IN THE GAUHATI HIGH COURT
THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR, TRIPURA, MIZORAM AND ARUNACHAL PRADESH
SHILLONG BENCH

M.A.C. Appeal No. 9 of 2008.

Shri Ajay Kumar Singh
Army No. 5454012 L Hav/Clerk
S/o Shri Shyam Bihari Singh
58 GTC (Adm Bn), Happy Valley,
Shillong-7. : Claimant/Appellant

-vs-

1. Shri Kyrshan lamare
Taliang, PO Jowai
District Jaintia Hills, Meghalaya

2. Shri Thanghamali Sumer
S/o Shri B Lakai
Lower lachaumiere,
Shillong, District Khasi Hills,
Meghalaya.

3. Hav Gopi Chetri
Records 58 GTC
District East Khasi Hills,
Meghalaya

4. The Manager,
M/s The Oriental Insurance Co.,
Ltd., Keating Road,
Shillong-1, East Khasi Hills
District, Meghalaya.

5. The Manager
The New India Assurance Co. Ltd.,
Dhankheti, shillong
District East Khasi Hills,
Meghalaya. : Opp Parties/Respondents

BEFORE
THE HON'BLE MR JUSTICE T VAIPHEI

For the Petitioner	:	Mr BC Das, Mrs Rita D Sharma, Advs
For the Respondents	:	Mr VK Jindal, Sr Adv Mr S Jindal, Mr S Dey, Mr EC Suja, Advs
Date of hearing	:	26.07.2011
Date of Judgment & Order	:	21.10.2011

JUDGMENT AND ORDER

Being aggrieved by the award of compensation amounting only to Rs. 1,66,670/- in the judgment dated 1-8-2008 passed by the learned Member, Motor Accident Claims Tribunal, Shillong in MAC No. 31 of 2005, this appeal is preferred by the claimant-appellant for enhancement of the compensation.

2. The appellant was at the relevant time serving as Havildar in the Indian Army presently posted at 58 GTC (Adm Bn), Happy Valley, Shillong. It is his pleaded case that on 6-11-2004 at around 5.35 PM, while riding from Police Bazar to Happy Valley on a motor bike bearing ML-05D-0842 driven by Havikldar Gopi Chhetri with him as pillion rider, one Indica Tourist Taxi bearing ML-04-746 running in full speed negligently dashed against their motor bike near the gate of Step by Step School, Barik Point with the result that he fell down from the bike and sustained multiple head injuries. Due to this accident, he lost the side vision of both his eyes permanently: his left eye became squint, and he has since then been suffering from frequent fits and seizure. As these injuries are permanent in nature, which cannot be cured, his medical category has permanently been reduced to P-2-permanent. He is, therefore, liable to be discharged from military service at any time without any service benefit. He is also being debarred from further promotion to a commission rank and is also debarred from UN Foreign posting. According to him, his whole unit were to be posted to Sudan in the year 2009 on peace keeping mission under the United Nations Organization (UNO) for one year, but he could not be there due to the injury thereby losing the chance of earning Rs. 1,00,000/- per month apart from other benefits. At the

sametime, he requires a large amount of money for his treatment from time to time even after his discharge from service. He, therefore, filed the claim petition for compensation of Rs. 17,89,693/- under different heads of entitlement, both pecuniary and non-pecuniary for loss and sufferance due to the accident. In the claim petition, he furnished the particulars of his injuries, the expenses he had incurred and would be incurring for the rest of his life as the injuries sustained by him are permanent in nature and also due to the likelihood of his getting discharge from service following reduction of his medical category.

3. The claim petition was contested by the owner of the Tata Indica car (respondent 1) and the Oriental Insurance Co. Ltd (respondent 4), who entered their appearances through their respective counsel and filed their respective written statements. The owner of the motor cycle initially contested the case, but abandoned the defence subsequently. The New India Assurance Co. Ltd. (respondent 5), the insurer of the motor cycle, also resisted the claim petition by filing its written statement. On the pleadings of the parties, the following issues were framed by the Tribunal, namely,

I S S U E S

1. Whether the claim is maintainable in its present form?
2. Whether the accident occurred due to the rash and negligent driving of the Driver of Tata Indica No. ML-04-7460 or the rider of the Motor Cycle No. ML-05-D-0842?
3. Whether the claimant was injured as a result of the said accident and, if so, what is the extent of the injuries sustained, whether there is any permanent disability?
4. Whether the Opp. Parties are liable for compensation?

5. Whether the claimant is entitled to compensation and, if so, to what extent?

4. In the course of trial, the appellant examined himself as CW 1 and six other witnesses as CWs 2 to 7. The respondent No. 1 also examined himself as OPW 1, while respondent 3, owner of the motor cycle, examined himself as OPW 2. However, neither of the insurers adduced any evidence. At the conclusion of the trial, the impugned judgment of award was passed by the Tribunal. There was no dispute regarding the factum of the vehicular accident. On the question of whether there was rash and negligent driving also, the finding of the Tribunal is that the accident was attributable to the fault of the Tata Indica car, which was driven in a rash and negligent manner by trying to overtake other vehicles and had in the process dashed against the motor cycle of the respondent No. 3. In the absence of cross-appeal by the respondent No. 1, the findings of the Tribunal on these aspects of the matter have attained finality. On the issue of the nature of injuries sustained by the appellant, the findings of the Tribunal are that he indeed sustained head injuries for which he had to be treated at a number of hospitals and that he had lost use of his visual abilities to a certain extent. According to the Tribunal, the neurological test at Exts XIII and XIII-2 showed that his loss of vision was 1.42 of the left eye and -0.12 of the right eye, but there was apparently no permanent disability sustained by him except to the extent of the defect in his visual powers. With regard to the liability of the respondents for payment of compensation, the Tribunal took the view that as the accident was entirely due to the fault of the driver of the Tata Indica, the owner is vicariously liable to pay the compensation. The respondent No. 1 deposed before the Tribunal that his vehicle was insured with respondent No. 4 at the time of the

accident. The Tribunal also found that the offending car was insured as a commercial vehicle and accordingly held that the insurer, namely, M/s Oriental Insurance Co. Ltd. (respondent 4), was liable to indemnify the loss caused to the respondent No. 1.

5. As for the quantum of compensation payable, the Tribunal recorded the findings that the appellant could only produce medical bills and vouchers, which together came to Rs. 1,095/-, but no evidence was produced for incurring expenses on attendant as claimed by him and that no medical certificate was exhibited by him to prove the exact percentage of his disability. However, the Tribunal found that he was downgraded in his medical category from 'A' to 'P-3 Permanent' thereby changing his assignment in the office work from that of a Clerk before the accident to that of peon after the accident, which could be regarded as demotion. The Tribunal also took the view that the assertion of the appellant that the apprehension of future promotion due to accident was also justified but disbelieved that he lost the chance of foreign assignment, which depended on chance and eligibility. The Tribunal found that the income of the appellant was Rs. 7,022/-, and after deduction of Rs. 5,000/- for his personal and family expenses, the balance of Rs. 2,022/- could be said to be the profit for which the future income had to be calculated annually and another 22 years for the number of years of service left. Even then, the Tribunal was of the view that the calculation might not be exact as the loss of earning was not 100% as he was still in service and that after taking into account his apparent demotion, the loss of his earning capacity could be taken at 40% and that if the loss of income could be taken at Rs. 2,022/-, the annual loss would then be Rs. 24,264/-, 40% of which would come to Rs. 9,705/-. Taking into consideration the

uncertainties of life, the Tribunal adopted a multiplier of 15 and determined the compensation under this head at Rs. 1,45,575/-, to which he added Rs. 15,000/- for pain and suffering, Rs. 5,000/- for loss of amenities and Rs. 1,095/- for medical expenses, etc. The total amount of compensation so awarded came to Rs. 1,66,670/- plus interest at the rate of 8% per annum from the date of the claim petition.

6. I have carefully perused the impugned judgment and award and I have also heard Mr. B.C. Das, the learned counsel for the appellant and Mr. V.K. Jindal, the learned senior counsel assisted by Mr. S. Jindal, the learned counsel for the respondent No. 4 (Oriental Insurance Co. Ld.) and Mr. E.C. Suja, the learned counsel for the respondent No. 1. The only question which falls for consideration in this appeal is, whether, on the facts and circumstances of the case, the compensation awarded is just or inadequate. It is the contention of the learned counsel for the appellant that the multiplier of 15 adopted by the Tribunal is clearly wrong: the correct multiplier to be adopted is 18 inasmuch as the age of the claimant-appellant was only 26 years when the accident took place. He further contends that as an Army personnel, the appellant gets everything practically free and his family members are also enjoying most of their needs at subsidized rates and the deduction of Rs. 5,000/- from his monthly salary of Rs. 7,022/- is absurd and dismally low: only 1/3 of his monthly salary ought to have been deducted. In my opinion, these contentions cannot be entertained by this Court at the appellate stage when no pleadings to that effect were made by the appellant. The law is now well-settled that when no plea in support of a contention has been taken in the pleadings and no issue has been framed thereon in regard to this plea,

no amount of evidence can be looked into on such a plea and no finding can be reached on such evidence. It is next contended by the learned counsel for the appellant that the Tribunal has failed to take into account the fact that the injuries sustained by the appellant are permanent in nature as deposed by CW 4, who had stated that he did not think that there was chance of regaining the sight vision. However, Mr. V.K. Jindal, the learned senior counsel, drawing my attention to the cross-examination of CW 7, submits that the appellant is in a fit condition to live a normal life subject to taking medication. He also submits that CW 4 himself admitted that only an Army doctor could comment as to whether the appellant would be in a position to continue the army service in any manner, and he is not in a position to say so. The learned senior counsel also points out that CW 3, who was Major in the Army at the relevant period, also admitted that the appellant was placed in temporary permanent disability of category P 3 for a period of 24 weeks. He, therefore, submits that the finding of the Tribunal that the appellant could not prove that he suffered permanent disability except to the extent of loss in his visual power, does not suffer from any infirmity. In my opinion, there is force in the contention of the learned senior counsel. The testimony of CW 4 that he did not think that there is chance of regaining the night vision is belied by his disclosure in his cross-examination that he was not an eye-specialist, but the doctors of Military Hospital who had treated and diagnosed him would be in a better position to comment on the nature of the injury as well as the line of treatment and on the effect of the injury. The learned senior counsel, therefore, submits that in the absence of permanent disability of any kind, the compensation amount awarded by the Tribunal cannot be faulted with and is rather a just compensation warranted by the nature of injury sustained by

him. As there is no infirmity in the impugned judgment, so submits the learned senior counsel, the appeal sans merit is liable to be dismissed.

7. The principles for assessing the quantum of compensation payable to an injured came up for consideration before the Apex Court very recently in ***Yadava Kumar v. Divisional Manager, National Insurance Company Ltd., (2010) 10 SCC 341***. That was the case in which the appellant was a painter sustaining injury in a road accident; his disability was assessed at 33% in respect of right upper limb and 21% in left upper limb and 20% in respect of whole body. He was prevented from painting due to injuries sustained. Courts below refused to award any amount towards loss of future earnings. Holding that the approach of the High Court in refusing to grant any compensation for loss of future earnings is not correct, the Apex Court held therein that Note 5 to Schedule II gives formula for calculation of compensation in case of disability in non-fatal accidents. The Apex Court further observes therein that while assessing compensation in accident cases, the High Court or Tribunal must take a reasonably compassionate view of things. The other observations of the Apex Court made at paragraphs 15, 16 and 17 of the judgment are equally instructive, which read thus:

> *"15. It goes without saying that in matters of determination of compensation both the tribunal and the court are statutorily charged with a responsibility of fixing a "just compensation". It is obviously true that determination of a just compensation cannot be equated to a bonanza. At the sametime the concept of "just compensation" obviously suggests application of fair and equitable [principles and a reasonable approach on the part of the tribunals and the courts. This reasonableness on the part of the tribunal and the court must be on a large peripheral field. Both the courts and tribunals in the matter of this exercise should be guided by principles of good conscience so that the ultimate result becomes just and*

equitable [see ***Helen C. Rebello v. Maharashtra, SRTC, (1999) 1 SCC 90****].*

"16. This court also held that in the determination of the quantum of compensation, the court must be liberal and not niggardly inasmuch as in a free country law must value life and limb on a generous scale [see ***Hardeo Kaur v. Rajasthan State Transport Corpn., (1992) 2 SCC 567****].*

17. The High Court and the Tribunal must realise that there is a distinction between compensation and damages. The expression compensation must include a claim for damages but compensation is more comprehensive. Normally damages are given for an injury which is suffered, whereas compensation stands on a slightly higher footing. It is given for atonement of injury caused and the intention behind grant of compensation is to put back the injured party as far as possible in the same position, as if the injury has not taken place, by way of grant of pecuniary relief. Thus, in a matter of computation of compensation, the approach will be slightly more broad-based than what is done in a matter of assessment of damages. At the sametime it is true that there cannot be any rigid or mathematical precision in the matter of determination of compensation."

8. True, the instant case is not one of permanent disablement, but a temporary partial disablement. The finding of the Tribunal is that the claimant was placed in temporary permanent disability of category P4 for twenty weeks. Though CW 4 first suggested that he did not think that there was a chance of regaining sight vision, yet in the cross-examination, he admitted that only an Army doctor could comment on whether he would be in a position to continue the army service in any manner. In my opinion, in the light of this evidence, the onus has shifted to the appellant-claimant to establish that his disablement is permanent, partial or otherwise. Having not discharged this burden, it is difficult to hold that the appellant is suffering from permanent disablement. Notwithstanding the findings of the Tribunal in respect of the nature of injuries sustained by the claimant, which do not warrant my interference, I am, however, of the view that the amount of compensation awarded to the appellant by the Tribunal appears to be somewhat low considering

the temporary demotion of the appellant and the associated mental agony and also of the loss of status which can only be attributed to the accident. The possibility of his posting abroad for UN Peace-Keeping Mission at least for one year cannot be entirely ruled out when his colleagues could admittedly also go there: the inference is thus irresistible that had he not met the accident, he would have been selected and earned considerable additional income apart from his normal salary in India. Moreover, the amount deducted by the Tribunal for his personal expenses is also on the high side considering the fact that he and his family are enjoying free ration or food and other household items at highly subsidized rates in the Army. As held by the Apex Court, there is a distinction between damages and compensation; normally damages are given for an injury which is suffered, whereas compensation stands on a slightly higher footing. It is given for atonement of injury caused and the intention behind grant of compensation is to put back the injured party as far as possible in the same position, as if the injury has not taken, by way of grant of pecuniary relief. That apart, the amount of compensation awarded to the claimant-victim in many non-fatal accident cases so inadequate that they may even envy the death. Years and years altogether, they march up and down in the corridors of Claims Tribunals, sometimes for the entire day, to claim adequate compensation, yet all that they receive is a pittance. In my opinion, the time has now really for the Claim Tribunals come to ponder as to whether the entire exercise is worth the blood, sweat and tears of the claimant-victim, is now the moot question. Considering the nature of injury sustained by the appellant and the attendant facts and circumstances and also keeping in mind the principles of assessment enunciated by the Apex Court in ***Yadava Kumar case*** *(supra)*, the ends of justice will be met if another

one lakh is added to the amount already awarded by the Tribunal so as to award “a just compensation” to the appellant.

9. Consequently, this appeal is partly allowed. The compensation amount already awarded by the Tribunal to the appellant is, therefore, enhanced to Rs. 2,66,670/- (Rupees two lakhs sixty-six thousand six hundred and seventy)only from Rs. 1,66,670/- (Rupees one lakh sixty-six thousand six hundred and seventy)only together with interest at the rate of 8% per annum with effect from the date of the claim petition. The entire payment minus the amount paid/deposited, if any, heretofore shall be made by the Oriental Insurance Co. Ltd. within a period of two months from the date of receipt of this judgment. The impugned judgment and award stands modified in the manner and to the extent indicated above. No cost. A copy of this judgment be circulated to all the Claims Tribunals of Meghalaya.

JUDGE

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