

THE HIGH COURT OF TRIPURA
AGARTALA

MAC APP. 33 of 2011

Sri Harekrishna Sarkar,
S/O Late Aswini Sarkar,
Village – Sadhupara, Champaknagar,
P.S. – Jirania, P.O. - Birendranagar,
District – West Tripura.

..... *Appellant*

- Vs. -

1. Sri Pramode Ranjan Deb,
S/O. Suresh Ch. Deb,
Resident of Village - Sonamura Town,
P.O. – Sonamura, P.S. – Sonamura,
District – West Tripura. (Owner of the
Vehicle bearing Registration No. TR-01-3136, Jeep).

2. The Divisional Manager,
National Insurance Company Ltd.,
Akhaura Road, P.O. – Agartala,
P.S. - West Agartala,
District – West Tripura.
(Insurer of the vehicle bearing Registration
No.TR-01-3136, Jeep).

..... *Respondents*

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant : None.

For the respondent : Mr. P. Majumder, Advocate.
No.1.

Date of hearing & : 23.07.2015.
delivery of
Judgment & order

Whether fit for : No.
reporting

JUDGMENT & ORDER (ORAL)

This appeal by the claimant has been filed for enhancement of compensation.

2. Briefly stated the facts of the case are that the claimant filed the claim petition under Section 166 of the Motor Vehicles Act (M.V. Act) alleging that on 14.06.2003 at about 4.00 p.m. he was standing on the side of the road. At that time, a jeep bearing registration No. TR-01-3136 came from Teliamura side and dashed against the appellant. He sustained injuries on both his legs. The claimant was taken to the hospital and was discharged from the hospital on 15.09.2003. It was also alleged that he was again admitted hospital on 10.11.2003 and discharged on 22.11.2003. For the third time, the claimant was admitted in hospital on 26.08.2004 and discharged on 13.09.2004. It is alleged that the claimant was a labourer.

3. The insurance company and the owner contested the award. The learned Tribunal after contest held that the claimant was entitled to Rs.1,14,000/- as compensation along with interest @ 9% per annum from the date of restoration of the claim petition on 21.11.2006 till the date of payment. Thereafter, the claimant also filed a Review Petition claiming that he had obtained a disability certificate after the award had been announced and that should be taken into consideration and the award be enhanced. This Review Petition was rejected and thereafter, the petitioner

filed CRP 81 of 2009 in this Court, which was disposed of on 27.02.2009 with liberty reserved to the petitioner to take recourse to action under the M.V. Act.

4. The claim petition was filed on 03.09.2003 and the claimant-petitioner after filing the claim petition took no steps on 26.03.2004, 28.04.2004 and on 06.07.2004, the claim petition was dismissed for non-prosecution. Thereafter, the claim petition was restored and taken up again on 07.02.2005. The claimant again did not take steps to serve the opposite parties from 07.02.2005 till 12.05.2006 and the learned trial Court found that seven adjournments have been granted and therefore, the case was dismissed for non-prosecution on 12.05.2006.

5. The claimant filed a petition in the Gauhati High Court, Agartala Bench being CRP 55 of 2006 wherein the High Court observed that though there are apparent laches are attributable to the claimant petitioner, however, in the interest of justice, another opportunity was granted to the petitioner to put forth his case and the petitioner was directed to appear before the MACT on 18.12.2006. Relevant portion of the order reads as follows:-

"...Though apparent laches are attributable to the petitioner, however, in the interests of justice, another opportunity is necessary to be afforded to the petitioner to pursue his claim. Accordingly, the impugned order dated 12.05.2006 is hereby set aside and the petitioner is directed to appear before the learned M.A.C.T. would dispose of the matter in accordance with law on the basis of available materials on record. It is hereby directed that the petitioner would appear before the learned M.A.C.T. on 18.12.2006 along with all relevant documents in support of

his claim and shall not take unnecessary adjournments except at the pleasure of the learned Tribunal under compelling circumstances. If the adjournment is being sought for unnecessarily, then cost may be imposed and the learned Tribunal shall expedite the disposal of the claim petition within a reasonable time, preferably within a period of three months on the available documents and on the merits of the case.”

6. On 18.12.2006, the petitioner was supposed to be present along with all the documents in support of his claim and was not to take any adjournments. On that date, the claimant did not produce any documents, but only filed requisites for service of the defendants, who were served on 03.02.2007. Thereafter, time was sought by the opposite party to file written statement and the case fixed for *ex parte* evidence of the petitioner on 13th April, 2007, when the petitioner for the first time submitted certain documents. The *ex parte* order was set aside on the said date and the National Insurance Company was ordered to be impleaded as a party. On 7th June, 2007, learned counsel for the claimant-petitioner was absent and the Court noted that the High Court had directed the Tribunal to dispose of the claim petition within a period of 3 months. The Tribunal found that sufficient opportunity had been given to the petitioner to appear before the Tribunal, but he had submitted no medical certificate and therefore, the prayer made by written application for grant of time was rejected. The case was then fixed for 12th June, 2007 and this judgment was passed. On 06.01.2009, the claimant filed an application for release of the amount and the same was released in his favour.

7. The claimant filed a Review Petition for reviewing the judgment dated 12.06.2007. This Review Petition was filed on 26.06.2007 and was rejected on 07.08.2008. Thereafter, the petitioner filed the Revision Petition 81 of 2009, which was disposed of on 27.10.2009 with liberty reserved to the petitioner to take appropriate action. Thereafter, the present appeal was filed on 7th April, 2011 against the judgment and award dated 12.06.2007, but there is no challenge to the order passed in the Review Petition in this appeal. The delay in filing the appeal was condoned on 10.06.2011.

8. The main ground raised in the petition is that the petitioner has received 40% permanent disability and since he is a labourer he is totally unable to earn any amount. I have gone through the disability certificate and I find that in the disability certificate, the disability which has been given is "post traumatic stiffness of Rt ankle with unsteady gait" and the extent of disability is 40%. It is more than obvious that this disability certificate is not in respect of the entire body, but only in respect of the right limb since the injury is only to the ankle and not even to the entire body. There is no doubt that the claimant was very negligent in prosecuting his case and as pointed out earlier, on many dates, the learned counsel was not even present. Even today, the learned counsel is not present. However, I proceed to decide the case on

merits since a petition under Section 166 of the M.V. Act must be decided on merits and should not be dismissed in default. While the claimant may have been negligent, he cannot suffer for the mistakes of his counsel, who did not appear in the Court on many occasions. Therefore, I proceed to reassess the claim in accordance with well settled principles.

9. The principles with regard to determination of just compensation contemplated under the Motor Vehicles Act, 1988 are well settled. Injuries cause deprivation to the body which entitles the claimant to claim damages. The damages may vary according to the gravity of the injuries sustained by the claimant in an accident. On account of the injuries, the claimant may suffer consequential losses such as, (i) loss of earning; (ii) expenses on treatment which may include medical expenses, transportation, special diet, attendant charges etc., (iii) loss or diminution to the pleasures of life by loss of a particular part of the body, and (iv) loss of future earning capacity. The damages can be pecuniary as well as non-pecuniary, but all have to be assessed in rupees and paisa.

10. From the evidence on record, it is apparent that the claimant remained admitted in G.B. hospital on three occasions. He remained admitted in hospital from 14.06.2003 to 15.09.2003 i.e. 93 days at the first instance. On his discharge he was asked to again come to OPD and he was admitted from 10.11.2003 to

22.11.2003 i.e. for 12 days. Finally, he was again admitted on 26.08.2004 till 13.09.2004 i.e. for 18 days. Therefore, his total period of hospitalization is 123 days. The accident took place in the year 2003 and at that time cost of one attendant is taken at Rs.150/- per day and the cost of two attendants at Rs.300/- per day and therefore, the claimant is awarded Rs.36,900/-, which is rounded off to **Rs.37,000/-** for his attendant charges alone.

11. The claimant submitted cash memos to the extent of Rs.7,213/- only, but the learned Tribunal awarded him Rs.50,000/- which included the attendant charges etc. Since I am considering the attendant charges separately, I award the claimant **Rs.15,000/-** for medicines. The claimant is also held entitled to **Rs.5,000/-** for transportation charges on the various visits to the hospital. The learned Tribunal has come to the conclusion that the income of the claimant was Rs.3,000/- per month, which is very reasonable and has awarded **Rs.54,000/-** for loss of income. This is also upheld. The learned Tribunal has not awarded any amount to the claimant for future loss of income. The claimant was a labourer. Though the disability is stated to be 40% and it is claimed that he has become totally unable to work, I am unable to accept this plea of the claimant. Even if the claimant is a labourer he could continue work with this disability though his earning capacity would definitely be hampered. This 40% disability is not in relation to the body, but only in relation to the right limb or

ankle and therefore, I assess the loss of earning capacity at 15%. The income of the claimant has been assessed at Rs.3,000/- and 50% is added for future prospects and the income is taken at Rs.4,500/- per month and 15% of that works out to Rs.675/- per month or Rs.8,100/- per year. Since the claimant was 31 years of age, the relevant multiplier would be 16 and the compensation works out to Rs.1,29,600/- which rounded off to **Rs.1,30,000/-**. In addition thereto the claimant is held entitled to **Rs.30,000/-** for pain and sufferings. Since the claimant admittedly remained in hospital for more than 100 days and remained under treatment for more than a year. The claimant has suffered a permanent disability to his ankle and cannot walk properly. Therefore, he is awarded **Rs.25,000/-** for future discomfort and loss of amenities of life. Therefore, the total award works out to **Rs.2,96,000/-** (Rs.37,000/- + Rs.15,000/- + Rs.5,000/- + Rs.54,000/- + Rs.1,30,000/- + Rs.30,000/- + Rs.25,000/-). The award is enhanced from Rs.1,14,000/- to Rs.2,96,000/-, i.e. by **Rs.1,82,000/-** (Rupees One lakh eighty two thousand).

12. Coming to the question of interest, I find that the amount awarded by the Tribunal has already been paid by the insurance company and now comes the question of interest on the enhanced amount. Normally, this Court awards interest from the date of filing of the petition, but this is a case where twice the claim petition was dismissed in default. Thereafter, it was restored

and the claimant was told to produce all his documents by a particular date. He did not do so and therefore, he was awarded a lesser amount. He filed a Revision Petition, which was rejected in the year 2009 with liberty to file an appeal, but the appeal was filed only in the year 2011. Therefore, I award him interest only on the enhanced amount of **Rs.1,82,000/-** from the date of filing of the appeal i.e. 7th April, 2011 till date of payment/release of the amount @ 9% per annum.

13. 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.1,14,000/- to Rs.2,96,000/-, i.e. by **Rs.1,82,000/-** (Rupees One lakh eighty two thousand) and on this enhanced amount, the claimant shall also be entitled to interest @ 9% per annum from the date of filing of the appeal i.e. on 7th April, 2011 till payment of the amount.

14. Send down the lower court records forthwith.

CHIEF JUSTICE

sima