

THE HIGH COURT OF TRIPURA
AGARTALA

MAC APP. 59 OF 2011

Sri Rakesh Poddar,
S/O. Lt. Raiharan Podder,
Of Village & P.O.-Manubazar,
P.S.-Manubazar,
District-South Tripura.

..... **Claimant-Appellant.**

- V e r s u s -

1. Smt. Shilpi Majumder (Dey),
W/O. Pradip Dey,
Of East Harina, P.O.-Harina,
P.S.-Sabroom,
District-South Tripura.
(Owner of TR03-2124, Commander Jeep).
2. Sri Bimal Tripura,
S/O. Jari Kumar Tripura,
Of Ludhuya, P.O.-Sabroom,
P.S.-Sabroom,
District-South Tripura.
(Driver of Commander Jeep bearing No.TR03-2124).
3. The United India Insurance Company Ltd.,
Central Road, Agartala, West Tripura.
(Insurer of TR03-2124, Commander Jeep).

..... **Respondents.**

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant : Ms. P. Ghatak, Advocate.

For the respondents : None.

Date of hearing and
delivery of judgment
and order. : 22.06.2015.

Whether fit for reporting : **NO.**

JUDGMENT & ORDER (ORAL)

This is an appeal for enhancement of compensation directed against the award dated 19-05-2011 passed by the learned Motor Accident Claims Tribunal, South Tripura, Udaipur in case No. T.S.(MAC) 51 of 2010 whereby he awarded a sum of Rs.1,31,375/- in favour of the claimant under the following heads:-

Pain and suffering	:- Rs. 25,000/-
Loss of income	:- Rs. 22,500/-
Future loss of income	:- Rs. 43,875/-
<u>Cost of treatment</u>	<u>:- Rs. 40,000/-</u>
Total	:- Rs.1,31,375/-

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. As far as the present case is concerned, the claimant met with the accident on 22.12.2008. He was immediately taken to the Tripura Sundari District Hospital and then referred to the G.B. Hospital where he remained admitted from 22.12.2008 to 24.01.2009, i.e. for a period of 34 days. During this period surgical implants were put to heal the fracture to both bones of the right leg. Thereafter, the claimant was again admitted to hospital on 2.6.2009 and remained there till 20.6.2009, i.e. for 19 days. This time again an operation was performed and the plates were removed. It seems there was some discharge also from the fractured areas. The claimant again had to be admitted in hospital for one day for removal of certain other implants on 1.9.2009 and was discharged on 2.9.2009. Therefore, the total period of treatment is 54 days.

4. The claimant has not been awarded any amount for attendant charges. Even in the year 2008 the attendant charges would be at least Rs.200/- per day. It is well known that in Indian hospitals, especially in the Government hospitals in Tripura more than one attendant is required because nobody attends to the patient round the clock. Therefore, taking the cost of two attendants at Rs.400/- per day, the cost of attendants over 54 days works out to Rs.21,600/-. The claimant may have required some attendants outside the hospital also when he was at home and, therefore, he is awarded **Rs.25,000/-** as cost of attendants.

5. As far as loss of income is concerned, the learned Tribunal has assessed the income at Rs.125/- per day. In my view, this is very much on the lower side because the claimant was admittedly running a sweet shop and even in the year 2008 he would have earned at least Rs.200/- per day or Rs.6,000/- per month and if he did not earn for 6(six) months, his loss of income would be **Rs.36,000/-**.

6. Coming to the future loss of income. The claimant, no doubt, has suffered disability of 15% but this disability will not affect the earning capacity of a sweet shop owner because a sweet shop owner with this sort of disability can still do some work. However, his efficiency is definitely going to be hampered and I assess the loss at 5% of the income. Since the income was Rs.6,000/-, 5% of the same would be Rs.300/- per month or Rs.3,600/- per year. As per **Sarla Verma's** case, the multiplier in the case of a 28 year old person would be 17 and the loss on this count is assessed at **Rs.61,200/-**.

7. The learned Tribunal has awarded Rs.25,000/- for pain and suffering. The claimant remained in hospital for almost two months over a period of almost 9(nine) months. He had to undergo three operations and, therefore, I award him **Rs.35,000/-** for pain and suffering.

8. The claimant has suffered a permanent disability. He has not been awarded anything for future discomfort and loss of amenities of life. Though I have assessed his loss of income on the

lower side, the claimant will have to live with a permanent disability for the rest of his life and, therefore, I award him **Rs.25,000/-** under this head.

9. The claimant produced cash memos for Rs.37,894/- and he has been awarded Rs.40,000/-. This Court cannot lose sight of the fact that sometimes a lot of cash memos are not kept and some future treatment will also have to be taken into consideration and, therefore, I award **Rs.50,000/-** to the claimant as cost of treatment.

Therefore, the total compensation works out to Rs.(25,000 + 36,000 + 61,200 + 35,000 + 25,000 + 50,000) = Rs.2,32,200/- (rupees two lakh thirty two thousand two hundred).

10. 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.1,31,375/- to Rs.2,32,200/-, i.e. by Rs.1,00,825/-. On the amount of compensation so awarded, the claimant shall also be entitled to interest @ 9% per annum from the date of filing of the claim petition till payment/deposit of the awarded amount.

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

12. Send down the lower court records forthwith.

CHIEF JUSTICE