THE HIGH COURT OF TRIPURA
A G A R T A L A

MAC APP. NO.82 OF 2011

Shri Prafulla Sinha,
S/O. Late Kula Chandra Sinha,
A resident of Assambasti of Fatikrai,
P.S.-Kailashahar,
District-North Tripura.

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

– V e r s u s –

1. The Divisional Manager,
National Insurance Company Limited,
42, Akhaura Road, P.S. West Agartala,
District-West Tripura.
(Insurer of offending Vehicle TR-01-B-0531).

..... **Respondent No.1**.

2. Shri Nirmal Mitra,
S/O. Late Nibaran Mitra,
A resident of Dhamcherra, Kanchanpur,
P.S.-Dhamcherra, District-North Tripura.
(Owner of TR-01-B-0531).

..... **Respondent No.2**.

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant	: Mr. A. Nandi, Advocate.
For the respondent No.1	: Mr. A.L. Saha, Advocate.
Date of hearing and delivery of judgment and order.	: 05.08.2015.
Whether fit for reporting	: **NO**.

JUDGMENT & ORDER (ORAL)

This appeal by the claimant for enhancement of compensation is directed against the award dated 18-07-2011 delivered by the learned Motor Accident Claims Tribunal, Court No.3, West Tripura, Agartala in case No. T.S.(MAC) 302 of 2009 whereby the learned Tribunal awarded a sum of Rs.2,24,000/- in favour of the claimant under the following heads:-

Pain and suffering	:- Rs. 15,000/-
Loss of income	:- Rs. 16,000/-
Cost of treatment	:- Rs. 37,000/-
Loss of future income	:- Rs.1,56,000/-
Total	:- Rs.2,24,000/-

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. Applying the aforesaid principles, I now proceed to assess the compensation afresh. From the facts proved on record, it is apparent that the claimant suffered injuries in an accident which took place on 15.02.2009. Immediately after the accident,

the claimant was shifted to the R.G.M. Hospital, Kailashahar and thereafter to Silchar. He was admitted in South City Hospital at Silchar on 16.02.2009 and remained admitted there upto 05.3.2009. A surgical impression was performed during this period. The claimant remained admitted for 18 days at Silchar. This is a place far away from his place of residence. Therefore, I feel that he would have required two attendants round the clock and even in the year 2009 the cost of one attendant is taken at Rs.300/- per day, cost of two attendants at Rs.600/- and for 18 days, the cost of attendants works out to Rs.10,800/- which is rounded off to **Rs.11,000/-**.

4. The claimant was first taken from the site of the accident to the hospital at Kailashahar and thereafter he must have gone to Silchar either by taxi or by an ambulance. He would have had to come back from Silchar also by a taxi. The distance of Kailashahar to Silchar is about 150 Kms. and, therefore, I feel that it would be appropriate to award **Rs.7,500/-** for transportation expenses both going and coming.

5. The claimant produced vouchers for his treatment amounting to Rs.37,000/-. He also produced a bill of Rs.17,100/- but this bill has not been considered on the ground that it is not authenticated. It is not the problem of the claimant if the bail is not authenticated. He has spent Rs.54,100/-. He may have spent some other smaller amounts for which bills may not have been kept and, therefore, he is awarded **Rs.60,000/-** under the head of medical treatment.

6. The learned Tribunal has awarded **Rs.16,000/-** to the claimant for loss of four months income which, in my opinion, is reasonable and calls for no interference.

7. The next claim of Mr. A. Nandi, learned counsel for the claimant, is that since the claimant was a day labourer and has suffered temporary disability of 65% for a period of 5 years, his disability should be assessed at 100% and he should be awarded compensation accordingly. There is a common fallacy that loss of disability is equal to loss of earning capacity. In ***Raj Kumar vs. Ajay Kumar and another, [(2011) 1 SCC 343]***, the Apex Court has clearly held that where the claimant wants to prove some loss of earning capacity on account of disability, the claimant must examine the doctor. In this case, doctor was not examined. I have gone through the disability certificate. It clearly shows that it is not a permanent disability certificate because the word "permanent" has been scored off. The nature of disability is stiffness of right knee, right hip and weakness of right lower limb. It is more than apparent that the 65% disability has been assessed in relation to the right lower limb and is not 65% disability in relation to the whole body. Such a person can work though his income may be less. Therefore, I feel that the amount of **Rs.1,56,000/-** awarded under this head is more than adequate.

8. The claimant has been awarded **Rs.15,000/-** for pain and suffering which, in my opinion, is reasonable and calls for no enhancement.

9. The claimant has not been awarded any amount for the disability suffered by him for loss of amenities of life and future discomfort in life. Keeping in view the nature of the injuries, I award him **Rs.25,000/-** under this head.

Therefore, the total compensation works out to Rs.(11,000 + 7,500 + 60,000 + 16,000 + 1,56,000 + 15,000 + 25,000) = Rs.2,90,500/- (rupees two lakh ninety thousand five 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.2,24,000/- to Rs.2,90,500/-, i.e. by Rs.66,500/-. Since the Insurance Company has already satisfied the award of the Tribunal, it is directed to deposit the enhanced amount of compensation along with interest @ 7.5% per annum from the date of filing of the claim petition till payment/deposit of the awarded amount in the Registry of this Court within 4(four) months from today after deducting/adjusting the amount, if any, already paid/deposited by them along with proof of such earlier deposit.

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

12. Send down the lower court records forthwith.

CHIEF JUSTICE