**HIGH COURT OF TRIPURA**
**AGARTALA**

**MAC APP NO.02/2020**

Sri Bimal Malakar
Son of Sri Prafulla Malakar,
Resident of Dudhpur, P.S. Kumarghat,
District – Unakoti, Tripura.

.....Appellant(s)

Versus

1. Smti. Swapna Saha
   Wife of Sri Anil Kumar Saha, resident of
   Dhaleswar Road No.13, P.O. – Dhaleswar,
   P.S. – East Agartala, District – West Tripura.
   [(Owner of the vehicle bearing registration
   No.TR-01-T-1912 (truck)]

2. The Divisional Manager
   The Oriental Insurance Company Ltd.,
   Central Road, P.O. – Agartala, P.S. – East Agartala,
   District – West Tripura,
   [Insurer of the vehicle bearing registration No.
   TR-01-T-1912 (truck)]

.....Respondent(s)

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For Appellant(s) : Mr. H. Debnath, Advocate.

For Respondent No.2 : Mr. K.C. Bhattacharjee, Advocate.

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**HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI**

Date of hearing and judgment : 03.12.2020.

Whether fit for reporting :No.

**JUDGMENT & ORDER (ORAL)**

This appeal is taken up for final hearing with the consent of the learned counsel for the parties.

2. Appellant-original claimant has challenged the judgment and award dated 30.08.2019 passed by the Motor Accident Claims Tribunal, West Tripura in Case No.T.S. (MAC) No.88 of 2014.

3. Brief facts are as under:

The claimant was travelling on a motor cycle along with the complainant on 30.11.2013 at about 2 o'clock. The vehicle collided with an oil tanker coming from opposite direction resulting into serious bodily injuries to the claimant. He, therefore, filed the said claim petition seeking compensation of Rs.7,50,000/- from the owner and the insurer of the vehicle involved in the accident. Before the Claims Tribunal, the claimant contended that the injury had resultant into permanent disability. He was treated as an indoor patient between 30.11.2013 to 22.02.2014. He was aged 44 years on the date of accident and was working as a carpenter from which he was earning Rs.9,000/- per month.

4. The Claims Tribunal held that the driver of the oil tanker solely negligent in causing the accident. Regarding the quantum of compensation, the Tribunal proceeded on the basis of disability certificate Ex.6 which

suggested 60% disability which certificate was valid for a period of five years. The Tribunal believed the income of the claimant at Rs.6,000/- per month and granted compensation for 5 years for loss of 60% thereof. The Tribunal added further sums for pain, shock and suffering, conveyance and attendant charges etc. A total compensation of Rs.3,72,720/- was awarded. The claimant has filed this appeal for enhancement of the compensation.

5. In my opinion, the Claims Tribunal has committed several legal errors in the process of awarding compensation. It would be convenient to rework the entire compensation.

6. Firstly, considering the date of accident and the occupation of the claimant at the time of accident, assessing his income at Rs.6,000/- per month needs no revision. However, the question of actual loss of income followed by future loss of income has to be addressed.

7. The claimant had pointed out that he was treated as an indoor patient for close to 84 days. Obviously, even after discharge from the hospital, he would not be in a position to resume his daily activities immediately. For 6 months of forced rest, amount of Rs.36,000/- would be awarded @ Rs.6,000/- per month.

8. The disability certificate Exbt.6 was limited for a period of 5 years. Under order dated 09.10.2020, therefore, I have requested the District Disability Medical Board to assess the condition of the claimant again and to issue a certificate of permanent disability and that too projecting the disability on the basis of body as a whole. He was accordingly examined by the Disability Board. A certificate dated 11.11.2020 has been issued which suggests that the claimant has 60% permanent disability in relation to his right leg. Despite direction, the Medical Board has not assessed the disability of the claimant over body as a whole. Some guess work, therefore, shall have to be done. Since the disability is projected over the right leg, one may take 20% disability of the body as a whole. Applying the decision of Supreme Court in case of ***National Insurance Company Limited vs. Pranay Sethi and others*** reported in ***(2017) 16 SCC 680*** and looking to the age of the claimant being 44 years there shall be 25% increase in his income for future. His prospective income, therefore, would come to Rs.7,500/- per month. Loss of 20% would work out to be Rs.1,500/- per month or Rs.18,000/- per annum. Looking to the age of the claimant, as per the decision of Supreme Court in case of ***Sarla Verma (Smt) and others vs. Delhi Transport Corporation and another*****,** reported in ***(2009) 6 SCC 121*** multiplier of 14 would be applied. For loss of future income, thus, the claimant would receive Rs.2,52,000/- i.e Rs. 1500 x 12 x 14.

9. The Tribunal had awarded a sum of Rs.1,00,000/- for pain, shock and suffering and loss of amenities of life which was reasonable. The same would be maintained.

10. For medical expenditure, the claimant had produced proof of sum of Rs.26,720/-, which was awarded by the Tribunal and is sustained.

11. Further sum of Rs.25,000/- is awarded for special diet, attendant and transportation charges.

12. In the result, the claimant would receive total compensation as under:

(i) Actual loss of income – Rs. 36,000/-

(ii) Future loss of income – Rs.2,52,000/-

(iii) Pain, shock and sufferings – Rs.1,00,000/-

(iv) Medical expenditure – Rs. 26,720/-

(v) Special diet, attendants – Rs. 25,000/-

Total – Rs.4,39,720/-

13. The additional amount of compensation awarded in this Appeal shall be deposited before the Claims Tribunal within 6 (six) weeks from today

with simple interest @ 7.5% per annum from the date of the claim petition till actual payment.

14. Appeal allowed in part and disposed of accordingly.

15. Pending application(s), if any, also stands disposed of. Records may be transmitted to the Trial Court.

**(AKIL KURESHI), CJ**

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HIGH COURT OF TRIPURA