

**THE HIGH COURT OF TRIPURA
A G A R T A L A**

MAC APP. 06 OF 2011 & CO(FA) 03 OF 2011

IN MAC APP. NO. 06 OF 2011:

Appellant :

Shri Rajesh Reang,
S/O. Shri Tansairo Reang,
Resident of Vill-Mataraipara,
P.O. Karbook, P.S. Birganj,
District-South Tripura.

BY ADVOCATE :

Mr. A. Nandi, Advocate.

– **Versus** –

Respondents :

1. Shri Sunil Das,
S/O. Late Rai Mohan Das,
Resident of Vill-West Nalchar,
P.S. Sonamura, District-West Tripura.
(Owner of vehicle bearing No.TR-01-F-1688).
2. The Branch Manager,
New India Assurance Company Ltd.,
Mantribari Road, P.S. West Agartala,
District-West Tripura.
(Insurer of offending vehicle TR-01-F-1688).

BY ADVOCATES :

Mr. Somik Deb, Advocate (for respondent No.1).
Mr. P. Gautam, Advocate (for respondent No.2).

IN CO(FA) NO. 03 OF 2011:

OP-Respondent-Cross-Objector :

Shri Sunil Das,
S/O. Late Rai Mohan Das,
Resident of Village-West Nalchar,
P.O. & P.S.-Sonamura,
District-West Tripura, Tripura.
(Owner of the vehicle bearing No.TR-01-F-1688).

BY ADVOCATE :

Mr. Somik Deb, Advocate.

– **Versus** –

Claimant-Respondent :

1. Shri Rajesh Reang,
S/O. Shri Tansairo Reang,
Resident of Village-Mataraipara,
P.O. Karbook, P.S. Birganj,
District-South Tripura, Tripura.

OP-Respondent :

2. The Branch Manager,
New India Assurance Company Ltd.,
Mantribari Road, P.O.-Agartala,
P.S. West Agartala, Agartala,
District-West Tripura, Tripura.
(Insurer of the vehicle bearing No.TR-01-F-1688).

BY ADVOCATE :

Mr. A. Nandi, Advocate.

**BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA**

Date of hearing & : 17.06.2015.
delivery of judgment
and order.

Whether fit for reporting : **NO.**

JUDGMENT & ORDER (ORAL)

This appeal and cross objection are being disposed of by a common judgment since they arise out of the same award dated 18-11-2010 passed by the learned Motor Accident Claims Tribunal, Court No.3, West Tripura, Agartala in case No. T.S.(MAC) 343 of 2007.

2. Briefly stated, the facts of the case are that the claimant filed a petition in which he alleged that on 09.04.2007 at about 1-30 p.m. he stopped the offending vehicle which is a Tipper truck bearing registration No.TR-01-F-1688 and when he attempted to board the truck, the driver all of a sudden started the truck and as a result of which the claimant fell down and sustained

injuries. In the claim petition it was alleged that the claimant was working as an assistant-cum-cleaner but neither in the claim petition nor in the evidence has he stated with whom he was working as assistant-cum-cleaner. He has neither named his employer nor has he given the number of the vehicle in which he was working as assistant-cum-cleaner. Even in an inquiry to be held under the Motor Vehicles Act, the claimant must give some information. If he claims to be in employment, the minimum information which is required is the name of the employer, the place of employment and the salary which the claimant was getting. Shockingly, in the claim petition it is mentioned that the name and address of the employer is not known and would be furnished later on. How can any person who is 20 years of age and is filing the claim petition himself states that he does not know the name of his employer and will furnish the name later on? This only is a means of filling up the lacunae in the case at a later stage which cannot be permitted.

3. The admitted facts are that the claimant remained in hospital for 71 days. He suffered a fracture of the leg. He remained under treatment for a fairly long time and a disability certificate has been issued which shows that the claimant is suffering from mild stiffness of the left ankle and the disability has been assessed at 15%. The learned Tribunal assessed the compensation at Rs.95,550/- under the following heads:-

Pain and suffering	:- Rs.10,000/-
Loss of income	:- Rs.12,000/-
Medical expenses	:- Rs. 3,750/-

Future loss of income :- Rs.64,800/-

Miscellaneous expenses:- Rs. 5,000/-

Total :- Rs.95,550/-

4. It is urged by Sri A. Nandi, learned counsel for the appellant, that the award is very much on the lower side and deserves to be enhanced. His main claim for enhancement is that no amount has been awarded for attendant charges and that the amount awarded for pain and suffering is on the lower side.

5. On the other hand, Sri Somik Deb, learned counsel for the owner-respondent who has filed cross-objection submits that the award is on the higher side since the income has not been proved. He also submits that the future loss of income assessed is very high keeping in view the nature of disability. The last submission of Sri Deb is that the liability to pay the compensation, if any, is that of the Insurance Company because the claimant was not a gratuitous passenger on the vehicle since he was only attempting to board the vehicle and cannot be termed to be a gratuitous passenger.

6. 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.

7. As far as the compensation is concerned, I am of the clear cut view that the Tribunal did not understand the principles for award of compensation. Therefore, I reassess the compensation on the basis of the evidence on record.

8. The claimant remained in hospital for 71 days. He would have required attendant round the clock. Even if the cost of one attendant in the year 2007 is taken at Rs.200/- per day, the cost of two attendants works out to Rs.400/- and the cost of attendants for 71 days works out to Rs.28,400/-. The claimant may have required some attendants even after he went home and, therefore, he is awarded **Rs.35,000/-** as attendant charges.

9. As far as medical expense is concerned, the claimant proved documents for Rs.3,745/-. The learned Tribunal has restricted the claim to Rs.3,750/-. In view of the nature and the length of treatment, I assess the damages at **Rs.10,000/-**.

10. The claimant claimed that he was earning Rs.2,000/- per month. He claimed that he was an assistant-cum-cleaner but as discussed above, this statement appears to be totally false

because he did not even name the owner of the vehicle he was travelling.

11. Having held so, this Court is of the considered view that the claimant being an able bodied man could not have been earning less than Rs.2,000/- per month and the claim being reasonable is accepted and his income is assessed at Rs.2,000/- per month. Even if the claimant was unemployed, he had the capacity to at least earn Rs.2,000/-. He has been awarded loss of income for 6 months and the same is accepted to be correct and he is awarded **Rs.12,000/-** for loss of income.

12. As far as loss of future income is concerned, I am of the view that the learned Tribunal totally missed the point. The learned Tribunal did not see what was the disability and only went by the percentage of disability. The disability as pointed out in the medical certificate is only mild stiffness in the ankle. This will not at all affect the earning capacity of the claimant and, therefore, I am not inclined to award any amount for loss of future income.

13. While assessing future loss of income, there must be some evidence before the Tribunal to indicate what was the claimant doing and how the injury would assess his earning capacity. The disability certificate only shows mild stiffness. Such mild stiffness, that too in the ankle would not lead to loss of income in life.

14. The claimant has been awarded Rs.10,000/- for pain and suffering. This is very much on the lower side. The claimant

remained in hospital for almost 2 ½ months and even thereafter, he was advised bed rest. His pain and suffering is much more and, therefore, he is awarded **Rs.25,000/-** for pain and suffering.

15. Though I have held that the claimant is not entitled to any amount for future loss of income, the claimant has to live for the rest of his life with a disability. This disability even though it may not affect his earning capacity is a source of constant discomfort to him. He cannot walk like a normal human being. He will face problems throughout his life and, therefore, I award him **Rs.25,000/-** for future discomfort and loss of amenities in life.

Therefore, the total compensation works out to Rs.(35,000 + 10,000 + 12,000 + 25,000 + 25,000)=Rs.1,07,000/- (rupees one lakh seven thousand).

16. Accordingly, the appeal is allowed. The award of the learned Tribunal is modified and the compensation is enhanced from Rs.95,550/- to Rs.1,07,000/-, i.e. by Rs.11,450/-. On the amount of compensation so awarded, the claimant shall also be entitled to interest @ 9% per annum from the date of filing of the claim petition till payment/deposit of the awarded amount.

17. Lastly, coming to question as to who is to pay the compensation. The learned Tribunal held that the injured claimant was a gratuitous passenger. The evidence led on record only goes to show that the injured was attempting to board the truck. Whether he was attempting to board the truck to travel in the truck as a passenger, gratuitous or otherwise, the fact remains

that he was still on the footboard of the truck and had not entered inside the truck. There is not an iota of evidence on record to show that the driver had permitted him to board the truck. In fact, the evidence indicates that the driver was not permitting the claimant to board the truck and while attempting to board the truck, the claimant fell down. Therefore, he was not a passenger much less a gratuitous passenger and was a third party for all intents and purposes and hence, the Insurance Company is liable to pay the compensation.

18. The Insurance Company has not fully satisfied the award of the Tribunal. Accordingly, it is directed to deposit the modified amount of compensation along with interest in the Registry of this Court within 4(four) months from today after deducting/adjusting the amount, if any, already paid/deposited by them along with proof of such earlier deposit.

19. In view of the above discussion, the cross objection is accordingly allowed.

20. Send down the lower court records forthwith.

CHIEF JUSTICE