

**THE HIGH COURT OF TRIPURA
A G A R T A L A**

MAC APP. 122 OF 2008 & CO(FA) 01 OF 2009

IN MAC APP. NO. 122 OF 2008:

Claimant-Appellant :

Sri Pradip Debnath,
S/O. Late Sadhan Debnath,
Village-Gokulnagar,
N.C. Adarsha Colony, P.S. Bishalgarh,
Tripura West.

BY ADVOCATE :

Mr. S. Saha, Advocate.

- Versus -

Respondents :

1. Sri Tapan Kumar Deb,
S/O. Sukhendu Ch. Deb,
South Badharghat, Siddhi Ashram,
P.S.-Amtali, District-Tripura West.
(Owner of TRL-1332-Truck).
2. National Insurance Co. Ltd.,
Branch at Akhaura Road,
Agartala, under P.S.-West Agartala,
District-West Tripura.
(Insurer of the Offending Vehicle
No.-TRL-1332-Truck).

BY ADVOCATE :

Mr. K. Bhattacharji, Advocate.

IN CO(FA) NO. 01 OF 2009:

Respondent Cross objector :

Sri Tapan Kumar Deb,
S/O. Sri Sukhendu Chandra Deb,
Vill. South Badharghat, Siddhi Ashram,
P.S.-Amtali, District West Tripura.
(Owner of TRL-1332-Truck).

BY ADVOCATE :

Mr. R.C. Debnath, Advocate.

- Versus -**Respondents :**

1. Sri Pradip Debnath,
S/O. Late Sadhan Debnath,
Vill.-Gokulnagar, N.C. Adarsha Colony,
P.S. Bishalgarh, District West Tripura.
2. The National Insurance Company Ltd.,
Akhaura Road, Agartala,
P.S. West Agartala,
District West Tripura.
(Insurer of offending vehicle bearing
No.TRL-1332, Truck).

BY ADVOCATE :

Mr. K. Bhattacharji, Advocate.

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

Date of hearing & : 31.10.2014.
delivery of judgment
and order.

Whether fit for reporting : **NO.**

JUDGMENT & ORDER (ORAL)

Both the appeal and the cross objection are being disposed of by a common judgment since they arise out of the award dated 31-05-2008 passed by the learned Motor Accident Claims Tribunal, Court No.4, West Tripura, Agartala in case No. T.S.(MAC) 266 of 2004 whereby Rs.7,000/- was awarded in favour of the claimant.

2. The undisputed facts are that the claimant suffered injuries in a motor vehicle accident involving vehicle No.TRL-1332 owned by Sri Tapan Kumar Deb. The vehicle was insured with the National Insurance Company Limited. The learned Tribunal

awarded Rs.5,000/- for medical expenses and Rs.2,000/- for pain and suffering, i.e. Rs.7,000/- in all. Hence, the appeal.

3. On perusal of the record, I find that the claimant was never admitted in hospital. He met with the accident on 02-11-2003 and was treated as an outdoor patient. He was advised X-ray and on 07-11-2003 the diagnosis on the basis of X-ray is that there is a chip fracture on the right humerus. He has been advised open strapping. Unfortunately, the claimant has not led any detailed evidence to show what was the amount he spent and for how many days he did not go to work. He was a government employee but has not proved his leave record. He has not proved what was the amount spent by him and the learned Tribunal on the basis of guess work has awarded Rs.7,000/-.

4. The only ground for enhancement is that the learned Tribunal has not taken into consideration the fracture of the humerus. There is no disability and, therefore, I am of the considered view that the award should be enhanced from Rs.7,000/- to Rs.15,000/-, i.e. by Rs.8,000/-. As far as interest on this awarded amount is concerned, I find that the owner took no steps before the Tribunal to place on record the insurance policy. Initially, the entire liability was fixed on the owner. The owner thereafter filed review petition and in review, the learned Tribunal directed that though the awarded amount would be paid by the Insurance Company, the interest @ 9% per annum on the awarded amount would be paid by the Insurance Company from 26-04-2004, i.e. the date of institution of the claim petition till 31-05-

2008, the date of disposal thereof and also from 30-07-2011 till payment/deposit of the amount. The insured owner was directed to pay the interest in respect of the period from 31-05-2008 till 30-07-2011. These directions shall continue to apply even in regard to the enhanced amount. The enhanced amount along with interest as aforesaid be deposited by the Insurance Company and the owner of the vehicle in the Registry of this Court within four months from today.

5. The appeal and the cross objection are disposed of in the aforesaid terms.
6. Send down the lower court records forthwith.

CHIEF JUSTICE