

THE HIGH COURT OF TRIPURA
AGARTALA

MAC APP No.108 OF 2011

Sri Krishna Biswas
S/O Lt. Abhoy Biswas
Resident of Dukli,
P.O.- Siddhi Ashram,
P.S.- Amtali,
District- Tripura West

.....Claimant Appellant.

- V e r s u s -

1. Sri Nabadwip Sarkar
S/O Lt. Girish Ch. Sarkar
Resident of Village Sibnagar,
Melaghar P.O. Takchapara & P.S.
Melaghar, District Tripura West.

2. New India Assurance Co. Ltd.
Agartala Branch, Mantribari Road,
P.O. Agartala P.S. West Agartala,
District Tripura West.

.....O.P. Respondents.

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant : Mr. D.R. Choudhury, Advocate.
Mr. D. Deb, Advocate

For the respondent No.2: Mr. K. Bhattacharji, Advocate.

Date of hearing and : 27.07.2015.
delivery of judgment
and order.

Whether fit for reporting : **No.**

JUDGMENT & ORDER (ORAL)

This appeal for enhancement of compensation is directed against the award dated 12.05.2011 delivered by the learned Motor Accident Claims Tribunal (Court No.3), West Tripura, Agartala in Title Suit (MAC) 174 of 2010 whereby, a sum of

Rs.26,000/- was awarded to the claimant under the following heads:-

Pain and sufferings -	Rs.10,000/-
Loss of income -	Rs. 9,000/-
Cost of treatment -	Rs. 4,000/-
<u>Miscellaneous expenses -</u>	<u>Rs. 3,000/-</u>
Total -	Rs.26,000/-

2. Since, the only issue is with regard to the quantum of compensation, it is not necessary to give other facts. The admitted facts are that the claimant after the accident was admitted in the Agartala Government Medical College and G.B.P Hospital and remained admitted in hospital from 24th December, 2009 till 3rd February 2010 i.e. for a period of 41 days. He was diagnosed as having suffered fracture of the pelvis. After his discharge he was advised bed rest for 15 more days. Thereafter, the claimant again went to the Dr. B.R.A.M. Hospital at Tripura with regard to some cervical problem i.e. spondylosis. The claimant has also produced on record a disability certificate wherein his disability has been assessed at 42% but the disability is on account of deafness.

3. 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.

4. The claimant remained admitted in hospital as an indoor patient for 45 days. This Court can take judicial notice of the fact that in a hospital a person requires treatment round the clock. The condition of the hospitals in India by and large and in the hospitals in Tripura specifically is such that an attendant is required round the clock. Therefore, at least, 2 (two) attendants are required for a patient. The accident took place in the year 2009 and I assess the cost of one attendant at Rs.250/- per day and for 2(two) attendants Rs.500/- per day and the claimant is held entitled to **Rs.20,500/-** on account of attendant charges for 41 days.

5. The learned Tribunal has only awarded Rs.4,000/- to the claimant for cost of treatment. Keeping the prolonged treatment of 44 days and the nature of the injuries which is a fracture to the pelvis, the claimant should be awarded Rs.10,000/- for medical expenses even though he has not produced any material to substantiate this claim. Sometimes parties do not keep all the material with them and he is awarded **Rs.10,000/-** under this head. In addition thereto the claimant is also awarded another

sum of **Rs.3,000/-** as awarded by the learned Tribunal for miscellaneous expenses, transportation charges etc.

6. Now coming to the pecuniary losses the learned Tribunal held that the petitioner was earning Rs.3,000/- per month. The accident took place in the year 2009. The claimant was 52 years of age at the time of the accident. He had claimed his income to be Rs. 5,500/- per month and he stated that he was a mason. Even in the year 2009 a mason would earn Rs.200/- per day and therefore, the claim of his earning Rs.5,500/- a month cannot be said to be exorbitant.

7. It may be pertinent to mention here that though a suggestion was put to the claimant that he was not earning Rs.5,500/- per month, there is no suggestion that he was not a mason. A person at the age of 52, would not be earning less than Rs.200/- per day and therefore, I feel that the income should be taken at Rs.5500/- per month. The learned Tribunal has only awarded loss of income for 3 (three) months. The claimant remained in hospital for 41 days. Even after his discharge he was advised complete bed rest for 15(fifteen) days. After that this Court can reasonably presume that he could not jump straight out of the bed and he would require to rest at home for at least another 2 (two) months. Since, I have taken his income at Rs. 5,500/- per month I award him **Rs. 22,000/-** for loss of income for 4 (four) months.

8. As far as the pain and sufferings is concerned, keeping in view the prolonged period of treatment I award the claimant a sum of **Rs.20,000/-** for pain and sufferings.

9. The next issue raised by Mr. D.R. Choudhury, learned counsel is that the claimant should be awarded loss of future income on account of his disability. I am unable to accept this plea. As rightly held by the learned Court below, the petitioner has miserably failed to show that this disability of deafness had anything to do with the fracture to the pelvis. Normally, a fracture to the pelvis will not cause any deafness. It is urged by Mr. D.R. Choudhury, learned counsel that the girdle of the pelvis encloses the spine and it may have caused damage to the ear. This plea cannot be accepted. Courts do not award compensation on assumptions, presumptions or conjectures.

10. Medical evidence was required to be led to prove that the fracture of the pelvis could cause such a disability. No such evidence has been led. ***In Raj Kumar v. Ajay Kumar and another : (2011) 1 SCC 343***, the Apex Court clearly held that it is the duty of the claimant to lead medical evidence in a case of this nature. Therefore, I cannot award any amount to the claimant for future loss of income because I am of the considered view that the deafness is not a result of the accident.

11. In view of the above discussion, the appeal is allowed and the award is enhanced from Rs. 26,000/- to Rs. 75,500/-

(Rs.20,500/- + Rs.10,000/- + Rs.3,000/- + Rs.22,000/- + Rs.20,000/-) i.e. by **Rs.49,500/-**.

12. The Insurance Company has already satisfied the award passed by the learned Tribunal. It is therefore, directed to deposit the enhanced amount of **Rs.49,500/-** (Rupees Forty nine thousand five hundred) along with interest @ 9% annum from the date of filing of the claim petition till deposit of the amount in the Registry of this Court within 12(twelve) weeks from today.

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

14. Send down the LCRs forthwith.

CHIEF JUSTICE

amrita/sima