

**THE HIGH COURT OF TRIPURA
AGARTALA**

MAC APP. NO.78 of 2011

Shri Sankar Saha

S/O. Shri Nirmal Chandra Saha,
Village- Bridhanagar, P.O. Ranirbazar,
P.S. Ranirbazar, District- West Tripura.

..... **Appellant.**

- Vs -

1. Shri Mihir Lal Saha,

S/O. Late Dhananjoy Saha,
Ranirbazar, P.O. Ranirbazar,
P.S. Ranirbazar, District- West Tripura.
(Owner of TR-01-3192, Mahendra Jeep)

2. The Divisional Manager,

The New India Assurance Company Ltd.
Divisional Office located at Mantribari Road,
Agartala, P.S. West Agartala, District- West Tripura.
(Insurer of TR-01-3182, Mahendra Jeep)

..... **Respondents.**

**BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA**

For the appellant : Mr. A Nandi, Advocate.

For the respondent : Mr. DC Saha, Advocate.
No.1.

Date of hearing & delivery : 03.08.2015.
of judgment & order

Whether fit for reporting : No.

JUDGMENT & ORDER(ORAL)

This appeal for enhancement of compensation by the claimant is directed against the award, dated 16.07.2011, passed by the learned Motor Accident Claims Tribunal(Court No.3), West Tripura, Agartala, in Case No. T.S.(MAC) 409 of 2008.

2. The admitted facts are that on 27.08.2008, the petitioner was traveling on motor cycle No. TR-01-Y-5686, which was hit by Mahindra jeep bearing registration No. TR-01-3182 owned by Mihir Lal Saha and insured with The New India Assurance Company. As a result of the accident, the claimant received injuries. He, thereafter, filed a claim-petition claiming compensation in which it was alleged that he went to the GB Hospital, but instead of getting treatment there, he went to the Tropical Orthopaedics & Related Research Centre where he was admitted on 27.08.2008 and discharged on 11.09.2008. Thereafter, he was again admitted in Tripura Medical College on 17.08.2009 and discharged on 26.08.2009 probably for removal of the surgical implants. The claimant has also produced one certificate of Dr. Sankar Halder wherein it is mentioned that the claimant had 40 per cent disability. Dr. Halder has also appeared in the witness-box.

3. The learned Tribunal granted only 50% of the expenses incurred in the Tropical Orthopaedics & Related Research Centre on the ground that the claimant himself chose to get treatment there whereas in GB Hospital he would have been treated free of cost. The learned Tribunal also discarded the Disability Certificate on the ground that the said certificate had not been issued by the Disability Board constituted by the State.

4. The principles with regard to determination of just compensation contemplated under the Motor Vehicles Act, 1988 are well settled. Injuries cause deprivation to the body, which

entitles the claimant to claim damages. The damages may vary according to the gravity of the injuries sustained by the claimant in an accident. On account of the injuries, the claimant may suffer consequential losses such as, (i) loss of earning; (ii) expenses on treatment which may include medical expenses, transportation, special diet, attendant charges etc., (iii) loss or diminution to the pleasures of life by loss of a particular part of the body, and (iv) loss of future earning capacity. The damages can be pecuniary as well as non-pecuniary, but all have to be assessed in rupees and paisa.

5. The claimant remained admitted in hospital for the first time from 27.08.2008 to 11.09.2008 i.e. for 15 days. At that time he would require two attendants to attend upon him and the cost of each attendant in the year 2008 is assessed at Rs.250/- per day and the cost of two attendants at Rs.500/- per day and therefore, the cost of attendants amount works out to **Rs.7,500/-**.

6. However, the next time when the claimant came to hospital, he did not require two attendants because this was one year after the accident and only attendant-charges for one attendant are allowed from 17.08.2009 to 26.08.2009 i.e. for 10 days which works out to **Rs.2,500/-**.

7. The claimant spent Rs. 62,550/- for medical expenses. He also spent Rs. 30,300/- for nursing and room charges at the Tropical Orthopedic and Related Research Centre. However, the

learned Tribunal awarded him only 50% of the amount spent in the Tropical Orthopaedics & Related Research Centre. I am clearly of the view that there was no justification for such deduction and the claimant was entitled to be admitted in a private hospital also. The total expenses therefore, works out about Rs.92,850/-. There may be some other expenses for which the claimant may not have kept receipts and therefore, he is awarded a lump sum amount of **Rs.1,00,000/-** for medical expenses.

8. The claimant claimed that he was earning Rs.7,000/- per month, but the learned Tribunal assessed the income at Rs.3,000/- per month. The claimant relied upon some certificates issued by the Collector and Magistrate, but as held by the Court in T.S.(MAC) 409/2008, no reliance can be placed on such certificates. The claimant was a young man aged about 24 years and it can be easily inferred that he would have earned at least Rs.150/- per day in the year 2008 and therefore, his income is assessed at Rs.4,500/- per month. Keeping in view of the nature of injuries, I am clearly of the view that the learned Tribunal was justified in holding that the claimant could not work for 4 months and therefore, he is awarded **Rs.18,000/-** under this head.

9. The claimant has been awarded Rs.10,000/- for pain and sufferings. In my opinion this amount should be increased to **Rs.20,000/-**.

10. Now comes the question of future discomfort. It is urged by Mr. A Nandi, learned counsel that Dr. Halder has given a certificate showing the disability of the claimant at 40% and he has also been examined in Court and therefore, this Disability Certificate should be accepted. Normally, in India, Disability Certificates are issued by Disability Boards. These boards consist of 3 doctors. A large number of tests have to be carried out before issuing a Disability Certificate. The assessment and certification of disabilities is based either on the guidelines in notification issued by the Ministry of Social Justice of Empowerment or by the guidelines issued by the Institute of Surgeons. Dr. Halder has not made reference to either. He has not even stated in his evidence on what basis he has assessed the disability. He was not legally empowered to issue a Disability Certificate, and therefore, the learned Tribunal was justified in rejecting this certificate.

11. Though the learned Tribunal had rejected the claim of the appellant of disability on the ground that the Disability Certificate should have been obtained from the Disability Board even though this appeal is remain pending for 4 years, the claimant made no application for referring the matter to the Disability Board for assessing his disability.

12. The Courts have always been reluctant to accept certificates issued by individual doctors' especially private doctors. In case such certificates are accepted, then there will be whole-sale sale of such certificates. Having held so, one thing which is proved on

record is that the claimant has suffered a permanent disability. It is also proved that his leg has been shortened. To this effect there is no cross-examination. Therefore, I award the claimant **Rs.50,000/-** for future discomfort and loss of amenities of life.

13. In view of above discussion, the claimant is awarded Rs.7,500/- + Rs.2,500/- + Rs.1,00,000/- + Rs.18,000/- + Rs.20,000/- + Rs.50,000/- = Rs.1,98,000/- as compensation and the compensation is enhanced from Rs.1,04,700/- to Rs.1,98,000/- i.e. by Rs.93,300/-.

14. The insurance company has already satisfied the awarded amount and therefore, it is directed to pay the enhanced amount of **Rs.93,300/-** (Rupees Ninety three thousand three hundred) along with interest @ 7.5% per annum from the date of filing of claim petition till deposit of the amount. Obviously, the insurance company shall be entitled to adjust the amount(s), if any, which it has already paid or deposited.

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

16. Send down the LCRs forthwith.

CHIEF JUSTICE

Sabyasachi Ghosh/sima