

THE HIGH COURT OF TRIPURA
AGARTALA

MAC App. No. 98 of 2011

Appellant:

Smt. Kusumati Debbarma,
W/o. Late Santi Debbarma, C/o. Sri Swapan
Das of Mohanpur, P.O & P.S-Ranir Bazar,
District- West Tripura, Pin-799211.

By Advocates :

Ms. P. Dhar, Adv.
Ms. P. Deb Paul, Adv.

Respondents :

1. Sri Sanjay Kumar Das,
S/o. Sri Naresh Das, Resident of Ganki, P.S &
P.O-Khowai, West Tripura, Pin-799202 [Owner
of Truck registered as TR-01-1795]

2. The Oriental Insurance Co. Ltd.
[to be represented by the Manager, Divisional
Office] Central Road, P.O-Agartala, P.S-East
Agartala, West Tripura, Pin-799001.

By Advocates :

Mr. A. Gon Choudhury, Adv.,
Mr. K. Bhattacharji, Adv.

B E F O R E
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

Date of hearing &
Judgment & Order : **29th July, 2015.**

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER (ORAL)

This appeal by the claimant is directed against the award dated 30.04.2011 delivered by the learned Motor Accident Claims Tribunal, Court No.3, West Tripura, Agartala in T.S(MAC) No. 500 of 2008 whereby he rejected the claim petition filed by the claimant.

[2] Briefly stated, the facts of the case are that on 15.03.1996 deceased Santi Debbarma was travelling in Truck no.TR-01-1795. It is not disputed that the truck met with an accident and Santi Debbarma received serious injuries. He was taken to the G. B. P. Hospital on the same day and he remained admitted there from 15.03.1996 till 09.05.1996 i.e. for about two months.

[3] The present appellant who is the widow of Late Sri Santi Debbarma filed a petition claiming compensation for the injury suffered by her husband. Unfortunately, Santi Debbarma was not made a party to the claim petition and the entire compensation was claimed by the claimant, Smt. Kusumati Debbarma. The learned MACT passed an award of Rs.1,85,000/- in her favour along with interest @ 12% per annum. The insurance company challenged this award. A learned Single Judge of the Agartala Bench of the Gauhati High Court which then exercised jurisdiction over the State of Tripura set aside the award of the Motor Accident Claims Tribunal in FA No.166 of 1997 vide judgment dated 06.02.2002. The main ground on which the award was set aside was that Kusumati Debbarma had no right to file the claim petition under Section 166 of the Motor Vehicles Act, 1988 since her husband was alive and that the claim petition should have been filed by the husband or at best by his next friend or legal guardian on behalf of the husband. It was also ordered that the amount of Rs.50,000/- already released in favour of Smt. Kusumati Debbarma be refunded by her. However, in separate misc. case, in which proceedings were initiated to recover this amount, later this part of the order was varied and the amount of Rs.50,000/- paid to Kusumati Debbarma was not refunded by her under orders of the Court.

[4] The learned Single Judge passed the judgment on 06.02.2002 and a second petition was filed by the wife on 12.12.2008 in which it was stated that in fact Santi Debbarma died as result of injuries received in the accident on 19.05.2002. Though there is no limitation for filing a claim petition, there is no explanation worth the name as to why the claimant waited for six years to file this petition. I am saying this because the learned Single Judge while allowing the appeal of the insurance company had given liberty to the injured husband to file a claim petition either himself or through a person duly authorized by him. No claim petition was filed in the life time of Santi Debbarma.

[5] Be that as it may, the fact remains that Santi Debbarma had died within about three months of the passing of the judgment by the learned Single Judge and this claim petition was filed after six years. Unfortunately, in the claim petition there is not an iota of evidence except for the bald statement of the claimant that the death of Santi Debbarma was as a result of injuries sustained in the accident. The learned Tribunal held that there is no evidence of this nature and, therefore, rejected the claim petition.

[6] It is contended by Ms. P. Dhar, learned counsel appearing on behalf of the claimant that Santi Debbarma was totally disabled and he was virtually in a state of coma and, therefore, the death is directly attributed to the accident. I am afraid that I cannot accept this contention because to prove this fact some medical evidence should have been led and even if a doctor was not examined at least there should have been documentary evidence on record to show what was the nature of injuries, what was the nature of treatment and how long the treatment was going on. There is very scanty evidence on record which only shows that he was admitted in hospital on 15.03.1996 and discharged on 09.05.1996 with a head injury. But it is apparent from the

discharge slip that he has suffered paralysis due to the accident and he was not in a fit condition to work. The disability has been assessed at 50% which in my opinion would be 100% in the context of a person who was working as a labourer. Even in the disability certificate the photograph of Santi Debbarma shows that he was not even a fit condition to stand and in the photograph he showing lying down in a supine condition.

[7] In view of the above, I am clearly of the view that even if the claimant is not entitled to claim compensation on account of the death of her husband since she has failed to prove that the death is relatable to the accident, she is entitled to compensation with regard to the injuries suffered by her husband.

[8] This court in a number of cases has held that in a case of injury the legal heirs of the injured cannot claim non pecuniary loss such as pain and suffering, future loss of income etc. but they can claim the actual losses which may have occurred. In the present case, the deceased died about six years after the accident took place. Even if he was earning Rs.2000/- per month in the year 1996 which comes to Rs.24,000/- in a year and for a period of six years the income would come to Rs.1,44,000/-. This is the actual loss of income already suffered because the case of the claimant is that her husband could not work for even a day after he met with an accident. In addition thereto, the claimant must have spent substantial amount on the treatment of her husband. Keeping in view the fact that he remained in hospital for two months and he was virtually bed ridden for six years, I award a sum of Rs.1,00,000/- for medical treatment.

[9] The total award therefore, comes to Rs. (1,44,000/- + 1,00,000/-) = Rs.2,44,000/-. Out of this Rs.50,000/- which the claimant has already received is deducted and the insurance company shall pay a sum of Rs.1,94,000/- along with interest @ 7.5 % per annum from the date of filing of the claim petition i.e. from 12.12.2008 till payment/deposit of the entire amount. The claimant is a very poor person and it is apparent that if the amount is paid to her that may not eventually reach her. Therefore, it is ordered that no portion of the amount shall be released in favour of the claimant. The entire amount shall be kept in a fixed deposit for a period of five years at the first instance and only the interest accruing there upon shall be released to her on quarterly basis. After five years Rs.50,000/- shall be released in favour of the claimant every year till the entire amount is released in her favour.

[10] The appeal is disposed of in the aforesaid terms. No order as to costs.

Send down the lower Court records forthwith.

CHIEF JUSTICE