

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

MAC App. No. 119 of 2008

Claimant-Appellant :

1. Sri Asish Debnath,
S/o. Shri Haripada Debnath of Resham Bagam,
South Kashipur, P.S: East Agartala, District-
West Tripura.

By Advocates :

Mr. B.N. Majumder, Adv.
Mr. S. Adhikari, Adv.

Respondents :

1. Shri Biswajit Dey,
S/o. Shri Gurudhan Dey, Resident of
Krishnanagar Lake Road, Agartala, District-West
Tripura.

2. Shri Bipul Bhowmik,
S/o. Shri Arun Bhowmik, C/o. Shri Biswajit Das,
Residence of Reshambagan (Das Para), P.S-
East Agartala, District-West Tripura.

3. The National Insurance Company Ltd.
Represented by its Divisional Manager, Agartala
Divisional Office, 42, Akhaura Road, P.S.- West
Agartala, District- West Tripura.

4. The New India Assurance Company Ltd.,
Represented by its Branch Manager, Agartala
Branch Office, Mantribari Road, P.S-West
Agartala, District West Tripura.

5. Shri Surajit Karmakar,
S/o. Sri Surendra Karmakar of Barjala, P.S.
West Agartala, District-Tripura (West).

6. Md. Edrish Miah,
S/o. Md. Anu Miah of Bagma (Daria, P.S- R. K.
Pur, Udaipur, District-South Tripura.

By Advocates :

Mr. P. Chakraborty, Adv.
Mr. S. Lodh, Adv.

B E F O R E
THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA

Date of hearing &
Judgment & Order : **31st October, 2014.**

Whether fit for reporting :

Yes	No
√	

JUDGMENT & ORDER (ORAL)

This appeal for enhancement of compensation is directed against the award dated 16th August, 2008 passed by the learned Motor Accident Claims Tribunal, West Tripura, Agartala in T.S(MAC) No. 105 of 2006 whereby the Tribunal has awarded a sum of Rs.4,82,000/- along with interest @ 6% per annum in favour of the claimant.

[2] Since this is an appeal for enhancement of compensation, only the facts relevant for this purpose are being stated.

[3] The undisputed facts are that the claimant-injured was a driver of an auto rickshaw. He had the valid driving licence. He met with an accident with the offending vehicle and his right hand was amputated at the wrist making him incapable of driving an auto rickshaw. His disability has been assessed at 75%. The income of the injured has been assessed by the learned Tribunal at Rs.3,000/- per month and taking the disability to be 75% he has been awarded Rs.4,32,000/- for future loss of income, Rs.40,000 for medical expenses, Rs.10,000/- for pain and suffering i.e. Rs.4,82,000/- in all. Aggrieved by this award, the claimant has filed the present appeal.

[4] The principles with regard to determination of just compensation contemplated under the Motor Vehicles Act, 1988 are well settled. Injuries cause deprivation to the body which entitles the claimant to claim damages. The damages may vary according to the gravity of the injuries sustained by the claimant in an accident. On account of the injuries, the claimant may suffer consequential losses such as, (i) loss of earning; (ii) expenses on treatment which may include medical expenses, transportation, special diet, attendant charges etc., (iii) loss or diminution to the pleasures of life by loss of a particular part of the body, and (iv) loss of future earning capacity. The damages can be

pecuniary as well as non-pecuniary, but all have to be assessed in rupees and paisa.

[5] It is impossible to equate human suffering and personal deprivation with money. However, this is what the Motor Vehicles Act enjoins upon the Courts to do. The Court has to make a judicious attempt to award damages, so as to compensate the claimant for the loss suffered by him. Such compensation is what is termed as just compensation. On the one hand, the compensation should not be assessed very conservatively, but on the other hand, compensation should also not be assessed in so liberal a fashion so as to make it a bounty to the claimant. The Court while assessing the compensation should have regard to the degree of deprivation and the loss caused by such deprivation. The compensation or damages assessed for the personal injuries should be substantial damages to compensate the injured for the deprivation suffered by him throughout his life. They should not be just token damages. There are numerous cases where the principles for grant of compensation have been enunciated. It would be relevant to quote pertinent observations from a few.

[6] The following observations of Lord Morris in his speech in ***H. West & Son Ltd. V. Shephard, 1958-65 ACJ 504 (HL, England)***, are very pertinent:

"Money may be awarded so that something tangible may be procured to replace something else of the like nature which has been destroyed or lost. But money cannot renew a physical frame that has been battered and shattered. All that Judges and courts can do is to award sums which must be regarded as giving reasonable compensation. In the process there must be the endeavour to secure some uniformity in the general method of approach. By common assent awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that so far as possible comparable injuries should be compensated by comparable awards."

[7] Lord Denning while speaking for the Court of Appeal in the case of ***Ward v. James, (1965) 1 All ER 563***, laid down the following three basic principles to be followed in such like cases:

"Firstly, accessibility: In cases of grave injury, where the body is wrecked or brain destroyed, it is very difficult to assess a fair compensation in money, so difficult that the award must basically be a conventional figure, derived from experience or from awards in comparable cases. Secondly, uniformity: There should be some measure of uniformity in awards so that similar decisions may be given in similar cases; otherwise there will be great dissatisfaction in the community and much criticism of the administration of justice. Thirdly, predictability: Parties should be able to predict with some measure of accuracy the sum which is likely to be awarded in a particular case, for by this means cases can be settled peaceably and not brought to court, a thing very much to the public good."

[8] The assessment of damages in personal injury cases raises great difficulties. It is not easy to convert the physical and mental loss into monetary terms. There has to be a measure of calculated guess work and conjecture. An assessment, as best as can, in the circumstances, should be made.

[9] In the case of ***Mediana, (1900) AC 113***, Lord Halsbury held: "Of course the whole region of inquiry into damages is one of extreme difficulty. You very often cannot even lay down any principle upon which you can give damages; nevertheless, it is remitted to the jury, or those who stand in place of the jury, to consider what compensation in money shall be given for what is a wrongful act. Take the most familiar and ordinary case: how is anybody to measure pain and suffering in moneys counted? Nobody can suggest that you can by any arithmetical calculation establish what is the exact amount of money which would represent such a thing as the pain and suffering which a person has undergone by reason of an accident. But, nevertheless, the law recognizes that as a topic upon which damages may be given."

[10] In ***Perry v. Cleaver, 1969 ACJ 363 (HL, England)***, Lord Morris of Borth-y-Gest held thus: "To compensate in money for pain and for physical

consequences is invariably difficult but no other process can be devised than that of making a monetary assessment.”

[11] In *Phillips versus Western Railway Co., (1874) 4 QBD 406*, Field, J., while emphasizing that damages must be full and adequate, held thus: “You cannot put the plaintiff back again into his original position, but you must bring your reasonable common sense to bear, and you must always recollect that this is the only occasion on which compensation can be given. The plaintiff can never sue again for it. You have, therefore, now to give him compensation once and for all. He has done no wrong, he has suffered a wrong at the hands of the defendants and you must take care to give him full fair compensation for that which he has suffered.” Besides, the Tribunals should always remember that the measures of damages in all these cases “should be such as to enable even a tortfeasor to say that he had amply atoned for his misadventure”. The observation of Lord Devlin that the proper approach to the problem or to adopt a test as to what contemporary society would deem to be a fair sum, such as would allow the wrongdoer to “hold up his head among his neighbours and say with their approval that he has done the fair thing”, should be kept in mind by the court in determining compensation in personal injury cases.

[12] *Mc Gregor on Damages, 14th Edn.*, para 1157, referring to heads of damages in personal injury actions states: “The person physically injured may recover both for his pecuniary losses and his non-pecuniary losses. Of these the pecuniary losses themselves comprise two separate items, viz., the loss of earnings and other gains which the plaintiff would have made had he not been injured and the medical and other expenses to which he is put as a result of the injury, and the courts have sub-divided the non-pecuniary losses into three categories, viz., pain and suffering, loss of amenities of life and loss of expectation of life.”

[13] In ***Concord of India Insurance Co. Ltd. versus Nirmala Devi, 1980 ACJ 55 (SC)***, the Apex Court held: "The determination of the quantum must be liberal, not niggardly since the law values life and limb in a free country in generous scales."

[14] In ***R.D. Hattangadi versus Pest Control (India) Pvt. Ltd., 1995 ACJ 366 (SC)***, speaking about the heads of compensation, the Apex Court held thus: "Broadly speaking, while fixing the amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss.

So far as non-pecuniary damages are concerned, they shall include:

(i) damages for mental and physical shock, pain and suffering already suffered or likely to be suffered in the future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to walk, un or sit; (iii) damages for loss of expectation of life, i.e. on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life."

[15] In ***Rajkumar Vs. Ajay Kumar, (2011) 1 SCC 343***, the Apex Court laid down the heads for which compensation is to be awarded for personal injuries.

"6. The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special damages)

- (i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.***
- (ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:***
 - (a) Loss of earning during the period of treatment;***
 - (b) Loss of future earnings on account of permanent disability.***
- (iii) Future medical expenses.***

Non-pecuniary damages (General damages)

- (iv) Damages for pain, suffering and trauma as a consequence of the injuries.***
- (v) Loss of amenities (and/or loss of prospects of marriage).***
- (vi) Loss of expectation of life (shortening of normal longevity).***

In routine personal injury cases, compensation will be awarded only under heads (i), (ii) (a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life."

[16] In ***Sanjay Verma Vs. Haryana Roadways, (2014)3 SCC 210*** the Apex Court has granted compensation under the heads of medical expenses, future treatment, pain and suffering, cost of attendance etc. in a case of similar nature.

[17] Applying the aforesaid principle, I now proceed to assess the compensation under the various heads:

[18] It is not disputed that the claimant met with an accident on 11th January, 2006. He was admitted to the G. B. Hospital, Agartala on the same day. He was discharged therefrom on 24.01.2006 and his right hand was amputated at the wrist and there was fracture of two bones. According to the learned Tribunal deceased has not produced any document with regard to his medical expenditure. This statement made in the award is totally incorrect because in the evidence of the claimant there is mention of large number of documents being

exhibited and on going through the record I find that a number of cash memos have been attached but the value of these cash memos is not much and the total expenditure reflected in the cash memos is only Rs.3575/-. In the face of these cash memos, I do not understand how the learned Tribunal could have assessed the medical expenses as Rs.40,000/-. Be that as it may and keeping into consideration the fact that there is amputation of the hand, I feel that there may be some expenditure for which receipt may not have been kept and I award Rs.10,000/- for charges of medicines alone.

[19] There is evidence on record to show that the claimant went to Silchar for treatment after his discharge from the hospital at Agartala. He must have been accompanied by one attendant and therefore for his travel to and fro to Silchar and treatment at Silchar he is awarded another some of Rs.5,000/-. In addition thereto the claimant must be compensated for the attendants at the hospital at Agartala. As pointed out above he was admitted in hospital for 14 days and he would have required at least two attendants round the clock and if the cost of one attendant in year 2006 is taken to be Rs.250 per day the cost of two attendants works out to Rs.500 per day and the cost of attendants for 14 days works out to Rs.7000/-. Thus the total amount for medical treatment and transportation is assessed at Rs.22,000/- and not 40,000/-.

[20] Coming to the actual loss of income, the learned Tribunal has not awarded any amount under this head. The claimant remained in hospital for 15 days. He was under treatment thereafter and it can reasonably be presumed that he would not have earned any amount for three months. The claimant has claimed that as a auto rickshaw driver he was earning Rs.4000/- per month and I think this is not an unreasonably high claim and therefore, his income is assessed

at Rs.4000/- per month and he is awarded Rs.12,000/- for loss of three months' income.

[21] Next comes the question of loss of future income. It is urged by Sri Majumder that since the claimant has become incapable of driving the auto rickshaw, his total income should be treated as loss of income and compensation assessed accordingly. There is no manner of doubt that the claimant cannot now drive an auto rickshaw. In that sense he has become 100% disabled. However, from the disability certificate I find that only the right hand of the claimant has been amputated and the claimant, in my opinion, can earn some amount even by selling vegetables in the market even though he would be incapable of doing heavy manual work. Therefore, the loss of earning capacity is also taken to be 75%. Since his income has been taken at Rs.4000/- per month, 75% loss of earning capacity works out to Rs.3000/- per month or Rs.36,000/- per year. He was aged 36 years at the time of accident and in terms of the judgment in **Sarla Verma's** case the multiplier applicable would be 15 and the compensation works out to Rs.5,40,000/-.

[22] The claimant has been awarded only Rs.10,000/- for pain and suffering. He has not been awarded any amount for future discomfort and loss of amenities in life. Award of Rs.10,000/- in the case of a person whose hand has been amputated is like rubbing salt into his wounds. In my view he should be awarded at least Rs.25,000/- for pain and suffering and Rs.50,000/- for loss of amenities and future discomfort in life. While awarding the amount under the second head of loss of amenities and discomfort in life, this Court is taking into consideration the fact that for the rest of the life the petitioner is going to live a partially crippled life. He has been permanently disfigured and does not have the use of one hand and therefore, this award is made under this head also.

[23] The total compensation is, therefore, assessed at Rs.6,37,000/-. The award is accordingly enhanced from Rs.4,82,000/- to Rs.6,37,000/- i.e. by Rs.1,55,000/-. The claimant is also entitled to interest on the enhanced sum of Rs.1,55,000/- @ 9% per annum from the date of filing of the claim petition till deposit of the amount. It is stated that the insurance company has already satisfied the award of the learned Tribunal. It is, therefore, directed to deposit the enhanced amount of compensation along with proportionate interest thereupon in the registry of this Court within four months from today.

[24] The appeal is disposed of in the aforesaid terms. No order as to costs.

Send down the lower Court records forthwith.

CHIEF JUSTICE