

THE HIGH COURT OF TRIPURA
AGARTALA

MAC APP. NO.04 OF 2011

Shri Ranjit Saha
S/O. Late Kusome Chandra Saha,
C/O. Shri Mono Ranjan Saha of
North Banamalipur (Near Bharati Press)
P.S. East Agartala, District-West Tripura.

..... **Appellant Petitioner.**

- V e r s u s -

1. The Branch Manager,
New India Assurance Company Ltd.,
Agartala Branch, Kaman Chowmohani,
P.S. West Agartala, District-West Tripura
(Insurer of offending vehicle bearing
registration No. WB-02-7161)
2. Shri Pankaj Banik,
S/O. Late Haridas Banik of
Chitta Ranjan Road near M.B.B.Club,
P.S. East Agartala, District-West Tripura
(Owner of offending vehicle)

..... **Respondents.**

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant	: Mr. A. Nandi, Advocate.
For the respondent No.1	: Mr. P. Gautam, Advocate. Mr. S. Debnath, Advocate.
Date of hearing	: 01.06.2015.
Date of judgment	: 15.07.2015
Whether fit for reporting	: YES

JUDGMENT & ORDER

This appeal by the claimant is directed against the award dated 16.12.2010 passed by the Learned Motor Accident Claims Tribunal (Court No.3), West Tripura, Agartala in T.S.(MAC) 381 of 1997 whereby he awarded compensation of Rs.65,455/- in favour of the claimant.

2. Briefly stated the facts of the case are that the claimant-appellant filed an application for grant of Compensation under Section 166A of the Motor Vehicles Act (hereinafter referred to as the "Act") read with Section 163A of the said Act. The petitioner alleged that on 20.10.1996, he along with the son of his employer was travelling in Vehicle no. WB-02-7161. The vehicle was being driven at a high speed. When the vehicle reached near Bagma, it hit a tree on the side of the road. The petitioner sustained injuries. He was immediately shifted to Udaipur Hospital from where he was referred to G.B. Hospital at Agartala. He remained under treatment at G.B. Hospital for 10 days and was thereafter referred to the S.S.K.M. Hospital, Kolkata for better treatment. According to the appellant, he could not get any bed in SSKM hospital and, therefore, he got himself admitted in Avenue Nursing Home for 21 days.

3. The Motor Accident Claims Tribunal first decided the matter on 16.2.1999 and awarded compensation of Rs.1,73,600/- in favour of the petitioner-claimant and against the New India Assurance Company Limited along with interest @ 6% per annum.

4. The New India Assurance Company Limited challenged the award by filing a writ petition being CRP No. 32 of 1999 in the Agartala Bench of the Gauhati High Court which then exercised jurisdiction over the State of Tripura. In that case the claimant was represented by Mr.A.Nandi, Advocate. The said case was disposed of on 31.10.2003 in the following terms:-

"9. In the result, this writ petition is not maintainable and is hereby dismissed. However, in

the interest of speedy payment of the awarded amount I call upon both the learned counsel of the parties to come into an amicable settlement of the case by way of reducing the amount of interest awarded by the Tribunal which has now become 20% per annum with effect from the date of claim petition in view of the fact that the compensation could not be paid within one month period stipulated in the award. I am happy to record that Mr.D.K.Biswas and also Mr.A.Nandi, learned counsel appearing on both sides agreed to my proposal of reducing the interest to be paid from 20% to 13% with the stipulation that the petitioner Insurance Company shall pay the entire amount along with the interest due as aforesaid within a period of 45(forty five)days.

10. In view of this agreement I hereby modify the impugned award as follows:-

(1) The petitioner Insurance Company shall pay the compensation of Rs.1,73,600/- minus Rs.50,000/- already paid by it along with interest @ 13% per annum from the date of claim petition within 45(forty five) days from today.

(2) Since a sum of Rs.50,000/- has already been paid by the petitioner Insurance Company, the interest to be paid shall also be adjusted accordingly.

On the facts and circumstances of the case, there shall be no order as to costs. The interim order, if any, stands vacated."

5. It would be pertinent to mention that before this petition had been disposed of the present appellant had already filed MAC APP. No. 44 of 1999. In this case also Mr. A. Nandi, Advocate, was appearing for the claimant. In CRP No.32 of 1999 the Insurance Company was represented by Shri. D.K. Biswas, Advocate and by Sri. P. Gautam in the MAC APP. 44 of 1999. When the CRP was disposed of Sri Nandi did not inform the Court that he had also filed an appeal on behalf of the claimant. In case, he had

done so, the Court would have ordered both the cases to be tried together. Paras 9 and 10 of the judgment passed in CRP which have been quoted herein above clearly indicate that after holding that the writ petition was not maintainable the learned Judge with the consent of the parties modified the award. The operative portion of the order passed in Para 10 clearly shows that pursuant to the agreement entered into the learned Single Judge modified the awarded amount and held that the interest would be paid on Rs.1,73,600/- @ 13% per annum. The result of this decision is that the award of the learned Tribunal stood modified by the judgment of the learned Single Judge passed in CRP 32 of 1999 and stood merged in the judgment of the CRP.

6. MAC Appeal No. 44 of 1999 came up for hearing before another learned Single Judge on 14.05.2010, seven years after the petition filed by the Insurance Company had been disposed of on consent. Again neither counsel for the claimant nor counsel for the Insurance Company pointed out to the Court that a learned Single Judge had earlier dealt with the matter and had already modified the award of the Tribunal. The learned Single Judge held that the learned Tribunal had wrongly treated the claim petition to be filed under Section 163A and came to the conclusion that the petition had been filed under Section 166 of the Act and accordingly, remanded the matter to the learned MACT to decide the issue of compensation afresh.

7. A bare perusal of the judgment of the learned Single Judge in the appeal clearly shows that only the decision of the MACT on issue No.2 relating to quantum had been set aside and

the matter was remanded back to the Tribunal to decide the issue afresh. This meant that there was no award of Rs.1,73,600/-. However, it would be pertinent to mention that the learned Single Judge of this Court also ordered that the amount which had already been paid to the appellant would not be refunded by the appellant and would be adjusted with the amount that would be finally awarded by the Tribunal. Reference may be made to Paras 13 and 14 of the judgment of the learned Single Judge in this regard which read as follows:-

“13. Accordingly, in that view of the matter the decision on Issue No.2 arrived at by the learned Tribunal shall stand set aside and the matter is remanded back to the Tribunal for deciding afresh the said issue.

14. It is made clear that whatever amount has been received by the appellant is not required to be refunded by the appellant after setting aside the findings on Issue No.2 and that would be adjusted with the amount that would be arrived at finally by the Tribunal.”

8. Thereafter, the MACT has only passed an award for Rs.65,455/-. He has not said a word about the amount of Rs.1,73,600/-. He has not stated whether this amount is inclusive or exclusive of the amount of Rs.1,73,600/- awarded earlier. It is, however, apparent that all the parties have treated this amount of Rs.65,455/- to be in addition to the amount of Rs.1,73,600/-.

9. Aggrieved by this judgment, the claimant has filed this appeal praying for enhancement of the compensation. This Court had put a question to Sri Nandi to explain how after the award of the Tribunal had merged with the judgment of the High Court in CRP-the Tribunal had any jurisdiction to change the award. In fact,

the learned Single Judge who took up the appeal probably would not have passed the judgment which he passed if his attention had been drawn to the judgment of the learned Single Judge in CRP No.32 of 1999.

10. An advocate is an officer of the Court. He is required to assist the Court properly. In this case, Mr. Nandi was appearing for the claimant both in the CRP No. 32 of 1999 and MACT APP. No.44 of 1999. When CRP No.32 of 1999 was taken up, he did not inform the learned Presiding Judge that he, on behalf of the claimant, had filed MAC APP. No. 44 of 1999. Seven years later when MAC APP. 44 of 1999 came up for hearing, he did not again inform the learned Presiding Judge that the award of the Tribunal already stood modified by the judgment of the learned Single Judge in CRP 32 of 1999. In total ignorance of the earlier judgment of this Court in CRP 32 of 1999, the learned Single Judge passed the judgment in MAC APP. No. 44 of 1999.

11. I am of the considered view that after the judgment of the Tribunal had been modified and stood merged with the judgment passed in the writ petition neither the learned Single Judge nor the Tribunal had any jurisdiction to pass any other order. Once a judgment has been passed by a learned Single Judge of this Court, it can only be modified or set aside either by a Division Bench if an Intra Court appeal lies or by the Apex Court if Intra Court appeal is not maintainable. One Single Judge cannot set aside the order of another Single Judge.

12. In this case, the whole problem occurred because the learned counsel did not inform the Court of the pendency of both the matters.

13. The Insurance Company has already satisfied the second award passed by the Tribunal and, therefore, the claimant have got a sum of Rs.65,455/- in addition to the amount of Rs.1,73,600/- awarded earlier by the MACT. Since the Insurance Company has satisfied this award, I am saying nothing further. However, I am clearly of the view that in view of the earlier judgment passed in CRP No.32 of 1999 which was passed with the consent of the parties the claimant is not entitled to any further enhancement and the appeal is accordingly dismissed. No costs.

14. Send down the lower court records forthwith.

CHIEF JUSTICE

sabyasachi bhattacharjee