

THE HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A

MAC APP. NO.76 of 2011

Shri Pinku Roy,
S/o Late Samir Roy,
Resident of Vill - Kali tilla of Bhattapukur,
P.O. A.D. Nagar, P.S. West Agartala,
District - West Tripura.

..... *Appellant.*

- Vs -

1. **Sri Ranajoy Majumder,**
S/o Sri Chunilal Majumder,
R/o Vill - Krishnanagar, Agartala,
P.S. West Agartala, District - West Tripura,
[Previous owner of the vehicle bearing No.TR-01-F-0642
(Mahendra Utility Van). Notice to be served upon Sri Arun Kr.
Saha, R/o ONGC Bank Chowmohani, P.S. Amtali, District - West
Tripura, [Custodian and present owner of the vehicle bearing
No.TR-01-F-0642 (Mahendra Utility Van)].
2. **Sri Anubrata Sarkar,**
S/o Ashutosh Sarkar, R/o Vill - South Jolaibari, Belonia,
At present residing at T.A. Krishnanagar,
P.S. West Agartala, District - West Tripura,
[Owner of the vehicle bearing No.TR-01-B-8236 (Motor cycle.
Hero Honda CBZ model)].
3. **The Divisional Manager,**
Oriental Insurance Co. Ltd., Central Road, P.S. West Agartala,
District - West Tripura, (Insurer of the offending vehicle bearing
No.TR-01-F-0642, validity of insurance w.e.f. 14.01.2007 to
13.01.2008)].

..... *Respondents.*

_B_E_F_O_R_E
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant : Mr. A Nandi , Advocate.

For the respondent No.1 : Mr. P Majumder, Advocate.

Date of hearing and
delivery of judgment : 31.8.2015.

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER(ORAL)

 This appeal by the claimant has been filed for enhancement of compensation and is directed against the award dated 28th June 2011 passed by the learned Motor Accident Claims Tribunal(Court No.3), West Tripura, Agartala in Case No.TS(MAC)392 of 2007.

2. The allegations made by the claimant-appellant are that on 4th July, 2007 the claimant was proceeding towards Ranirbazar from Agartala as pillion rider on motorcycle bearing Registration No.TR01-B-8236. This motorcycle was owned and driven by Sri Anubrata Sarkar. This motorcycle had a collision with vehicle No.TR01-F-0642(jeep) which was coming from the opposite side i.e. from Ranirbazar towards Agartala. This vehicle was owned by respondent No.1 and was insured with the Oriental Insurance Company. The claimant claimed that he was admitted in hospital from 4th July, 2007 to 28th July, 2007 and had suffered disability to

the extent of 40%. He also alleged that he was earning Rs.5,000/- per month.

3. The factum of the accident is not disputed. However, the stand of the respondent owner of the jeep is that the accident occurred due to the negligence of the driver of the motorcycle. The learned Tribunal relying upon the FIR and the report furnished by the police under Section 173 of Cr.P.C came to the conclusion that the drivers of both the vehicles were equally negligent and held them liable to pay the compensation in equal shares.

4. While appearing in the witness box the claimant has only stated that while he was travelling as a pillion rider on reaching the approach road of old Agartala all of a sudden the accident took place. He has not described in detail as to how the accident happened. He has not stated that the motorcycle was on the left side of the road. The FIR which was recorded immediately after the occurrence indicates that the accident was result of negligence of both the drivers. It appears that since the motorcycle was not insured an effort has been made to make a false statement to get the liability transferred upon the insurance company. However, the learned Tribunal was absolutely right in coming to the conclusion that both the drivers were equally responsible for the accident.

5. 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.

6. The claimant in this case was admitted in hospital on 4th July, 2007 and discharged therefrom after 24 days on 28 July, 2007. He had suffered fracture of both bones of left leg. After discharge he was asked to come to the hospital after 15 days and thereafter again he was asked to come after 10 days on 19th September, 2007. The record shows that the claimant was being treated regularly as outdoor patient in the hospital and the last such treatment is of 3rd December, 2007.

7. The claimant has examined one doctor Sankar Halдар who has issued two certificates dated 17th March, 2011 and 9th May, 2011. As per the first certificate, the petitioner first visited this doctor on 17th March, 2011 with complaint of difficulty in walk and the doctor found severe restriction of movement in the ankle joint which is impairing the normal daily activities of the patient. Dr. Halдар also examined as a witness but his statement has not been believed by the Tribunal.

8. The claimant remained in hospital for 24 days. He would have required attendants round the clock. Even in the year 2007 the cost of one attendant is taken at Rs.150/- per day, the costs of two attendants comes to Rs.300/- per day and for 24 days the cost of attendants itself works out to Rs.7,200/- which is rounded off to **Rs.7,500/-**.

9. The claimant has produced documents to show that he has spent Rs.11,800/- for treatment. I am of the view that the claimant may have spent some further amount for treatment for which bills may not have been kept and he is awarded **Rs.15,000/-** towards costs of treatment.

10. The claimant alleged that he was earning Rs.5,000/- per month as a fruit seller and he could not work for 4(four) months and he has been awarded Rs.16,000/- by taking his income at Rs.4,000/-

per month. I find that this award is reasonable and calls for no interference. The learned Tribunal has also awarded Rs.5,000/- for miscellaneous expenses like transportation, fooding etc. I have already awarded Rs.7,500/- for attendant charges and this award of Rs.5,000/- for transportation etc. is maintained at the same amount. The claimant has been awarded Rs.15,000/- for pain & suffering and keeping in view the nature of injuries I find that this amount is reasonable.

11. The main grievance of the claimant-appellant is that he has not been awarded any amount for permanent disability. In this regard it would be pertinent to mention that the claimant throughout was getting treated in the G.B.P Hospital at Agartala, Tripura. His treatment continued there in the year 2007 and 2008 and I find that even in the year 2010 also he visited the hospital. In March, 2011 much after the claim petition had been filed the claimant suddenly visited the private doctor Dr. Sankar Halder who has given a certificate which is a totally self-serving certificate. It does not describe the extent of disability. It is not a disability certificate in the sense that it does not say what is the percentage of disability and relation to what limb? Shockingly this doctor in his statement has stated that no investigation is required to find out the stiffness. He also states that he did not write in his prescription about the findings on the complaint of stiffness of the patient.

12. It is well-known that disability certificates are to be issued on the basis of assessments and certification to be made either as per the guidelines issued by the Ministry of Social Justice and Empowerment, Govt. of India or by the Indian Association of Orthopedics. This Court would even accept any other guidelines but according to this doctor, he has not even followed any guideline. This Court can take judicial notice of the fact that earlier also Dr. Halдар summoned by this Court and it was found that his certificate was false. This is the second occasion when I have found that the certificate is incomplete.

13. In Tripura there is a very well established system of obtaining disability certificates from the disability boards. The State of Tripura has established disability boards throughout the State. These disability boards consist of three doctors and it is expected that any person who suffers a disability should go to this disability board. Even though the Tribunal had rejected the claim of the petitioner with regard to disability, even during the course of appeal the petitioner did not care to go to disability board and no certificate has been produced before this Court issued by the disability board. However, the fact remains that the petitioner has suffered a serious injury and I find that there is evidence to show that the claimant was complaining about having not fully recovered even in the year 2010.

Therefore, I award him **Rs. 10,000/-** for loss of amenities and future discomfort in life etc.

14. The total compensation is, therefore, assessed at Rs.(7,500 + 15,000 + 16,000 + 5,000 + 15,000 + 10,000) = **Rs. 68,500/-**

In view of the above discussion, the appeal is allowed and the award of the learned Tribunal is modified. The compensation is enhanced from Rs.47,800/- to Rs.68,500/-. Both the owner of the motorcycle and insurance company are held equally liable to pay the awarded compensation. The insurance company is held liable to pay Rs.34,250/- instead of Rs.23,900/-. The insurance company has already satisfied the award of the learned Tribunal. Therefore, it is directed to deposit the enhanced amount of Rs.20,700/- along with interest @ 9% from the date of filing of the claim petition till deposit of the same. The amount be deposited in the Registry of this Court within 4(four) months from today. The claimant is at liberty to recover the remaining amount of Rs.34,250/- along with interest @ 9% from the date of filing of the claim petition till deposit of the same from the owner of the motorcycle.

The appeal is disposed of in the aforesaid terms. No costs.

CHIEF JUSTICE