

**THE HIGH COURT OF TRIPURA
AGARTALA**

MAC APP NO. 84 OF 2006

The Director of Postal Services,
Department of Post Offices,
Agartala.

..... **Appellant.**

- Versus -

Sri Rathindra Sarkar,
Son of Sri Rup Kumar Sarkar,
C/o. Bipul Debnath of Jirania,
P.S. & P.O. Jirania,
West Tripura.

..... **Respondent.**

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

For the appellant : Mr. P. Majumder, Advocate.

For the respondent : Mr. S. Bhattacharji, Advocate.

Date of hearing and : 31.01.2014.
delivery of judgment
and order.

Whether fit for reporting : **NO.**

JUDGMENT & ORDER (ORAL)

This appeal by the appellant is directed against the award dated 10-08-2006 passed by the learned Motor Accident Claims Tribunal, West Tripura, Agartala in T.S.(MAC) 347 of 2004 whereby the claimant was awarded compensation of Rs.2,55,800/- along with interest.

2. The case of the claimant was that on 11-10-2003 he was driving auto rickshaw bearing No.TR-02-2766 when it was hit by the Mail Van belonging to the appellant. It was alleged that the accident occurred due to the rash and negligent driving of the driver of the Mail Van. The learned Tribunal held that the accident had occurred due to the negligence of the driver of the Mail Van. He also came to the conclusion that the claimant had suffered 40% permanent disability and thereafter awarded him the compensation of Rs.2,55,800/- under the following heads:-

Loss of income	:- Rs. 3,000/-
Future loss of income	:- Rs.2,44,800/-
Medical expenses	:- Rs. 1,500/-
Transportation charge	:- Rs. 1,000/-
Attendant charges	:- Rs. 500/-
<u>Pain and suffering</u>	<u>:- Rs. 5,000/-</u>
Total	:- Rs.2,55,800/-

3. Sri P. Majumder, learned counsel, appearing vice Mr. P.K. Biswas, learned Sr. Counsel for the appellant, submits that the accident did not occur due to the rash and negligent driving of the driver of the Mail Van and that at best it is a case of contributory negligence. He also contends that the income has not been properly proved and lastly it is submitted that the disability certificate has not been proved accordingly.

4. There is no dispute that the accident took place. According to the claimant, the accident took place due to the negligence of the van driver and he has also stated that one of the passengers of the auto rickshaw also died in the said accident. He has clearly stated that the van was coming at a high speed. On the other hand, the driver of the Mail van also stepped into the witness box and stated that he was going uphill on a low speed and the auto rickshaw driver (the claimant) was coming down at a high speed.

5. The FIR has been proved on record and this FIR has been registered only against the driver of the Mail van. This was the contemporaneous document which has been lodged at the instance of one of the passengers of the auto rickshaw. In this also the blame is put on the driver of the Mail van. Therefore, I am in agreement with the learned Tribunal that the driver of the Mail van was negligent.

6. As far as quantum is concerned, an auto rickshaw driver even in the year 2003 would have earned at least Rs.100/- per day. Even though the disability may not be such that he cannot work as an auto rickshaw driver because there is no evidence to show that he had to give up such work, but the fact remains that he cannot work as competently as before. I also find that the claimant has been awarded a very low amount on account of pain and suffering and has been awarded no amount whatsoever for actual loss of income. He has also not been awarded any amount

for future discomfort and loss of amenities of life and the amount awarded to him for medical treatment is very much on the lower side. Therefore, even if the award is slightly higher as far as assessing the loss on account of future income is concerned that is more than offset by the very low award under the other heads.

7. Therefore, I find no merit in the appeal which is accordingly dismissed.

8. Send down the lower court records forthwith.

CHIEF JUSTICE