

THE HIGH COURT OF TRIPURA
AGARTALA

MAC APP. 56 of 2011

Sri Muklesh Miah,
S/O. Late Satter Miah,
Resident of Village – Gainama,
P.O. & P.S. – Chailengta,
District – Dhalai.

Presently residing at –
Abhoynagar, Agartala,
P.S. – East Agartala,
District – West Tripura.

..... *Appellant*

- Vs. -

1. Sri Pritish Baul,
S/O Mr. Sudharshan Baul,
Resident of Village – Gainama,
P.O. & P.S. – Chailengta,
District – Dhalai.

2. The Oriental Insurance Company Ltd.,
Dharmanagar Branch, Rajbari,
P.O. – Dharmanagar, Dharmanagar,
District – North Tripura.

..... *Respondents*

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant : None.

For the respondent : Mr. P. Gautam, Advocate.
No.2.

Date of hearing & : 13.10.2015.
delivery of
Judgment & order

Whether fit for : No.
reporting

JUDGMENT & ORDER (ORAL)

This appeal by the claimant filed for enhancement of compensation is directed against the award dated 21.03.2011 delivered by the learned Motor Accident Claims Tribunal (Court No.3), West Tripura, Agartala in Case No. T.S. (MAC) 450 of 2009.

2. The claimant suffered fracture injury of the ankle and his disability was assessed temporarily for a period of 5 years at 50%.

3. On 19.06.2015, this Court had passed the following order:-

"The learned Tribunal while assessing the compensation has relied upon the disability certificate issued by the Disability Board which comprised of the Chief Medical Officer, Dhalai District, Ambassa on 23.10.2009 as well as the Rehabilitation Specialist (Locomotor), Member of the Disability Board at Dhalai. This disability certificate has been issued on 23.10.2009. The nature of disability is shown to be trauma post accident with stiffness of right ankle. The extent of disability has been assessed at 50%. No doctor has been examined before the trial Court. The compensation will have to be assessed by seeing what is the nature of disability and how the disability has affected the petitioner.

The Registrar (Judicial) of this Court is directed to send a copy of this certificate which is on the lower court file to the Chief Medical Officer, Dhalai District, Ambassa. This officer will inform the Registrar within three days of the receipt of this letter the names of the doctors who are the Chief Medical Officer on 23.10.2009 as well as the name of the Rehabilitation Specialist (Locomotor) who has signed this certificate.

Amputation below the knee as per the Workmen's Compensation Act leads to 50% loss of earning capacity. Therefore, I fail to understand how the doctor could have assessed the disability at 50% in respect of a fracture to the ankle which has healed and which has only resulted in stiffness.

The Registrar (Judicial) is directed to send this letter immediately and the Chief Medical Officer, Dhalai will submit the names of the doctors to this Court within one week thereafter.

List this matter on 10.07.2015."

4. Thereafter, the doctor has sent his explanation which is virtually no explanation in the eyes of law. He has repeated what is stated in the certificate but has not been able to explain how stiffness of the ankle can amount to 50% disability to the entire body. The injury has caused some stiffness of the right shoulder. This disability by no stretch of imagination can cause disability to the extent of 50% to the entire body. The loss of 50% can be to the respective portion of the limbs i.e. 50% disability of the right ankle and 50% disability of the right shoulder. The doctor even now has been unable to state what work the claimant can do and what was the claimant cannot do. The learned Tribunal had assessed the compensation by taking the disability at 50% for the entire body even though for a total period of 5 years. In my view, the loss of earning capacity in a case of this nature would not be more than 10% and even if a much higher multiplier was applied the compensation would be less than what has been awarded by the learned Tribunal.

5. Therefore, I find no merit in the appeal which is, accordingly, dismissed. No order as to costs.

6. Send down the lower court records forthwith.

CHIEF JUSTICE

sima