

THE HIGH COURT OF TRIPURA
AGARTALA

MAC APP. NO.68 OF 2012

Shri Shibu Chakraborty,
Son of Shri Radhapada Chakraborty,
Village Dasda Bazar, P.O. Dasda,
P.S.-Kanchanpur, District: North Tripura.

..... Appellant.

- V e r s u s -

1. Shri Krishna Bhushan Dey,
Son of late Mathur Dey,
Resident of East Kanchanbari (Pagla Chhera),
P.O. Kanchanbari, P.S.-Kumarghat,
District: North Tripura.
(Owner of the vehicle No.TR-01-3763(Commander Jeep)).
2. Shri Nepal Malakar,
Son of Shri Monoranjan Malakar,
Resident of Village-Sunaimuri,
P.O. Fatikroy, P.S.-Kumarghat,
District-North Tripura.
(Driver of the vehicle No.TR-01-3763(Commander Jeep)).
3. The Branch Manager,
The United India Insurance Company Limited,
Dharmanagar Branch,
P.O. & P.S. Dharmanagar,
District-North Tripura.
(Insurer of the vehicle No.TR-01-3763(Commander Jeep)).
4. Shri Satyajit Paul,
Son of Shri Matilal Paul,
Rash Bik Kunja (Old Guest House), Khush Bagan,
P.S.-East Agartala, P.O. Agartala,
District: West Tripura.
(Owner of the vehicle No.TR-01-F-1756(Truck)).
5. Shri Ajit Paul,
Son of Shri Harekrishna Paul,
Resident of village Majlishpur,
P.O. & P.S.-Jirania,
District: West Tripura.
(Driver of the vehicle No.TR-01-F-1756(Truck)).
6. The Divisional Manager,
The Oriental Insurance Company Limited,
Central Road, P.O. Agartala,
P.S. West Agartala, District-West Tripura.
(Insurer of the Vehicle No.TR-01-F-1756(Truck)).

..... Respondents.

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

For the appellant : Mr. A. Das Gupta, Advocate.
 For the respondent No.3 : Mr. S.D. Choudhuri, Advocate.
 For the respondent No.6 : Mr. K. Bhattacharji, Advocate.
 Date of hearing and delivery of judgment and order. : 01.12.2015.
 Whether fit for reporting : **YES.**

JUDGMENT & ORDER (ORAL)

This appeal by the claimant for enhancement of compensation is directed against the award dated 09-12-2011 delivered by the learned Motor Accident Claims Tribunal, Dharmanagar, North Tripura in case No. T.S.(MAC) 42 of 2010 whereby he awarded compensation of Rs.2,00,800/- to the claimant along with interest under the following heads:-

Medical expenses	:- Rs. 5,800/-
Pecuniary loss	:- Rs.1,80,000/-
<u>Pain and suffering</u>	<u>:- Rs. 15,000/-</u>
Total	:- Rs.2,00,800/-

2. The undisputed facts are that the deceased was driver of a truck and there was a collision between this truck and a jeep. The claimant alleged that this accident had occurred due to the rash and negligent driving of the driver of the jeep and filed the claim petition. The learned Tribunal came to the conclusion that the accident had occurred due to the rash and negligent driving of the driver of commander jeep bearing No.TR-01-3763. This finding has

become final and is not under challenge. Next comes the issue of the monetary compensation to be paid to the claimant.

3. At the outset, I may notice that the manner in which the award has been passed shows total lack of the basic principles of assessment of compensation in such case. The Apex Court has repeatedly held that percentage of disability is not necessarily equal to loss of earning capacity. This shall depend on the facts of each case, the nature of the work being done by the injured, the nature of injury sustained by the injured and the effect which such injuries have on his earning capacity. I have gone through the medical record and it shows that on initial examination of the petitioner, it was found that he had broken teeth and was suffering pain on opening of the mouth. He has suffered injuries mainly on the face and has suffered loss of teeth.

4. The petitioner examined himself and in his statement stated that as a result of the injuries suffered in the accident he lost 8(eight) number of teeth in the upper jaw and 12(twelve) number of teeth in the lower jaw, i.e. 20(twenty) teeth in all and, therefore, 20 number of teeth were extracted. No evidence worth the name has been placed on record to show that twenty teeth were extracted or have to be removed as a result of the accident. I have gone through the entire evidence but do not find any material to prove this assertion of the claimant.

5. It is a well known principle of evidence that what can be proved by producing documents cannot be proved by leading oral evidence. There are various documents on record marked as

Exhibit-A series but in none of these documents the number of teeth is mentioned. Be that as it may, assuming for the sake of argument that the claimant had lost 20 teeth, this would mean that he would require a fresh set of dentures with artificial teeth. This does not mean that he would not be able to drive. I fail to understand how the learned Tribunal has awarded compensation for loss of income, that too an amount of Rs.1,80,000/-. A driver does not require teeth to drive. Even if there are no teeth in his mouth, he can still drive. If he has an artificial set of dentures, he can still drive. I fail to understand how there is loss of earning by merely losing the teeth. This may be a big loss as far as disfigurement is concerned. The claimant may have to be awarded compensation for loss of teeth, but loss of teeth, especially in the case of the driver would not cause future loss of income and the only loss of income could be awarded for the period of treatment.

6. 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.

7. It is impossible to equate human suffering and personal deprivation with money. However, this is what the Motor Vehicles Act enjoins upon the Courts to do. The Court has to make a judicious attempt to award damages, so as to compensate the claimant for the loss suffered by him. Such compensation is what is termed as just compensation. On the one hand, the compensation should not be assessed very conservatively, but on the other hand, compensation should also not be assessed in so liberal a fashion so as to make it a bounty to the claimant. The Court while assessing the compensation should have regard to the degree of deprivation and the loss caused by such deprivation. The compensation or damages assessed for the personal injuries should be substantial damages to compensate the injured for the deprivation suffered by him throughout his life. They should not be just token damages. There are numerous cases where the principles for grant of compensation have been enunciated. It would be relevant to quote pertinent observations from a few.

8. The following observations of *Lord Morris* in his speech in ***H. West & Son Ltd. V. Shephard, 1958-65 ACJ 504 (HL, England)***, are very pertinent:

“Money may be awarded so that something tangible may be procured to replace something else of the like nature which has been destroyed or lost. But money cannot renew a physical frame that has been battered and shattered. All that Judges and courts can do is to award sums which must be regarded as giving reasonable compensation. In the

process there must be the endeavour to secure some uniformity in the general method of approach. By common assent awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that so far as possible comparable injuries should be compensated by comparable awards."

9. Lord Denning while speaking for the Court of Appeal in the case of **Ward v. James, (1965) 1 All ER 563**, laid down the following three basic principles to be followed in such like cases:

"Firstly, accessibility: In cases of grave injury, where the body is wrecked or brain destroyed, it is very difficult to assess a fair compensation in money, so difficult that the award must basically be a conventional figure, derived from experience or from awards in comparable cases. Secondly, uniformity: There should be some measure of uniformity in awards so that similar decisions may be given in similar cases; otherwise there will be great dissatisfaction in the community and much criticism of the administration of justice. Thirdly, predictability: Parties should be able to predict with some measure of accuracy the sum which is likely to be awarded in a particular case, for by this means cases can be settled peaceably and not brought to court, a thing very much to the public good."

10. The assessment of damages in personal injury cases raises great difficulties. It is not easy to convert the physical and mental loss into monetary terms. There has to be a measure of calculated guess work and conjecture. An assessment, as best as can, in the circumstances, should be made.

11. In the case of **Mediana, (1900) AC 113**, Lord Halsbury held:

"Of course the whole region of inquiry into damages is one of extreme difficulty. You very often cannot even lay down any principle upon which you can give damages; nevertheless, it is remitted to

the jury, or those who stand in place of the jury, to consider what compensation in money shall be given for what is a wrongful act. Take the most familiar and ordinary case: how is anybody to measure pain and suffering in moneys counted? Nobody can suggest that you can by any arithmetical calculation establish what is the exact amount of money which would represent such a thing as the pain and suffering which a person has undergone by reason of an accident. But, nevertheless, the law recognizes that as a topic upon which damages may be given."

12. In ***Perry v. Cleaver, 1969 ACJ 363 (HL, England)***, Lord Morris of Borth-y-Gest held thus:

"To compensate in money for pain and for physical consequences is invariably difficult but no other process can be devised than that of making a monetary assessment."

13. In ***Phillips versus Western Railway Co., (1874) 4 QBD 406***, Field, J., while emphasizing that damages must be full and adequate, held thus: "You cannot put the plaintiff back again into his original position, but you must bring your reasonable common sense to bear, and you must always recollect that this is the only occasion on which compensation can be given. The plaintiff can never sue again for it. You have, therefore, now to give him compensation once and for all. He has done no wrong, he has suffered a wrong at the hands of the defendants and you must take care to give him full fair compensation for that which he has suffered." Besides, the Tribunals should always remember that the measures of damages in all these cases "should be such as to enable even a tortfeasor to say that he had amply atoned for his misadventure". The observation of Lord Devlin that the proper approach to the problem or to adopt a test as to what contemporary society would deem to be a fair sum, such as would

allow the wrongdoer to “hold up his head among his neighbours and say with their approval that he has done the fair thing”, should be kept in mind by the court in determining compensation in personal injury cases.

14. **Mc Gregor on Damages, 14th Edn.**, para 1157, referring to heads of damages in personal injury actions states:

“The person physically injured may recover both for his pecuniary losses and his non-pecuniary losses. Of these the pecuniary losses themselves comprise two separate items, viz., the loss of earnings and other gains which the plaintiff would have made had he not been injured and the medical and other expenses to which he is put as a result of the injury, and the courts have sub-divided the non-pecuniary losses into three categories, viz., pain and suffering, loss of amenities of life and loss of expectation of life.”

15. In **Concord of India Insurance Co. Ltd. versus Nirmala Devi, 1980 ACJ 55 (SC)**, the Apex Court held:

“The determination of the quantum must be liberal, not niggardly since the law values life and limb in a free country in generous scales.”

16. In **R.D. Hattangadi versus Pest Control (India) Pvt. Ltd., 1995 ACJ 366 (SC)**, speaking about the heads of compensation, the Apex Court held thus:

“Broadly speaking, while fixing the amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance;

(ii) loss of earning of profit up to the date of trial;
 (iii) other material loss.

So far as non-pecuniary damages are concerned, they shall include:

(i) damages for mental and physical shock, pain and suffering already suffered or likely to be suffered in the future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to walk, un or sit; (iii) damages for loss of expectation of life, i.e. on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.”

17. In ***Rajkumar Vs. Ajay Kumar, (2011) 1 SCC 343***, the Apex Court laid down the heads for which compensation is to be awarded for personal injuries.

“6. The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii) (a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that

compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.”

18. In ***Sanjay Verma Vs. Haryana Roadways, (2014) 3 SCC 210***, the Apex Court granted compensation under the heads of medical expenses, future treatment, pain and suffering, cost of attendance etc.

19. Compensation has to be awarded for the loss suffered. As stated hereinabove, the loss suffered will depend on the nature of the work, the nature of the disability and the effect this disability will have on the earning capacity of the injured. In this behalf, reference may be made to the judgment of the Apex Court in ***Raj Kumar*** (supra) wherein the Apex Court held as follows:-

“11. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that the percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation (see for example, the decisions of this Court in Arvind Kumar Mishra v. New India Assurance Co.Ltd. [(2010) 10 SCC 254] and Yadava Kumar v. National Insurance Co. Ltd. [(2010) 10 SCC 341].

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13. *Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.*

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15. *It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may."*

20. No doctor was examined in this case. As pointed out above, there is not even material on record to show that the petitioner has lost 20 teeth and there is no proof of loss of income. It has been repeatedly held that percentage of disability does not automatically mean loss in income by the same percentage. To highlight this, let me give one example. Supposing an employee of a bank employed on the clerical side loses both his legs in an accident. He can still work in the bank. He can continue to work in

the bank and get the same salary. He may be awarded very high compensation for loss of his legs, for discomfort, for disfiguration and other heads but he does not lose income. On the other hand, a labourer who may suffer a much smaller injury to one leg may become totally incapacitated from doing any hard physical work and even a small injury with lesser disability may lead to 100% loss of income. A mason who loses a hand would become incapable of earning any amount and his loss of income may be assessed at 100%. This has to be assessed depending on the facts of each case and the percentage of disability reflected in the disability certificate cannot be made the only ground for grant of compensation.

21. As far as the present case is concerned, the compensation already awarded is on the higher side as far as loss of earning capacity is concerned. It is true that this compensation is not adequate as far as disfigurement, medical expenses etc. is concerned but overall I feel that the award is on the higher side and, therefore, I do not feel that any further enhancement is called for.

22. In view of above discussion, the appeal is dismissed.

23. Send down the lower court records forthwith.

CHIEF JUSTICE