THE HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

MAC APP. NO.33 of 2012

Sri Mithan Saha,
S/o Sri Radhashyam Saha
of Village – Madhupur, P.S – Bishalgarh,
District – West Tripura.

…………… *Appellant.*

- Vs –

1. **Sri Santi Datta,**
   S/o Late Jogesh Datta,
   Village : - Kenani, P.O – Debipur,
   P.S – Bishalgarh, Dist – West Tripura,
   (Owner of TR-01A-4298 Tata Sumo).

2. **The National Insurance Co. Ltd.,**
   42, Akhaura road, Agartala, West Tripura.

……………… *Respondents.*

_B_E_F_O_R_E_
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant : Mr. P S Roy , Advocate.

For the respondent No.2 : Mr. A L Saha, Advocate.

Date of hearing and
delivery of judgment : 22.9.2015.

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER(ORAL)

This is an appeal for enhancement of compensation. The claimant suffered injuries in a motor vehicle accident involving Tata Sumo bearing registration No.TR-01A-4298. This vehicle was owned by Sri Santi Datta and insured with the National Insurance Company Ltd. The claim petition was contested and the learned Motor Accident Claims Tribunal, (Court No.3), West Tripura awarded a sum of Rs.32,450/- in favour of the claimant appellant as compensation under the following heads :

Pain and suffering	:	Rs.10,000/-
Loss of income	:	Rs. 9,000/-
Medical treatment	:	Rs. 8,450/-
Miscellaneous expenses	:	Rs. 5,000/-
		Total Rs.32,450/-

The claimant was also awarded interest @ 6% per annum from the date of filing of the claim petition till payment of amount.

2. When the claim petition was initially decided the learned Tribunal held that the liability to pay the compensation is only of the owner and he was directed to pay interest @ 6% per annum on the entire awarded amount along with the awarded amount. The owner filed a review petition and in the review petition he filed the policy of insurance. This review petition was decided on 4th January, 2012 and the learned Tribunal ordered that interest @ 6% per annum on the awarded amount from the date of filing of the review petition i.e. 30th August, 2011 till realization will be paid by the insurance company but the interest at the same rate from the date of filing of the original claim petition till 29th August, 2011 would be paid by the review petitioner i.e. owner of the vehicle.

3. The claimant was also a party in the review petition and he has not challenged the order passed in the review petition. After the review petition was filed the claimant filed the present appeal in which he has challenged both the original award as well as the order passed in the review petition.

4. The first question which needs to be decided is, what was the income of the claimant? The claimant claimed that he was a businessman and was earning Rs.6,000/- per month. However, one has to take note of the fact that the claimant was aged only about 18 years at the time of the accident and did not produce even a shred of evidence to show that he was engaged in any business of poultry farm. No certificate or registration of any sort was produced to prove this fact. The learned Tribunal assessed the income of the claimant at Rs.100/- per day which in my opinion is just and reasonable.

5. Coming to the other aspects of the case the fact remains that the discharge certificate shows that the claimant was admitted on 23rd June, 2005 and discharged on 7th July, 2005. Therefore, he remained admitted in hospital for about 15 days. He has been discharged on his own request. The claimant went to Kolkata for further treatment but the only record is of one bill of CT Scan which was conducted there and there is also record of having contacted with Dr. Ashim Roy on 23rd September, 2015. However, the doctor has found that the petitioner was fully conscious and oriented and there was no neurological disorder. He was only suffering from traumatic contusion. The fact remains that the claimant was admitted in hospital at Agartala for 15 days. Over this period of 15 days he would have required two attendants round the clock. Even if the cost of each attendant is taken to be Rs.200/- per day, the cost of two attendants comes to Rs.400/- and for 15 days the cost of attendants itself works out to ***Rs.6,000***/-.

6. The claimant went to Kolkata by train by first going to Guwahati and then to Kolkata. He must have been accompanied by at least one attendant and he spent few days at Kolkata. Therefore, he is awarded another sum of ***Rs.10,000/-*** for his treatment at Kolkata including miscellaneous expenses like cost of transportation, fooding, lodging etc.

7. The claimant has produced on record material to show that he spent Rs.8,450/- on his treatment for purchase of medicines, undergoing CT scan etc. This Court can take judicial notice of the fact that many time persons in this strata of society do not keep all the bills and keeping in view the fact that the claimant was suffering from a head injury, I award him ***Rs.15,000/-*** under the head of cost of treatment and medical expenses.

8. The claimant has been awarded only Rs.10,000/- for pain and suffering. In my opinion this is on the lower side and the same is, accordingly, increased to ***Rs.20,000/-***.

9. Next comes the question as to what should be the loss of income? The claimant not only was in hospital for 15 days but he went to Kolkata also for treatment and therefore, it can safely be assumed that he could not have worked at least four months. Therefore, he is awarded ***Rs.12,000/-*** under this head.

10. Lastly, coming to the issue of interest, I am clearly of the view that the amount of interest should be @ 9% per annum from the date of filing of the claim petition till payment/deposit of the awarded amount. This amount shall have to be initially paid by the insurance company. However, the insurance shall be entitled to recover interest for the period from the date of filing of the claim petition i.e. 30th March, 2007 till the date of filing of the review petition from the owner who was responsible for the delay inasmuch as he did not file the legible copy of the insurance policy. The insurance company shall be entitled to recover this amount of interest, if not already paid by the owner, in proceedings under this Act without requiring to prove the same in any other proceedings.

11. The total compensation is, therefore, assessed at Rs.(6,000 + 10,000 + 15,000 + 20,000 + 12,000/-) = Rs.63,000/- (Rupees sixty three 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.32,450/- to Rs.63,000/- i.e. by ***Rs.30,550/-***. It appears that the insurance company has already satisfied the awarded amount and, therefore, it is directed to deposit the enhanced amount with the Registry of this Court within 12(twelve) weeks from today. Obviously, the insurance company shall be entitled to adjust the amount(s), if any, which it has already paid or deposited.

The appeal is disposed of. Send down the LCRs forthwith.

CHIEF JUSTICE

Sukhendu