

THE HIGH COURT OF TRIPURA _A_G_A_R_T_A_L_A_

MAC APP. NO.62 of 2003

Smt. Parbati Sarkar,
D/o Sri Nakul Sarkar,
Vill. Panchabati (Purba Colony),
P.O. Sidhai, Mohanpur,
P.S. Sidhai, Dist. West Tripura.

..... *Appellant.*

- Vs -

1. **National Insurance Co. Ltd.,**
Akhaura Road, near IGM Hospital,
Agartala, Dist. West Tripura.
2. **Sri Anil Sarkar,**
S/o Late Birendra Sarkar,
Vill. Bamutia (Burjuish),
P.O. Bamutia, PS - Sidhai,
West Tripura,
(Owner of TR-01-1335).

..... *Respondents.*

**BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA**

For the appellant	: Mr. K N Bhattacharjee, Sr. Advocate, Mr. P S Roy, Advocate.
For the respondents	: Mr. P Gautam, Advocate.
Date of hearing	: 28.11.2013.
Delivery of judgment	: 11.12.2013
Whether fit for reporting	: No.

JUDGMENT & ORDER

This appeal by the claimant is directed against the award, dated 17th July, 2003 passed by the learned Motor Accident Claims Tribunal, West Tripura, Agartala in Case No.TS(MAC)542 of 2001, whereby the learned Tribunal awarded a sum of Rs.70,000/- along with interest to the claimant as compensation. Aggrieved by the award the claimant filed this appeal for enhancement of compensation mainly on the ground that she has suffered a permanent physical disability and the compensation is also on the lower side.

2. On 10.05.2013 this Court had passed a detailed order which reads as follows :

"10.05.2013

This is an appeal for enhancement of compensation.

Heard in part.

At the time of hearing of the claim petition the original disability certificate was produced and filed in Court which reflects that the extent of disability was 25% permanent physical disability. However, it was also noted that the condition is non-progressive and reassessment was recommended after a period of 5 years. This cannot be treated as a permanent disability certificate. On the one hand, this certificate shows that the claimant suffered a serious disability but on the other hand, this very certificate reflects that reassessment had to be done after 5 years. Therefore, before deciding the matter, I deem it fit and proper that the claimant should be re-examined by a Medical Board who shall assess her disability as on date. The Board shall examine the claimant in respect of the injuries to her left forearm only which injuries were suffered by her in the accident and thereafter the Board shall assess her disability. For the convenience of the Court the Board may in simple language, in its

certificate, also mention what acts the claimant cannot perform and what acts she can perform.

I may add that in this State I have found that the disability certificates are normally silent as to whether the disability is in respect of a particular limb or in respect of the whole body. The Medical Board shall clearly set out whether the disability is in respect of the whole body or in respect of particular limb.

The Registrar is directed to send a copy of this order to the Secretary, Health, Government of Tripura, who shall ensure that in future in all disability certificates to be awarded by the Boards, the extent of disability is clearly mentioned and also it is clearly mentioned whether the disability is in respect of particular limb or in respect to the entire body. It shall also be clearly mentioned whether the disability is temporary or permanent. If the Board feels that reassessment is necessary then it must clearly state after what period reassessment of disability should be done.

The appellant is directed to contact the Medical Superintendant of the G. B. hospital along with a copy of this order on or before 31st May, 2013 and then she will be given a date by the Medical Superintendant to appear before the Board sometime in the month of June, 2013.

The matter be listed before this Court again on 10th July, 2013 by which date, the Medical Superintendent of the G B Pant shall send a copy of the disability certificate to the Registrar of this Court in sealed cover.”

Now the Medical Board has submitted its report which reads as follows :

“REPROT OF THE STANDING MEDICAL BOARD

The member of the Standing Medical Board, Government of Tripura, Agartala Government Medical College & G.B.P Hospital, Agartala, have examined Smt. Parbari Sarkar – 28 years having malunited fracture of both bones of the left forearm. The left shoulder, left elbow and left wrist and hand are normal. There is partial restriction of the forearm supination and pronation movement. The disability can be minimized by surgical procedure. This disability is in respect of the particular limb only. This disability is temporary. The extent of disability as mentioned in the certificate issued dated 12-03-2003 exists.”

It is thus obvious that the claimant has a *malunited fracture of both bones of the left forearm*. The Board has also clearly stated that the disability of 25% is in respect of the particular limb and not in respect of the entire body. It has also been stated that the disability can be minimised by surgical procedure. It is in the light of this report that I now proceed to decide the matter.

3. The claimant was 16 years old when the accident occurred. After the accident she has got married. No doctor was examined during the course of the trial. The petitioner remained as an indoor patient in G. B Pant hospital for 8 days w.e.f 21.03.2001 to 29.03.2001. Thereafter she continued to get treatment as outdoor patient till May 2001. Therefore, she suffered for about two months. The learned Tribunal awarded her Rs.7,000/- for pain and suffering which in my opinion is on the lower side. She should have been awarded **Rs.10,000/-** for pain and suffering.

4. The amount of Rs.500/- awarded as Medical expenses is very much on the lower side. Even the cost of attendants for 8 days in hospital would have been almost Rs.4,000/- if the cost of one attendant is taken at Rs.250/- per day and the claimant would have required two attendants round the clock. Therefore for medical

expenses including cost of medicines, cost of attendants and transportation etc. she is awarded **Rs.10,000/-**.

5. However, I do not agree with the learned Tribunal that the claimant had any loss of income. She was a student and there would be no loss of income. The petitioner was a young girl who has suffered a permanent disability. True it is that this disability may be minimised by surgical procedure but though more than 10 years have elapsed the petitioner has not undergone any surgery probably because she is too poor to afford the same. She has to live with her deformed limb throughout her life and though the disability is only to the limb, in my opinion she should have been awarded **Rs.25,000/-** for loss of amenities of life, future discomfort etc.

6. As far as future loss of income is concerned, the learned Tribunal awarded her Rs.60,000/- by taking her annual income to Rs.15,000/- and taking her loss of earning capacity as 25%. On both counts I am not in agreement with the learned Tribunal. Even a labourer earns at least Rs.100/- per day which works out at Rs.3000/- per month. Though the claimant has suffered 25% disability to one arm her loss of earning capacity in my opinion should be adjudged at 15% and not 25%. Therefore, the loss of income works out at Rs.450/- per month or Rs.5,400/- per year and

the appropriate multiplier would be 18 and the loss of income works out at Rs.97,200/- which is rounded off to **Rs.1,00,000/-**.

7. In view of the above discussion, the appeal is allowed. The compensation is enhanced from Rs.70,000/- to **Rs.1,45,000/-**. The insurance company has not disputed its liability and, therefore, the insurance company is directed to deposit the enhanced amount of compensation i.e. Rs.75,000/- along with interest @ 6% per annum on the enhanced amount from the date of filing of the claim petition till deposit of the same. The amount be deposited in the Registry of this Court within 4(four) months from today.

The appeal is disposed of.

CHIEF JUSTICE

Sukhendu