THE HIGH COURT OF TRIPURA
A G A R T A L A
MAC App. No. 109 of 2011

Appellant :

Sri Shambhuram Debbarma,
S/o. Lt. Budhrai Debbarma, Resident of Bairagi para, South Gokulnagar, P.S-Teliamura, District-West Tripura.

By Advocate :

Ms. S. Deb Gupta, Adv.

Respondents :

1. Sri Dilip Kumar Das,
S/o. Sri Narayan Chandra Das,
of khamarbari, P.S-Jirania, P.O- Jirania, District-West Tripura, (Owner of the vehicle No. TR-01-3612, Commander Jeep)

2. The ICICI Lombard General Insurance Company Limited.
R.M.S Chowmuhani, Agartala, P.O-Agartala, District-Tripura West.

By Advocate :
None.

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

Date of hearing &
Judgment & Order : **17th July, 2015.**

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER(Oral)

This appeal for enhancement of compensation by the claimant-appellant is directed against the judgment and award dated 17.08.2011 passed by the learned Motor Accident Claims Tribunal, West Tripura, Agartala in T.S(MAC) No.97 of 2008 whereby the Tribunal has awarded compensation of Rs.26,950/- along with interest @ 6% per annum in favour of the claimant.

[2] It is not disputed that on 22.11.2007 when the claimant-appellant was standing on the road he was hit by a Jeep No.TR-01-3612 owned by Dilip Kumar Das and insured with the ICICI Lombard General Insurance Company Limited. The claimant suffered a fracture and was admitted in hospital over two periods. The learned Tribunal awarded Rs.10,000/- for pain and suffering, Rs.9,000/- for loss of income, Rs.2,950/- for cost of treatment and Rs.5,000/- for miscellaneous expenses i.e. a total of Rs.26,950/- as compensation.

[3] Aggrieved by this award the claimant-appellant has filed the present appeal.

[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 proceed to assess the compensation under the different heads.

[6] From the evidence on record it is obvious that the claimant remained admitted in hospital initially from 22.11.2007 to 08.01.2007 when surgical implant was inserted in his leg and thereafter from 17.11.2008 to 18.11.2008 i.e. for one day when the surgical implant was removed from his leg. Therefore, the total period of hospitalization is 49(forty-nine) days. The claimant would have been attended upon by attendance and if the cost of one attendant in the year 2007 is taken at Rs.200/- per day, cost of two attendants comes to Rs.400/- per day and for 49 days, the cost of attendance alone works out to Rs.19,600/- which is rounded off to Rs.20,000/-.

[7] The injured was 45 years old. He used to sell vegetables. In my view the learned Tribunal had gravely erred in taking his income to be Rs.3000/- per month. Even in the year 2007 a vegetable seller would earn Rs.150 to Rs.200/- per day minimum and therefore, I assess the income at Rs.5,000/- per month. The claimant remained in hospital for about 50(fifty) days and therefore, it can be reasonably be assumed that he could not have worked for at least 4(four) months. He is accordingly awarded Rs.20,000/- for loss of income.

[8] The claimant has been awarded only Rs.2,950/- as cost of his treatment on the basis of cash memos retained by the claimant-appellant. This Court can take judicial notice of the fact that a person like the claimant who is a vegetable seller is not aware about the niceties of law and will not retain all the cash memos. He is not a person who gets his expenses reimbursed, therefore, at the initial stage neither the injured nor his relatives would have any interest in retaining the cash memos. Keeping in view the long period of treatment the fact that surgical implants are expensive, I am of the opinion that at least Rs.10,000/- should be awarded under this head. Accordingly, I award Rs.10,000/- for medical expenses which would include cost of transportation also.

[9] Lastly, comes the question of pain and suffering. The claimant remained admitted in hospital for about 50(fifty) days. He could not have moved around for 2/3 months and, therefore, I am of the opinion that the award Rs.10,000/- for pain and suffering is very much on the lower side and the same is increased to Rs.20,000/-.

[10] The total compensation is, therefore, assessed at Rs. (20,000/- + 20,000/- + 10,000/- + 20,000/-) = Rs.70,000/-. The award is accordingly modified and enhanced from Rs.26,950/- to Rs.70,000/-. The claimant-appellant shall also be entitled to interest on the modified amount of compensation i.e. Rs.70,000/- @ 9% per annum from the date of filing of the claim petition till deposit of the amount.

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

Send down the lower Court records forthwith.

CHIEF JUSTICE