THE HIGH COURT OF TRIPURA
<u>A G A R T A L A</u>

<u>MAC APP. 51 OF 2010 & CO(FA) 07 OF 2010</u>

<u>IN MAC APP. NO. 51 OF 2010:</u>

<u>Appellant</u> :

The National Insurance Company Ltd.,
Represented by its Divisional Manager,
Agartala Division, 42, Akhaura Road,
P.S. West Agartala,
District-West Tripura.
(Insurer of Jeep bearing No.TR-01A-3123).

BY ADVOCATE :

Mr. P. Gautam, Advocate,
Mr. S. Debnath, Advocate.

– **Versus –**

<u>Claimant Respondent</u> :

1. Sri Ranjit Kumar Das @ Ranjit Das,
S/O. Late Jatindra Chandra Das,
of Village-Barmura,
P.S. Jatrapur,
District-West Tripura.

<u>Owner Respondent</u> :

2. Md. Abdul Latif,
S/O. Md. Abdul Majid,
of Village-Sonamura, Rabindranagar,
P.S. Sonamura,
District-West Tripura.
(Owner of vehicle bearing No.
TR-01A-3123 Jeep).

<u>Driver Respondent</u> :

3. Shri Dipak Debnath,
S/O. Sri Sridam Debnath,
of Village-Bashpukur,
P.S. Jatrapur,
District-West Tripura.
(Driver of vehicle bearing
No.TR-01A-3123 Jeep).

BY ADVOCATE :

Mr. T.D. Majumder, Advocate,
Mr. M.K. Roy, Advocate.

IN CO(FA) NO. 07 OF 2010:

Claimant-Respondent-Cross-Objector :

Sri Ranjit Kumar Das @ Ranjit Das,
S/O. Late Jatindra Chandra Das,
of Village-Barmura, P.S. Jatrapur,
District-West Tripura.

BY ADVOCATE :

Mr. M.K. Roy, Advocate.

– **Versus –**

Appellant-Respondent :

1. The National Insurance Company Ltd.,
(represented by the Divisional Manager),
42, Akhaura Road, P.S. West Agartala,
District-West Tripura.
(Insurer of offending vehicle No.TR-01-A-3123-Commander Jeep).

OPs-Respondents :

2. Md. Abdul Latif,
S/O. Md. Abdul Majid,
Vill-Sonamura,
District-West Tripura.
(owner of the offending vehicle bearing registration No. TR-01A-3123-Commander Jeep).

3. Shri Dipak Debnath,
S/O. Sri Sridam Debnath,
Vill-Bashpukur, P.S. Jatrapur,
District-West Tripura.
(driver of the offending vehicle bearing Registration No.TR-01A-3123-Commander Jeep).

4. Sri Ajoy Roy,
S/O. Sri Anadibhushan Roy,
Vill-North Maheshpur, PS-Jatrapur,
Dist.-West Tripura.
(owner of the offending vehicle
No. TR-01D-6522-Yamaha Bike).

5. The New India Assurance Company Ltd.,
(represented by the Branch Manager),
4, Mantribari Road, Agartala,
West Tripura.
(Insurer of offending vehicle bearing No.
TR-01-D-6522-Yamaha Bike).

BY ADVOCATE :

Mr. T.D. Majumder, Advocate,
Mr. P. Gautam, Advocate,
Mr. S. Debnath, Advocate.

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

Date of hearing & delivery of judgment and order.	: 16.06.2015.
Whether fit for reporting	: **YES**.

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 25-03-2010 passed by the learned Motor Accident Claims Tribunal, Sonamura, West Tripura in case No. T.S.(MAC) 27 of 2009.

2. The claimant filed the claim petition under Section 166 of the Motor Vehicles Act (M.V. Act) before the Motor Accident Claims Tribunal. In this claim petition, it was alleged that on 31.10.2008 the claimant was driving his motorcycle bearing registration No.TR-01-D-6522 and reached at Bagairchar near Bankumari Ashram. At that time, the offending vehicle (Commander Jeep) bearing registration No.TR-01-A-3123 came from the opposite side on a high speed. This jeep tried to overtake another jeep and came directly in front of the motorcycle and hit the motorcycle as a result of which the motorcyclist fell down. The claimant remained as an indoor patient in Agartala from 31.10.2008 to 06.11.2008. Thereafter, he was referred to Kolkata where he remained admitted from 08.11.2008 to 13.12.2008. Therefore, the petitioner was virtually hospitalized from 31.10.2008 to 13.12.2008. Even after his discharge from hospital, he could not work and was being treated as an indoor patient and

visited the hospital at Kolkata regularly on many occasions. It was alleged that the claimant was only moving with the help of crutches.

3. The learned Tribunal has awarded Rs.77,715/- for cost of medicines and treatment, Rs.69,175/- for air tickets, Rs.2,045/- for stay at Tripura Bhavan and hotels at Kolkata, Rs.22,500/- towards attendant charges, Rs.10,000/- for conveyance allowance, and Rs.5,000/- for pain and suffering. In addition thereto, the learned Tribunal assessed the income of the claimant at Rs.7,000/- per month, assessed his loss of income at 40% and applying multiplier of 17 awarded Rs.5,71,200/- for loss of income. For future discomfort, the claimant was awarded Rs.25,000/- and, therefore, the total award of Rs.7,82,635/-.

4. The Insurance Company has filed this appeal and at the time of argument the main grounds raised by Mr. P. Gautam, learned counsel for the appellant, was that the award is exorbitant. According to him, the claimant had not proved his income and he further submits that the learned Tribunal has wrongly assessed the loss of income at 40%. His last submission is that the disability is temporary in nature and is not a permanent disability.

5. On the other hand, learned counsel for the claimant not only supported the award but prayed for enhancement on the ground that the learned Tribunal has assessed the income of the injured at Rs.9,000/- per month and, therefore, that should be taken to be the income for all intents and purposes. He, therefore, prayed for reasonable enhancement. He also submitted that the

claimant had become totally unfit to earn any amount. The only issue before this Court is what is the amount of compensation to which the claimant is entitled.

The Tribunal has awarded amounts totally on the basis of conjectures without following any system and, therefore, this Court has been compelled to reassess the entire evidence.

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.

Applying the aforesaid principles, I now assess the compensation under different heads.

7. **Cost of treatment**:

The learned Tribunal has awarded Rs.77,715/- as cost of treatment based solely on the basis of the documents produced on record. I am of the opinion that in a case of this nature, all the documents may not have been kept and some extra amount must be awarded and, therefore, the claimant is held entitled to **Rs.80,000/-** for cost of medicines and treatment.

8. **Cost of transportation**:

The claimant has proved air tickets for Rs.69,175/-. He has also been awarded Rs.10,000/- for extra expenses and in my opinion, this is reasonable and the amount for transportation etc. is fixed at **Rs.80,000/-**.

9. **Attendant charges**:

Now comes the head of attendant charges. The learned Tribunal has awarded Rs.22,500/- for attendant charges and Rs.2,045/- for boarding and lodging at Kolkata. I propose to award a lump sum amount under this head. The claimant was hospitalized in Agartala for 7 days. The accident took place in the year 2008. The cost of one attendant at Agartala is assessed at Rs.250/- and the cost of two attendants at Rs.500/- and, therefore, for 7 days the cost of attendants works out to Rs.3,500/-. The claimant remained in Kolkata till 13.12.2008 and may have come back after a few days. He may not have come immediately after his discharge because he had to visit the hospital as an OPD patient also. Therefore, I propose to award attendant charges in Kolkata from 07.11.2008 to 20.12.2008, i.e. for 43 days. The cost of an attendant at Kolkata would be much higher because boarding and lodging would have to be included in this. The attendant's air fare has already been counted separately but in Kolkata even the cost of one attendant with his boarding and lodging is assessed at Rs.700/- per day and for 43 days, the cost of attendant works out to Rs.30,000/-. Therefore, total cost of attendant is assessed at Rs.33,500/- which is rounded off to **Rs.35,000/-**. The claimant shall not be entitled to any charges for stay in Tripura Bhavan etc. because those have been included in this.

10. **Loss of income**:

Now comes the issue of loss of income. To decide this issue, the first question is what was the income of the deceased. The claimant in his statement has stated that he was a businessman doing grocery work and he also had some landed property. However, there is no evidence worth the name on record to show what landed property was owned by the claimant. Was he owner of agriculture land or was he owner of landed house property, this has not been clarified. If he was owner of landed property, the said property continues to remain with him and the income from this does not get diluted because of his accident. Not a word has been said by the claimant or his witnesses as to what was this landed property. Next comes the issue of the certificate issued by the Sub-Divisional Magistrate (SDM). In my view, the certificate issued by the SDM is not worth the paper it is written on. How can the SDM assess the income of a businessman? How can the SDM assess the income of a person running a grocery shop? It is stated that he assessed the income on the basis of some inquiry. However, what is the material collected in the inquiry has not been shown to the Court. When claimants come to Court and claim compensation, it is their duty to prove their income in Court before the Motor Accident Claims Tribunal and they cannot rely upon certificates issued by SDM etc. who have no statutory authority to issue such certificates. A Revenue Officer has no authority or wherewithal to assess the income of a businessman. Can the SDM issue a certificate certifying the income of a lawyer? Obviously, the answer has to be "no". If the income is in dispute, the claimant must prove the income in accordance with law.

11. Having held so, this Court cannot lose sight of the fact that the claimant was aged about 35 years. He is admittedly running a grocery business because there is no cross-examination to this effect. From a business even in the year 2008, he could have easily earned Rs.200/- per day and, therefore, I assess the income at Rs.6,000/- per annum.

12. The learned Tribunal has not awarded any amount whatsoever to the claimant for loss of income. The claimant was in hospital for almost two months. He was under treatment after discharge from hospital under private doctors for a number of months and I assess the loss of income for 6(six) months and if his income is taken at Rs.6,000/- per month, then the loss of income works to **Rs.36,000/-**.

13. **Future loss of income**:

Next comes the issue as to what is the future loss of income. While assessing the future loss of income, future prospects will have to be taken into consideration and if 50% is added towards future prospects, the income has to be taken at Rs.9,000/- per month. Merely because the claimant has suffered 40% loss of disability would not mean that his loss of income is 40%. In Tripura, there is this unfortunate trend where Motor Accident Claims Tribunals do not do their job of assessing the damages, abdicate their duties and rely upon totally unreliable certificates issued by Magistrates and do not even consider what is the loss of income caused by the injuries.

14. Every disability causes some problems. Those problems affect a person differently according to the nature of his job. If a person is a labourer doing physical or manual work, then even a 30% or 40% disability may amount to 100% loss of income. On the other hand, the same injury if caused to a lawyer or a Judge may not even lead to 1% loss of income. The disability has to be related with the nature of the job.

15. As far as this case is concerned, the claimant led no evidence either of a doctor or even of his own evidence as to how the disability has actually affected him. He was running a grocery shop. He continues to run the grocery shop. His income cannot be reduced calculating the disability as the loss of income. Even a person on crutches can run a grocery shop. However, his efficiency is hampered. He cannot work as efficiently as before. According to this Court, the loss of income should be taken only at 20% of Rs.9,000/- and, therefore, the loss of income is assessed at Rs.1,800/- per month or Rs.21,600/- per year and since the

claimant was 35 years of age, the multiplier should have been 16 which works to **Rs.3,45,600/-**.

16. **<u>Pain and suffering</u>**:

Coming to the issue of pain and suffering, the learned Tribunal has awarded an absurdly low amount of Rs.5,000/-. To award only Rs.5,000/- to a person who has been hospitalized for 1½ months and has been under treatment for at least 4/5 months thereafter is like rubbing salt into his wound. Therefore, I enhance the award under the head of pain and suffering to **Rs.25,000/-**.

17. **<u>Future discomfort and loss of amenities in life</u>**:

Under the head of future discomfort and loss of amenities in life, the learned Tribunal has awarded only Rs.25,000/-. This also deserves to be enhanced. The claimant has been crippled because the disability certificate though termed as "temporary" shows that the leg of the claimant has been shortened by one inch. He will walk permanently with a limp. He cannot walk like a normal human being. He cannot run and play with his children. He is deprived of many pursuits in life which he could have followed as a normal human being. These factors have not at all been taken into consideration by the Tribunal. Keeping all these factors into consideration, I award him a sum of **Rs.75,000/-** under this head.

Keeping in view the aforesaid factors, I assess the total compensation at Rs.(80,000 + 80,000 + 35,000 + 36,000 +

3,45,600 + 25,000 + 75,000) = Rs.6,76,600/- (rupees six lakh seventy six thousand six hundred).

18. Accordingly, the appeal is partly allowed. The award of the learned Tribunal is modified and the compensation is reduced from Rs.7,82,635/- to Rs.6,76,600/-, i.e. by Rs.1,06,035/-. 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.

19. 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 8(eight) weeks from today after deducting/adjusting the amount, if any, already paid/deposited by them along with proof of such earlier deposit.

20. In view of the above discussion, there can be no enhancement of the compensation and the cross objection is accordingly dismissed.

21. Send down the lower court records forthwith.

CHIEF JUSTICE