THE HIGH COURT OF TRIPURA
A G A R T A L A
MAC App. No. 44 of 2011

Appellant :

The United India Insurance Co. Ltd.
Represented by its Divisional Manager, Agartala Division, Old RMS Chowmuhani, P.O. Agartala, P.S. West Agartala, West Tripura Dist. (Insurer of Maruti Van No. TR-01-J-0378).

By Advocate :

Mr. P. Gautam, Adv.

Claimant-Respondent :

1. Shri Netai Ghosh,
S/o. Late Nani Gopal Ghosh,
Resident of Bankumari, P.O- Jogendranagar, P.S- East Agartala, West Tripura District.

By Advocate :

Mr. B. Majumder, Adv.

Owner-Respondent :

2. Mrs. Kabita Dey (Rakshit),
W/o. Shri Swapan Kr. Dey, Resident of Gadumiah Masjid, Shibnagar, P.O- Collage Tilla, P.S- East Agartala, Dist. West Tripura, (Owner of Maruti Van No. TR-01-J-0378).

By Advocate :

None.

B E F O R E
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

Date of hearing &
Judgment & Order : **17th August, 2015.**

Whether fit for reporting :

Yes	No
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JUDGMENT & ORDER (ORAL)

This appeal by the insurance company is directed against the award dated 22.12.2010 passed by the learned Motor Accident Claims Tribunal, West Tripura, Agartala in TS(MAC) No.129 of 2009 whereby the Tribunal has awarded a sum of Rs.11,71,968/- in favour of the claimant along with interest @ 6% from the filing of the claim petition under the following heads:

(i) Cost of medicines	= Rs.1,64,938/-
(ii) Cost of transportation	= Rs. 85,130/-
(iii) Attendant charges for 29 days	= Rs. 2,900/-
(iv) Loss of future income	= Rs.8,64,000/-
(v) Pain and suffering and Discomfort as non pecuniary damages	= Rs. 50,000/-
(vi) Incidental cost(taxi fare, Auto fare, bus fare and telephone bills)	= Rs. 5000/-
	Total : Rs.11,71,968/-

[2] 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.

[3] Applying the aforesaid principles I now proceed to assess the compensation under the different heads.

[4] From the evidence on record it is apparent that the claimant remained under treatment at Agartala from 22.03.2008 to 01.04.2008 for 11(eleven) days. During this period he would have required two attendants and the cost of one attendant is taken at Rs.200/- per day and for 11(eleven) days the cost of attendants at Agartala works out to Rs.4400/-. In addition thereto at Kolkata the claimant remained in hospital for 18(eighteen) days. There the attendant would not only have to look after the patient but even the boarding, lodging of the attendant has to be taken into consideration. I assess the cost of one attendant at Kolkata at Rs.750/- per day and for 18(eighteen) days it works out to Rs.13,500/-. Therefore, the total cost of attendants works out to Rs.17,900/- which is rounded off to Rs.18,000/-.

[5] As far as medical expenses are concerned the claimant produced vouchers for Rs.1,64,938/-. Keeping in view the nature of treatment it can be reasonably assumed that some other amounts may have been expend and therefore, I award Rs.1,80,000/- under this head.

[6] With regard to transportation, the claimant has been awarded Rs.85,130/-. In addition thereto, the claimant must have spent money for taxis and local transportation and, therefore, he is awarded a sum of Rs.90,000/- under this head.

[7] The claimant remained admitted in hospital for 23(twenty three) days and I award him Rs.25,000/- for pain and suffering.

[8] The claimant had suffered a permanent disability. The disability certificate is on record and the disability certificate states post traumatic stiffness of right shoulder, wrist and hand and the disability has been assed at 40%. It is more than obvious that this disability is not in relation to the entire body. It is only in relation to the right arm. The main bone of contention is whether this disability is such that it would not permit the driver to drive a vehicle. The only reasoning given by the learned Tribunal is that since the driver is suffering from post traumatic shoulder, wrist and right hand he has lost 100% capacity of driving in the future. I fail to understand how the Tribunal came to such a finding. There is no medical evidence on record to support this finding.

[9] The Apex Court in ***Raj Kumar Vrs. Ajay Kumar and Another : (2011) 1 SCC 343*** has clearly held that where the party wants to prove that the disability which it has suffered has caused it 100% disability then the doctor must be examined in Court to prove, what is the nature of disability and what is the extent of disability? The relevant observations of the Supreme Court are as follows:

> ***"9. The percentage of permanent disability is expressed by the doctors with reference to the whole body, or more often than not, with reference to a particular limb. When a disability certificate states that the injured has suffered permanent disability to an extent of 45% of the left lower limb, it is not the same as 45% permanent disability with reference to the whole body. The extent of disability of a limb (or part of the body) expressed in terms of a percentage of the total functions of that limb, obviously cannot be assumed to be the extent of disability of the whole body. If there is 60% permanent disability of the right hand and 80% permanent disability of left leg, it does not mean that the extent of permanent disability with reference to the whole body is 140% (that is 80% plus 60%). If different parts of the body have suffered different percentages of disabilities, the sum total thereof expressed in terms of the permanent disability with reference to the whole body, cannot obviously exceed 100%.***
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> ***11. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of***

> ***earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that the percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation (see for example, the decisions of this Court in Arvind Kumar Mishra v. New India Assurance Co.Ltd. [(2010) 10 SCC 254] and Yadava Kumar v. National Insurance Co. Ltd. [(2010) 10 SCC 341].***
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> ***13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.***
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> ***15. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may."***

These principles have not been taken into consideration by the learned MACT. It is by now well settled that it is for the claimant to prove how the disability has affected his earning capacity. The mere self serving statement of the claimant will not be sufficient. He should have examined the doctor to show what he could do and what he could not do. This Court can also take judicial notice of the fact that mere stiffness in the shoulder and the hand is not sufficient to hold that a person is incapable of driving a vehicle. Stiffness occurs due to many causes and even if it is relatable to the accident it cannot be said that the stiffness has resulted in 100% disability. While assessing loss of earning capacity, the Courts also must take into consideration whether a man has become totally incapable of earning or not? Assuming, for the sake of argument that the claimant is unable to drive, he has not become incapable of earning any amount whatsoever. He can still work. He may work as a labourer. He may do other work but it is not understandable how it can be said that his loss of earning capacity is 100%.

[10] I, therefore, proceed to decide the matter by taking the loss of earning capacity at 40% which is equal to the disability. Therefore, the amount payable under this head comes out to Rs.3,45,600/- (Rs.4500 x 12 x16 x 40 ÷ 100). The claimant has not been awarded any amount for future discomfort, loss of amenities of life. Keeping in view the serious nature of the disabilities, he is awarded Rs.50,000/- under this head.

The total compensation is, therefore, works out to Rs.(18,000/- + 1,80,000/- + 90,000/- + 25,000/- + 3,45,600/- + 50,000/-) = Rs.7,08,600/-.

[11] In view of the above discussion, the appeal is allowed. The award of the learned Tribunal is modified and the compensation is reduced from Rs.11,71,968/- to Rs.7,08,600/-. The claimant shall also be entitled to interest on the modified amount of compensation i.e. Rs.7,08,600/- @ 9% per annum from the date of filing of the claim petition till deposit of the amount. The insurance company is directed to deposit the modified amount of compensation along with proportionate interest thereupon in the Registry of this Court within four months from today. Obviously, the insurance company shall be entitled to adjust the amount(s), if any, which it has already paid or deposited.

[12] The appeal is disposed of in the aforesaid terms. No order as to costs.

Send down the lower Court records forthwith.

CHIEF JUSTICE