

THE HIGH COURT OF TRIPURA
AGARTALA

MAC APP. NO.09 OF 2011

Shri Sailesh Das,
S/O. Late Shasan Lal Das,
Vill.-Kamariakhola,
P.O. & P.S.-Birganj,
Sub-Division-Amarpur,
District-South Tripura.

..... Claimant-Appellant.

- V e r s u s -

1. Shri Manik Acharjee,
S/O. Sudarshan Acharjee,
Hospital Road, Sub-Division-Amarpur,
P.O. & P.S.-Birganj,
District-South Tripura.
2. Shri Khokan Miah,
S/O. Jalil Miah of
Town Ranggang, Sub-Division-Amarpur,
P.O. & P.S.-Birganj, South Tripura.
3. National Insurance Company Limited,
Udaipur Branch, P.O. & P.S. R.K. Pur,
Udaipur, South Tripura,
Represented by the Branch Manager.

..... Respondents.

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant	: Mr. S.M. Chakraborty, Sr. Advocate, Ms. B. Chakraborty, Advocate.
For the respondent No.3	: Mr. P. Gautam, Advocate.
Date of hearing and delivery of judgment and order.	: 04.08.2015.
Whether fit for reporting	: NO.

JUDGMENT & ORDER (ORAL)

This appeal by the claimant for enhancement of
compensation is directed against the award dated 12-07-2010

delivered by the learned Motor Accident Claims Tribunal, South Tripura, Udaipur in case No. T.S.(MAC) 56 of 2009 whereby he awarded a sum of Rs.1,60,000/- in favour of the claimant along with interest @ 6% per annum.

2. The undisputed facts are that the claimant suffered a head injury in a motor vehicle accident. Due to this head injury he suffered loss of vision in one eye to the extent of 30%. He filed a claim petition under Section 166 of the Motor Vehicles Act (M.V. Act) claiming compensation and the Tribunal has awarded Rs.1,60,000/- under the following heads:-

Medical treatment including lodging, fooding and conveyance	:- Rs. 50,000/-
Pain & bodily suffering	:- Rs. 10,000/-
<u>Loss of earning capacity:-</u>	<u>Rs.1,00,000/-</u>
Total	:- Rs.1,60,000/-

3. At the outset, it may be noticed that the learned Tribunal has not followed the well settled principles relating to grant of compensation. No calculations have been made and lump sum figures have been awarded without even a sentence being written as to why this amount and not some other amount is being awarded. The figures 50,000/-, 10,000/- and 1,00,000/- could have been easily replaced by 5,00,000/-, 1,00,000/- and 10,00,000/- or by 5,000/-, 1,000/- and 10,000/- without adding or subtracting a word in the reasoning. That is not the way in which compensation has to be assessed. There are well settled principles

for assessment of compensation and these principles must be followed by all the Motor Accident Claims Tribunals.

4. 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.

5. Following the aforesaid principles, I now proceed to assess the compensation afresh because unfortunately the Motor Accident Claims Tribunal did not even care to consider the evidence or decide how he has come to the conclusions. The fact remains that the claimant remained admitted as an indoor patient in hospital from 09.8.2008 to 19.8.2008, i.e. for a period of 10(ten) days. He would have been attended upon by two attendants at least and even in the year 2008 the cost of one attendant is taken to be Rs.200/- per day, the cost of two attendants at Rs.400/- for

10 days comes to Rs.4,000/- and, therefore, he is awarded **Rs.4,000/-** as cost of attendants.

6. The medical evidence on record further shows that the claimant had to undergo a CT-Scan in Agartala. Thereafter, he was treated as an outdoor patient for a long period of time in Agartala till January, 2009. Since his condition did not improve, the claimant went to Guwahati to show himself to the doctors at Sri Sankaradeva Nethralaya on 13.11.2008. He also went to the Lions Eye Hospital at Silchar on 24.10.2008. He has also consulted the doctors at Silchar Medical College & Hospital at Silchar on 25.10.2008 and 15.06.2009. Thereafter, he went to the Gauhati Medical College & Hospital on 14.11.2008. He has now been assessed as having suffered loss of vision of 30% in one eye. As far as medical expenses are concerned, the vouchers placed on record are only for a sum of Rs.5,388/-. Even assuming that the claimant may not have kept the vouchers for some of the medicines and also keeping into consideration future cost of treatment, he is awarded **Rs.10,000/-** under the said head.

7. The claimant went to Silchar and Guwahati on a number of occasions. At least on four occasions he has been to these places. Each occasion must have cost him travelling and boarding expenses of at least Rs.2,500/- at the relevant time with one attendant and for four trips he is awarded **Rs.10,000/-** for transportation charges.

8. The claimant has not been awarded any amount for loss of income. The record shows that he was in constant treatment for at least 6(six) months after the accident. He could not have worked for six months. The claimant was aged between 42 to 45 years at the time of accident. He was an agriculturist and even in the year 2008 his income can easily be assessed at Rs.4,000/- per month and, therefore, for six months the loss of income is assessed at **Rs.24,000/-**.

9. The claimant has been awarded only Rs.10,000/- for pain and suffering. Keeping in view his nature of injuries, the length of treatment and the fact that he has not fully recovered, I award him **Rs.20,000/-** under the head of pain and suffering.

10. As far as loss of future income is concerned, the claimant has been awarded Rs.1,00,000/- without any calculation whatsoever. I have assessed the income of the claimant at Rs.4,000/- per month. The disability of 30% to one eye would not lead to loss of income of the same line. However, I am clearly of the view that the efficiency of the claimant even as a cultivator would be adversely affected by loss of vision and, therefore, I assess the loss at 10% or Rs.400/- per month, i.e. Rs.4,800/- per year. Since the claimant was aged between 40 to 45 years, multiplier of 14 is applied and the compensation works out to **Rs.67,200/-** under this head.

11. The claimant has not been awarded any amount whatsoever for disability and loss of amenities of life. He has

suffered a permanent disability. He has to live with loss of vision throughout the rest of his life and, therefore, he is awarded **Rs.50,000/-** under this head.

Therefore, the total compensation works out to Rs.(4,000 + 10,000 + 10,000 + 24,000 + 20,000 + 67,200 + 50,000) = Rs.1,85,200/- (rupees one lakh eighty five thousand two hundred).

12. In view of the above discussion, the appeal is allowed. The award of the learned Tribunal is modified and the compensation is enhanced from Rs.1,60,000/- to Rs.1,85,200/-, i.e. by Rs.25,200/-. Since the Insurance Company has already satisfied the award of the Tribunal, it is directed to deposit the enhanced amount of compensation along with interest @ 7.5% per annum from the date of filing of the claim petition till payment/deposit of the awarded amount 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.

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

14. Send down the lower court records forthwith.

CHIEF JUSTICE