal to the percentage of loss of earning. If the claimant had been a manual labour he could have claimed much higher amount. The evidence on record shows that the claimant has got an artificial limb and this Court has awarded him Rs.2,00,000/- extra for future expenses for the artificial limb etc. With an artificial limb the claimant can work as a petty businessman. His working shall however be affected because a petty businessman has to walk, move around, lift some goods etc. Keeping all these factors into consideration, I assess the loss of earning capacity at 30% which works out to Rs.2025/- per month or Rs.24,300/- per year. Since the claimant was aged only about 24 years, multiplier of 18 is applied and the compensation comes to Rs.4,37,400/- which is rounded off to Rs.4,40,000/-.

[14] The total compensation is, therefore, assessed at Rs. (4,60,000/- + 1,30,000/- + 60,000/- + 2,00,000/- + 2,00,000/- + 2,00,000/- + 27,000/-+ 4,40,000/-) = Rs.17,17,000/-. The award is accordingly enhanced from Rs.12,85,262/- to Rs.17,17,000/-i.e. by Rs.4,31,738/- which is rounded off to Rs.4,32,000/-. The claimant is also entitled to interest on the awarded amount @ 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 entire awarded amount 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.

[15] In view of the above, the appeal filed by the claimant for enhancement of compensation is allowed in the aforesaid terms.

Consequently, the cross-objection filed by the insurance company is dismissed. No order as to costs.

Send down the LCRs forthwith.

CHIEF JUSTICE