

THE HIGH COURT OF TRIPURA
AGARTALA

MAC APP. NO.40 OF 2010

Smt. Ratna Kar,
W/O. Sri Manik Lal Kar,
C/O. Sri Rabindra Debbarma,
Of Village-Abhoynagar,
P.S.-East Agartala,
District-West Tripura.

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

- V e r s u s -

1. Abdul Razzak,
S/O. Lt. Maidhar Ali,
Village-Ranga Matia,
P.S.- Sonamura,
District-West Tripura.
(Owner of the vehicle No.TR-01-A-3172,
Commander Jeep).
2. The Divisional Manager,
Oriental Insurance Company Ltd.,
Central Road, Kaman Chowmuhan,
Agartala, West Tripura.
(Insurer of the vehicle No.TR-01-A-3172,
Commander Jeep).
Represented by its Divisional Manager.
3. Sri Baban Sarkar,
S/O. Subodh Sarkar,
Resident of Village-S.D. Mission Colony,
P.S.- Amtali, District-West Tripura.
(Owner of the vehicle No.TR-01-3814,
Commander Jeep).
4. The Divisional Manager,
National Insurance Company Ltd.,
42, Akhaura Road,
Agartala, Dist. West Tripura.
(Insurer of the vehicle No.TR-01-3814,
Commander Jeep).
Represented by its Divisional Manager.

..... **Opposite Party Respondents.**

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant	: None.
For the respondent No.2	: Mr. K. Bhattacharji, Advocate.
For the respondent No.4	: Mr. P. Gautam, Advocate.

Date of hearing and delivery of judgment and order. : 05.05.2015.

Whether fit for reporting : **NO.**

JUDGMENT & ORDER (ORAL)

This appeal for enhancement of compensation is directed against the award dated 18-07-2009 passed by the learned Motor Accident Claims Tribunal, Court No.3, West Tripura, Agartala in case No. T.S.(MAC) 212 of 2006 whereby he awarded a sum of Rs.1,07,680/- in favour of the claimant.

2. On 19-03-2015 none was present for the appellant. However, this Court was informed that counsel for the appellant is out of station in connection with her treatment and, therefore, the matter was adjourned for today. In the mean time, Ms. N. Guha, learned counsel for the appellant, has also received the paper book on 23-03-2015 but she is also not present today. The appeal is more than 5 years old and is, therefore, being decided on merits.

3. The claimant has filed this appeal for enhancement of compensation and that is the only issue involved in the case. The records reveal that the claimant remained admitted in hospital from 12-02-2005 to 13-04-2005, i.e. for 61 days. The learned Tribunal awarded her Rs.3,000/- towards purchase of medicines, Rs.9,760/- towards attendant charges, Rs.10,800/- for loss of income. The claimant had suffered a disability of 20% and has been awarded Rs.69,120/- for future loss of income, Rs.10,000/- for pain and suffering, Rs.5,000/- towards mental shock, i.e. a

total of Rs.1,07,680/-. The manner in which compensation has been awarded leaves much to be desired.

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. Applying the aforesaid principles, I now proceed to assess the compensation as follows:-

5. The claimant remained in hospital for 61 days. Keeping into consideration the problems existing in government hospitals, attendant is required round the clock and, therefore, two attendants would have been required to look after the claimant and the cost of each attendant even in the year 2005 would not be less than Rs.200/- per day, and not Rs.80/- per day as taken by the learned Tribunal. Therefore, the loss on account of attendants @

Rs.400/- per day works out to Rs.24,400/-, which is rounded off to **Rs.25,000/-**.

6. The claimant is a poor labourer and has not produced any document to show that he spent any amount on his treatment. He may have got treatment free of cost in the hospital. Even then he would have spent a large sum of money on his treatment. The discharge certificate shows that the claimant had suffered multiple injuries and fracture of the left leg. Keeping into consideration all these factors, I assess the medical expenses at **Rs.10,000/-**.

7. The learned Tribunal has taken the income of the claimant at Rs.60/- per day which I feel is very much on the lower side. Even in the year 2005, a labourer would not earn less than Rs.150/- per day or Rs.4,500/- per month and, therefore, the loss for 6(six) months is assessed at **Rs.27,000/-**.

8. Next comes the question with regard to the loss of future earning capacity. As far as future disability is concerned, the learned Tribunal relying upon a disability certificate which appears to have been returned to the claimant has awarded a sum of **Rs.69,120/-** as loss of income. The certificate is not even on record and even along with the appeal no such certificate has been filed. Therefore, the assessment made by the learned Tribunal calls for no enhancement.

The amount awarded for pain and suffering, mental shock etc. are reasonable and call for no interference.

Therefore, the total compensation works out to Rs.(25,000 + 10,000 + 27,000 + 69,120 + 10,000 + 5,000) = Rs.1,46,120/- (rupees one lakh forty six thousand one hundred twenty).

9. In view of the above discussion, the appeal is partly allowed. The award of the learned Tribunal is modified and the compensation is enhanced from Rs.1,07,680/- to Rs.1,46,120/-, i.e. by Rs.38,440/-. Both the Insurance Companies are liable to pay the enhanced amount in equal shares along with interest @ 7.5% per annum on the enhanced amount from the date of filing of the claim petition till payment/deposit of the amount. Since the Insurance Companies have already satisfied the award of the Tribunal, they are directed to deposit their share of enhanced 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.

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

11. Send down the lower court records forthwith.

CHIEF JUSTICE