

THE HIGH COURT OF TRIPURA
AGARTALA

MAC APP. NO.97 OF 2011

Smt. Maharani Debbarma,
W/O. Sri Ram Kumar Deb Barma,
Resident of Bashtali, Ramdaspara,
P.S.-Bishramganj, District-West Tripura,
Aged about-38 yrs, by faith-Hindu,
By profession-Housewife, Citizen of India.
For and on behalf of her injured minor son-

Master Chiranjit Deb Barma,
S/O. Sri Ram Kumar Deb Barma,
Resident of Bashtali, Ramdaspara,
P.S.-Bishramganj, District-West Tripura.

..... Appellant.

- V e r s u s -

1. Sri Bhopal Kanti Saha,
S/O. Late Haricharan Saha,
Resident of Udaipur, Khilpara (East bank of
Thanapukurpar), P.S.-R.K. Pur,
District-South Tripura.
(Owner of Mini Bus vehicle bearing registration
No.TR-01-1486).

2. The Oriental Insurance Company Limited,
Represented by its Divisional Manager,
Of Central Road, Kaman Chowmuhani,
P.S. West Agartala, Dist.-West Tripura.
(Insurer of Mini Bus vehicle bearing registration
No.TR-01-1486).

..... Respondents.

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant	: Mr. R.G. Chakraborty, Advocate, vice Mr. P.K. Dhar, Advocate.
For the respondent No.1	: Mr. D. Bhattacharji, Advocate.
For the respondent No.2	: Mr. P. Gautam, Advocate.
Date of hearing and delivery of judgment and order.	: 26.08.2015.
Whether fit for reporting	: NO.

JUDGMENT & ORDER (ORAL)

This appeal by the claimant for enhancement of compensation is directed against the award dated 12-07-2011 passed by the learned Motor Accident Claims Tribunal, Court No.3, West Tripura, Agartala in case No. T.S.(MAC) 515 of 2008 whereby the learned Tribunal has awarded a sum of Rs.46,600/- in favour of the claimant.

2. The claim petition has been filed by Smt. Maharani Debbarma but it is clearly stated that this claim petition has been filed for and on behalf of her minor son Master Chiranjit Deb Barma.

3. The undisputed facts are that this minor boy aged about 10 years met with a motor vehicle accident on 21.10.2008 on the Agartala-Udaipur road. He was hit by Mini bus bearing No.TR-01-1486 which hit the minor child from behind. The claimant remained in hospital from 21.10.2008 to 05.01.2009, i.e. for a period of 76 days. He suffered from a fracture. Though the fracture has united, a disability certificate has been issued that he has suffered 20% disability to his leg and there is also a long scar on his thigh.

4. 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.

5. Applying the aforesaid principles, I now assess the compensation. The learned Tribunal has not awarded any amount to the claimant on account of attendant charges. The claimant injured is a young boy aged 10 years. He would require attendance round the clock in the hospital. Even if two attendants were attending on him round the clock and in the year 2008 the cost of one attendant is taken at Rs.250/- per day, the cost of two attendants for 76 days works out to Rs.38,000/-. The claimant was discharged after 76 days and even after his discharge he was advised biweekly dressing and he was asked to come for review in OPD after 2-3 weeks. Therefore, he would have required some attendants even when he was outside the hospital keeping in view his tender age and, therefore, I award a total amount of **Rs.40,000/-** for attendant charges.

6. The learned Tribunal has awarded Rs.6,600/- towards cost of treatment of the claimant. No doubt, the claimant only

proved receipts of Rs.6,595/- but this Court cannot lose sight of the fact that many people, especially those belonging to the poorest strata of society who have no medical reimbursement schemes do not keep the receipts of all the expenses incurred by them. The claimant was in hospital for 2½ months. Even if the cost of treatment for one day is taken at Rs.200/-, over 2½ months the cost of treatment would work out to almost **Rs.15,000/-** and I assess it accordingly.

7. The claimant has been awarded Rs.15,000/- for pain and suffering and loss of comfort. Even this is on the lower side. Keeping in view the nature of injuries and the long period of hospitalization, he is awarded **Rs.25,000/-** under this head.

8. The learned Tribunal has awarded Rs.15,000/- to the claimant for loss of income. This award is totally unjustified. The claimant was a student of Class-III and, therefore, there is no question of loss of income of a student studying in Class-III. There is no evidence of a student studying in Class-III. There is no evidence to show that he suffered loss of an academic year due to the accident. Therefore, no award could have been granted under this head. However, the learned Tribunal has not awarded any amount to the claimant for the permanent disability suffered by him. The claimant who is a young boy has been disfigured since his thigh has a permanent scar. This young boy aged 10 years has become semi crippled for the rest of his life. He has suffered a permanent disability. He cannot play and run around like a normal child. Movement of his leg is restricted and, therefore, I award him

Rs.50,000/- on account of loss of amenities of life and future discomfort in life.

Therefore, the total compensation works out to Rs.(40,000 + 15,000 + 25,000 +50,000) =Rs.1,30,000/- (rupees one lakh thirty thousand).

9. 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.46,600/- to Rs.1,30,000/-, i.e. by Rs.83,400/-. The claimant is also entitled to interest @ 9% per annum on the awarded amount from the date of filing of the claim petition till payment/deposit of the amount.

10. The Insurance Company is directed to deposit the entire awarded amount after adjusting the amount already paid by it in the Registry of this Court within 4(four) months from today. Since this amount is payable to a minor, it shall not be paid to the minor or to his guardian and shall be kept in a fixed deposit till the minor attains the age of 21 years. The interest accruing on the fixed deposit shall, however, be released in favour of the guardian on quarterly basis to meet the day to day expenses.

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

12. Send down the lower court records forthwith.

CHIEF JUSTICE