

THE HIGH COURT OF TRIPURA
AGARTALA

MAC APP. NO.48 OF 2011

Sri Rajat Nandi Majumder,
S/o Sri Pritesh Nandi Majumder,
Resident of Banamalipur,
Laxmi Narayan Bari Road,
Agartala, West Tripura.

..... Appellant.

- V e r s u s -

1. Sri Sudhangshu Ranjan Datta,
S/o Sri Subodh Chandra Datta,
Resident of Gangail road, Melarmath, Agartala,
(Owner of vehicle bearing No.TR01-K-0564).

2. The national Insurance Company Ltd.,
Akhaura Road, Agartala,
(Insurer of vehicle bearing No.TR01-K-0564).

..... Respondents.

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant : Mr. B N Majumder, Advocate,
Mr. R Saha, Advocate.

For

Respondent No.1 : Mr. P Dutta, Advocate.

Respondent No.2 : Mr. S Lodh, Advocate.

Date of hearing & Judgment: 22.7.2015.

Whether fit for reporting : **NO.**

JUDGMENT & ORDER (ORAL)

This appeal for enhancement of compensation has been filed by the claimant and is directed against the award, dated 7th March, 2011 passed by the learned Motor Accident Claims Tribunal, West Tripura, Agartala, in Case No.TS(MAC)281 of 2007 whereby the learned Tribunal awarded a sum of Rs.15,000/- along with interest as compensation in favour of the claimant-appellant.

2. It is not disputed that the claimant received injuries while travelling in a car bearing Registration No.TR01-K-0564 at Jawai hills near Shillong. He was immediately taken to the hospital at Jawai but there is no record of the said hospital available. Thereafter, the claimant was taken to the Woodland Hospital, Shillong and spent Rs.3,862/- there.

3. He is a resident of Agartala and came back to Agartala by taking a flight from Gauhati. He had an injury in the eye and after his return to Agartala he decided to go to Chennai for his treatment. He went to Chennai on 1st June, 2006. There was operation performed on the 'cornea'. He was discharged from the hospital on 3rd June, 2006 but had to remain in Chennai till 5th June, 2006 in connection with his treatment. He was asked to come back to the hospital at Chennai on 23rd August, 2006. He again had to go to Chennai.

4. The learned Tribunal awarded only Rs.15,000/- out of which Rs.10,000/- for his treatment and Rs.5,000 for pain and suffering. The learned Tribunal held that the claimant is not entitled to any amount for the treatment at Chennai because he had gone without reference to the hospital at Chennai and had not shown that this treatment was not available at Agartala. I am not at all in agreement with the learned Tribunal in this regard. It is for the patient to decide where he wants to get treatment. Unless it is shown that the claim is highly exorbitant or that the injury was so minor that there was no cause to go outside the state, it cannot be said by the Court or by the insurance company that the patient had

no right to go outside the state. This court can take judicial notice of the fact that even today the medical facilities available in the State of Tripura are very primitive and even for the minor ailments most patients go to Gauhati, Kolkata, Hayderabad, Vellore, Chennai etc. for treatment. The accident of the victim cannot be put on any different footing. He also has the same rights.

5. The injury was to the eye and a person who has an eye injury would want to get best care taken and 'Shakar Netralaya' is one of the most renowned eye hospitals in the country. It is not an expensive hospital but it is one of the best eye hospitals. On the first occasion the claimant spent Rs.11,500/- at Chennai. The total medical expenses proved in this regard are Rs.15,362/-. The claimant must also have to spend some more amounts on his subsequent two visits to Chennai for medical treatment etc. He must have also spent some amount at Jawai and therefore, I award him **Rs.20,000/-** under head of hospitalization and medication alone.

6. For the first visit to Channai I am of the opinion that the claimant would be entitled to take an attendant with him and therefore, he is awarded a sum of Rs.25,000/- for his and his attendant's ticket from Agartala to Chennai and for the return journey partly performed by air and partly by train he is allowed Rs.8,000/- i.e. **Rs.33,000/-** in all. He is also allowed **Rs.1,556/-** for his journey from Gauhati to Agartala. For the subsequent two visits I only permit one ticket for one person because this was not such an injury that he had to take an attendant and if he took an

attendant that was his own free will. Therefore, for these two visits I award him **Rs.10,000/-** in all.

7. The other issue is that the claimant has not been awarded any amount for loss of income. I do not believe that the claimant remained absent from duty for 97 days due to the illness because even in the medical certificates proved on record it is not said that the patient has been advised bed rest or is unfit to perform duties. Therefore, I grant him only reasonable period for his three visits to Chennai and his treatment at Gauhati and the total period comes to about 20 days. His salary was Rs.17,559 and therefore he is awarded **Rs.12,000/-** approximately for loss of income

8. Coming to the head of pain and suffering the amount of Rs.5,000/- as awarded by the learned Tribunal is very much on the lower side. Therefore the claimant is awarded **Rs.10,000/-** under this head.

As such, the total compensation works out to Rs.(20,000 + 33,000 + 1,556 + 10,000 + 12,000 + 10,000/-) = Rs.86,556/- which is rounded off to **Rs.87,000/- (Rupees eighty seven thousand only).**

9. 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.15,000/- to Rs.87,000/- i.e. by Rs.72,000/-. 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. The insurance company has already satisfied the award and, therefore, it is directed to deposit the enhanced amount of Rs.72,000/- along with interest in the Registry of this Court within 8(eight) weeks from today.

10. The appeal is disposed in the aforesaid terms. Send down the LCRs forthwith.

CHIEF JUSTICE