

THE HIGH COURT OF TRIPURA
AGARTALA

MAC APP. 39 OF 2011

Sri Mihir Majumder,
S/O. Sri Usha Ranjan Majumder,
Village & P.O. Taraninagar,
P.S.-Kumarghat,
District-North Tripura.

..... Claimant-Appellant.

- V e r s u s -

1. Sri Ranjit Debnath,
S/O. Sri Girindra Debnath,
Village-Emrapassa,
P.S.-Kumarghat,
District-North Tripura.
(owner of the vehicle No.TR-02-B-2038).
2. Sri Arjun Majumder,
S/O. Late Tikendra Majumder,
Village-Taraninagar,
P.S.-Kumarghat,
District-North Tripura.
(Driver of the vehicle No.TR-02-B-2038).
3. Branch Manager,
Oriental Insurance Company Limited,
Dharmanagar Branch, Rajbari,
P.S.-Dharmanagar,
District-North Tripura.
(Insurer of the offending vehicle No.TR-02-B-2038).

..... Respondents.

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant : Mr. P. Saha, Advocate.

For the respondent No.3 : Mr. K. Bhattacharji, Advocate.

Date of hearing and
delivery of judgment
and order. : 18.06.2015.

Whether fit for reporting : **NO.**

JUDGMENT & ORDER (ORAL)

This is an appeal for enhancement of compensation filed by the claimant and is directed against the award dated 31-01-2011 passed by the learned Motor Accident Claims Tribunal (2nd), North Tripura, Kailashahar in case No. T.S.(MAC) 10 of 2010 whereby he awarded a sum of Rs.11,300/- in favour of the claimant under the following heads:-

Medical expenses :- Rs. 3,300/-

Cost of conveyance and
Hotel expenses :- Rs. 5,000/-

Pain and suffering :- Rs. 3,000/-

Total :- Rs.11,300/-

2. Sri P. Saha, learned counsel for the appellant urges that the amount of compensation is extremely low and not at all in consonance with the well settled principles of grant of compensation in motor accident cases.

3. 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.

4. I am of the considered view that the learned Tribunal was totally unaware of the aforesaid principles while assessing the compensation and, therefore, I now proceed to assess the compensation applying the aforesaid principles under the various heads.

5. The evidence on record shows that the claimant immediately after the accident was taken to the RGM Hospital, Kailashahar and he was discharged on the same day itself. The diagnosis was that it was a head injury and the discharge certificate which is on record as Exhibit-5 shows that he was referred to the AGMC & GBP Hospital, Agartala for future treatment. The case of the claimant is that it was not convenient for him to come to Agartala and he proceeded to Silchar Medical College & Hospital, Silchar in Assam and he was admitted there on 13.01.2010 and he was discharged from the hospital on 15.01.2010. His treatment was conservative in nature. The claimant had suffered injuries in a road traffic accident and he had wound over the head. He had a serious head injury. Though in the discharge certificate issued by the RGM Hospital, Kailashahar reference is only made to a head injury, when the petitioner went

to Silchar and was examined on 13.01.2010, an X-ray was conducted on his hand and injuries were found on his right hand also. The injuries are not serious in nature. The claimant was under treatment for only 3 days and, therefore, compensation is assessed as follows:-

6. **Attendant charges:**

The claimant was admitted in Kailashahar for one day and was in Silchar for 3 days. The cost of one attendant is taken at Rs.500/- per day and for 4 days, it works out to **Rs.2,000/-**.

7. **Transportation expenses:**

The claimant not only had to go for his treatment at Kailashahar but there is evidence to show that thereafter also he was treated by private doctors. I am of the considered view that keeping in view the nature of the injuries and the fact that as per the discharge certificate of Kailashahar Hospital, the petitioner was totally unconscious. He could not have been taken to Silchar in a bus as has been assessed by the learned Tribunal. He must have gone in an ambulance or a private vehicle and, therefore, I award **Rs.5,000/-** for transportation expenses.

8. **Medical expenses:**

As far as medical expenses are concerned, the claimant himself claimed that he had spent Rs.3,300/- on the basis of the cash vouchers. Some vouchers may not have been kept. I accordingly award **Rs.5,000/-** for medical expenses.

9. **Pain and suffering:**

The claimant has been awarded only Rs.3,000/- for pain and suffering. Keeping in view the nature of his injuries, I award him **Rs.7,000/-** under this head.

10. **Loss of income:**

The claimant has not been awarded any amount for loss of income. He remained in hospital for 4 days and even after he was discharged from the hospital, he could not have started working immediately. He must have remained without work for at least one month. The claimant has not proved his income in a proper manner but even if he was a daily waged worker in the year 2010 he could not have been earning less than Rs.4,500/- per month and, therefore, I award him **Rs.5,000/-** for one month's loss of income.

11. As far as future loss of income is concerned, the counsel for the petitioner relies upon the disability certificate. The disability certificate has to be read as a whole. The disability is post traumatic weakness of the right hand. The disability has been assessed at 20% but obviously this disability is in the context of the right hand only and this 20% cannot be disability to the entire body. Furthermore, the disability is not in the nature of a deformity but only assessed as weakness. The disability, in my view, may have minimal impact on the earning capacity of the injured who continues to be in employment and, therefore, no amount is awarded to him for future loss of income. However, the fact

remains that the claimant has suffered a permanent disability and this weakness is going to affect him for the rest of his life. Therefore, he is awarded **Rs.15,000/-** for loss of amenities and future discomfort in life.

Therefore, the total compensation works out to Rs.(2,000 + 5,000 + 5,000 + 7,000 + 5,000 + 15,000) = Rs.39,000/- (rupees thirty nine thousand).

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.11,300/- to Rs.39,000/-, i.e. by Rs.27,700/-. On the amount of compensation so awarded, the claimant shall also be entitled to interest @ 7.5% per annum from the date of filing of the claim petition till payment/deposit of the awarded amount. 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 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.

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

14. Send down the lower court records forthwith.

CHIEF JUSTICE