

THE HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

MAC APP. NO.40 of 2014

The Oriental Insurance Company Ltd.,
Represented by its Divisional Manager,
Agartala Divisional Office,
Central Road, P.S. East Agartala,
District - West Tripura,
[Insurer of vehicle bearing No.TR-01-M-7793(Pulsar Bike)].

..... *Appellant.*

- Vs -

1. **Sri Sishir Kanti Majumder,**
S/o Late Surendra Ranjan Majumder,
C/o. Sri Amal Debnath,
Resident of Shibnagar College Road Extension,
P.O. Agartala College, P.S. East Agartala,
District - West Tripura.
2. **Sri Nayan Kumar Debnath,**
S/o Late Premananda Debnath,
resident of Vill - Joypur, Battala,
P.O. Battala, P.S. West Agartala,
District - West Tripura.
[Owner of vehicle bearing No.TR-01-M-7793(Pulsar Bike)].

..... *Respondents.*

_B_E_F_O_R_E_
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant : Mr. P Gautam, Advocate.
For the respondent No.1 : Mr. S B Debnath, Advocate.
Date of hearing : 19.3.2015.
Date of judgment : 26.3.2015.
Whether fit for reporting : No.

JUDGMENT & ORDER

This appeal by the insurance company is directed
against the award of the learned Motor Accident Claims Tribunal,

Court No.4, West Tripura, Agartala dated 19th July, 2013 passed in TS(MAC)503 of 2011 whereby he awarded compensation of Rs.9,26,260/- in favour of the claimant-respondent.

2. Briefly stated, the facts of the case are that the claimant filed a claim petition in which it was alleged that he was 65 years of age and working as a '*senior artist*' of '*Rupam Natya Sangstha*' and earning Rs.10,000/- per month.

3. According to the claimant, an accident took place at Office Lane, Agartala on 11.6.2011 at about 8.30 p.m. It is alleged that the claimant was coming on his bicycle from Sankar Chowmuhani to Office Lane and when he was near the Agriculture Office a '*Bajaj Pulsar*' motorcycle TR-01-M-7793 coming from the opposite direction on a high speed and hit the bicycle. As a result, the claimant suffered serious injuries in the accident. The claimant was taken to the I.G.M Hospital, Agartala and referred from there to the G.B.P Hospital. He was admitted there on 11.6.2011 and then referred to the SSKM/AMRI Hospitals, Kolkata on 12.6.2011. The claimant went to Kolkata and was admitted at AMRI Hospital, Kolakata on 13.6.2011 and discharged therefrom on 23.6.2011. During this period an operation was carried out on the right leg of the petitioner. The claimant was again admitted in the AMRI Hospital on 25.7.2011 and discharged therefrom on 3.8.2011. The claimant claimed compensation of Rs.14,53,019/-.

4. After evidence the learned Tribunal awarded Rs.9,26,260/- under the following heads :

- | | | | |
|-------|---|---|---------------|
| (i) | Cost of medicines, hospital charges, various tests etc. | - | Rs.3,53,709/- |
| (ii) | Cost of attendants | - | Rs. 36,000/- |
| (iii) | Cost of transportation | - | Rs. 72,554/- |
| (iv) | Loss earning for 5 years | - | Rs.3,84,000/- |
| (v) | Pain and suffering | - | Rs. 50,000/- |
| (vi) | Conveyance allowance | - | Rs. 10,000/- |
| (vi) | Lump sum amount for incidental costs. | - | Rs. 20,000/- |

Rs.9,26,263/-

5. At the outset I am constrained to observe that the manner in which the case had been dealt with by the learned Tribunal is highly improper. The respondents had put in appearance and the owner of the motorcycle had denied all the allegations made in the claim petition. It was alleged that the motorcycle was being driven by a driver having valid driving licence but the name of that driver was not disclosed. It was, however, prayed since the vehicle is insured the liability to pay the compensation is on the insurance company.

6. The insurance company contested the claim on factual aspects also. The claimant appeared in the witness box and supported what he had stated. He was cross-examined by the owner and a suggestion was put to him that he had not suffered injuries in

a motor vehicle accident and furthermore, there was no fault of the driver of the motorcycle.

7. The claimant also examined two witnesses. PW.2, Sri Kumar Sankar Pal is the Secretary of the Roopam Natya Ghosthi and stated that the claimant was a good actor and used to earn Rs.10,000/- per month in average. He is not an eye-witness to the accident. PW.3 is one Sri Prasenjit Guha who is alleged to have been engaged by the claimant as an attendant at Rs.200/- per day from 25.6.2011 till 25.12.2011. No doubt this witness has stated that the claimant received injuries in a '*road traffic accident*' but he has not stated how the accident happened and what was the vehicle involved in the accident. He also was not an eye-witness to the accident.

8. The other side led no evidence. The findings recorded by the learned Tribunal on issue No.1 reads as follows :

"8. Issue No.1 :-

To meet this issue, the petitioner examined himself as PW.1 and also produced two others witnesses viz. as PW.2 and PW.3 who supported the claim of the claimant-petitioner. PW.1 was duly cross-examined by the opposite parties. Besides, PW.1 also adduced some documentary evidence under Exbt.1 series. During cross-examination by the opposite parties, nothing material has come out to rebut the petitioner's case as the opposite parties put some suggestive questions during cross-examination of the PW1, PW.2 and PW.3 in the shape of denial which are not supported by any cogent evidence. Therefore, the evidence of the petitioner stands

unrebutted. Besides, I have also perused the certified copy of FIR, ejahar, charge-sheet, injury report etc. which also suggest that the petitioner sustained injury in a road traffic accident. Accordingly, I find force to give the answer in favour of the petitioner on this issue. Hence, this issue is decided in affirmative.

All that can be said is that these findings are no findings in the eye of law. The learned Tribunal has not even cared to discuss the evidence led by the claimant. He has not referred to any portion of the affidavit filed by the claimant or to the cross-examination of the claimant. Moreover, the learned Tribunal has stated that the claimant produced two other witnesses as PWs.2 and 3 who supported the claim of the petitioner(*respondent herein*). These two witnesses have said nothing about the accident and have no relevance with the issue No.1. It is shocking that a senior officer could deal with the matter in such a casual and callous manner.

9. Last but not the least, all that the learned Tribunal has found is that the petitioner sustained injury in a Road Traffic Accident(RTA). The learned Tribunal has not given any findings or reasons to hold that the driver of the motorcycle was guilty of rash and negligent driving. Without such findings having been given no award could have been passed under Section 166 of the Motor Vehicles Act, 1988. Unfortunately, the learned Tribunal has not discussed the evidence. I have referred the evidence of the parties referred to above. The claimant made a statement that he was hit by the motorcycle which was being driven rashly and negligently.

The respondent did not lead any evidence. The driver of the motorcycle was also not examined. Therefore, I hold that the accident occurred because of the rash and negligent driving of the driver of the motorcycle.

10. Now, coming to the aspect of compensation 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.

11. The claimant was admitted in Agartala for one day i.e. on 11.6.2011. He was discharged on the next day and referred to the SSKM or AMRI Hospital at Kolkata for better treatment. When

the claimant was discharged on 23.6.2011 he was advised to use crutches and not put weight on his right leg. He was found fit to fly in aircraft. It would also be pertinent to mention that in the discharge certificate it has been found that the claimant was already a diabetic and had a benign enlarged prostate which had nothing to do with the accident. It appears that after the claimant was operated a catheter was inserted but there was bleeding in the catheter and, therefore, the claimant had to be again taken to AMRI Hospital at Kolkata where he remained admitted from 25.7.2011 to 03.8.2011 and on discharge he was found to be normal and found fit to fly in an aircraft. No bed rest has been advised and no attendant has also been advised.

12. A certificate has been issued by the District Disability Board showing temporary disability of the claimant at 80% but it is apparent from the certificate itself that this certificate is in respect of the right leg and not in respect of the entire body. The claimant again went to AMRI Hospital on 29.9.2011 but this time he was getting treatment for his prostate and this had no connection with the accident. The petitioner has placed on record many documents which have no concern with the present case. One of such documents is a prescription of Dr. Pradip Sarkar of the Agartala Medical College dated 19.8.2011 where the complainant has

complained about pain around the anus and he has been advised to consult a diabetologist. This also has no concern with the accident.

13. Now we shall deal with the bills of the hospital. On 23.6.2011 the total bill given to the claimant at AMRI Hospital was for a sum of Rs.1,20,007/- which included bed rental charges, consultation, investigation, tests, medicines, consumables etc. In addition thereto, on his discharge from the hospital at Kolkata on 23.6.2011 the claimant purchased some medicines from the outside and the value of these medicines is Rs.21,215/-. On 11.6.2011 the claimant had undergone a brain scan for which he paid Rs.800/-. On 12.6.2011 the claimant spent Rs.635/- for medicines at Agartala. After returning from AMRI Hospital the claimant has spent for medicines worth Rs.1,058/-. The claimant again went to AMRI Hospital on 25.7.2011 and on this occasion he paid Rs.1,240/-. He again went to RG Urology Centre on 22.9.2011 and paid Rs.5,606/-. During the second period of treatment the claimant purchased medicines worth Rs.4,603/- and paid a bill of Rs.74,729.70 paisa in AMRI Hospital. After return from the second time the claimant purchased medicines of Rs.9,410/-. It would be pertinent to mention that a number of these medicines apparently are for the treatment of diabetes and prostrate and do not relate to the accident since the claimant was already suffering from diabetes and enlarged prostrate. In any event the total amount of medicines and

treatment works out to Rs.2,39,303.70 paisa say Rs.2,39,304/- There may be small amounts for which receipts may not have been kept and therefore, this is rounded off to **Rs.3,00,000/-**. This covers hospitalization, medicines etc.

14. The claimant remained admitted in hospital at Agartala for only one day and he is held entitled to **Rs.500/-** for attendant charges at Agartala. He remained admitted in Kolkata on two occasions, firstly for 11 days and on second occasion for 4 days. If the cost for staying, boarding and lodging of the one attendant is taken at Rs.1,000/- per day, for 15 days the cost of attendant itself works out to **Rs.15,000/-**.

15. Now, coming to transportation charges I may mention that some of the receipts and vouchers produced by the claimant on the face of it appear to be false. The claimant claimed that he was an actor and undated and unstamped vouchers on blank pieces of paper have been produced showing that the claimant or his relatives were being taken in different Maruti vehicles to the hospital. Even the number of those vehicles has not been given and I refuse to rely upon the same. As regards expenditure by air to Kolkata, the claimant has produced tickets for Rs.80,732/- which is rounded off to Rs.81,000/-. In addition thereto the claimant has awarded Rs.9,000/- for local transportation both at Agartala and at Kolkata for himself and his attendants i.e. a total amount of **Rs.90,000/-**.

16. The claimant has been awarded attendant charges of Rs.36,000/- @ Rs.200/- per day on the basis of the statement of PW.3. Not a single piece of paper has been produced on record to show that the claimant required any attendant after his discharge from the hospital on the second occasion. In fact the medical evidence clearly shows that the claimant had recovered and there is no documentary evidence on record to show that the claimant was in any way unable to do his work. Even more surprising is the fact that according to PW.3 he worked as attendant from 25.6.2011 to 25.12.2011 for 180 days which even includes the period when the claimant had gone to Kolkata for the second time. As pointed out above, there is nothing to show that the claimant required a full time attendant and therefore, this claim is rejected.

17. Now comes the question with regard to loss of earning capacity. The claimant was more than 65 years of age when the accident took place. This fact has been totally lost sight of by the learned Tribunal. The claimant could not have actively worked even if the accident had not occurred. He claimed that he was an actor and earned as an actor. This Court can take judicial notice of the fact that actors do not get work each and every day and the work of actor is limited. Furthermore, the disability of the claimant is 80% in respect of one leg. The claimant may not be able to work as a full time actor but can work as a part-time actor and even if he cannot

work as an actor he can work as director or do other work in the theatre.

18. Each case has to be decided on its own facts. Eighty per cent disability to the leg did not automatically translate to eighty per cent loss of earning capacity. Even if the income is taken at Rs.8,000/- per month as assessed by the learned Tribunal the loss of earning capacity cannot be more than 25% or Rs.2,000/- per month or Rs.24,000/- per year and since the claimant was already 66 years of age the maximum multiplier can be applied is '5' and the loss on this count comes to ***Rs.1,20,000/-***.

19. The claimant in addition thereto is only entitled to loss of pain and suffering which is assessed at ***Rs.20,000/-***. He is also held entitled to compensation on account of future discomfort in life due to the injury caused to him. Keeping in view his advanced stage the loss on this account is also assessed at ***Rs.20,000/-***.

20. The total compensation is, therefore, assessed at Rs.(3,00,000 + 500 + 15,000 + 90,000 + 1,20,000 + 20,000 + 20,000/-) = ***Rs.5,65,500/- (Rupees five lakh sixty five thousand and five hundred)***. In view of the above discussion, the appeal is allowed. The award of the learned Tribunal is modified and the compensation is reduced from Rs.9,26,263/- to Rs.5,65,500/- along with interest @ 7.5% per annum from the date of filing of the claim petition till payment/deposit of this amount.

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

CHIEF JUSTICE