

**THE HIGH COURT OF TRIPURA**  
**\_A\_G\_A\_R\_T\_A\_L\_A\_**

**MAC APP. NO.118 of 2008**

**Sri Biswajit Datta,**  
S/o Lt. Swapan Kumar Datta,  
of Basantanagar (Kakraban),  
P.S - Kakraban, Dist - South Tripura.

..... *Appellant.*

- Vs -

- 1. Sri Pancha Pada Tripura,**  
S/o Sri Falgun Kr. Tripura  
of Taibandal, P.S. - Melaghar,  
Dist : West Tripura.  
(Owner of the Vehicle No.TR-01-2668, Commander Jeep).
- 2. Sri Sunil Goswami,**  
S/o Hari Mohan Goswami,  
of Kakraban, P.S. - Kakraban,  
Udaipur, South Tripura.  
(Driver of Vehicle No.TR-01-2668, Commander Jeep).
- 3. The Branch Manager,**  
National Insurance Company Ltd.,  
Having its Branch office at Udaipur, Central Road,  
P.S. R. K. Pur, Udaipur, South Tripura.  
(Insurer of vehicle TR-03-1-2668, Commander Jeep).

..... *Respondents.*

**\_B\_E\_F\_O\_R\_E\_**  
**HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA**

For the appellant : Ms. P Ghatak, Advocate.  
For the respondents : Mr. G S Bhattacharji, Advocate,  
Mr. P Gautam, Advocate.  
Date of hearing and  
delivery of judgment : 27.02.2015.  
Whether fit for reporting : No.

### JUDGMENT & ORDER(ORAL)

This appeal by the claimant-appellant has been filed for enhancement of compensation and is directed against the award, dated 24<sup>th</sup> April, 2008 passed by the learned Motor Accident Claims Tribunal, South Tripura, Udaipur in Case No.TS(MAC)94 of 2007, whereby he awarded a sum of Rs.13,560/- as compensation in favour of the claimant-appellant under the following heads :

Pain and suffering	: Rs.5,000/-
Medical expenses	: Rs.4,560/-
Loss of income for one month	: Rs.4,000/-
<hr/>	
Total Rs.13,560/-	

2. The undisputed facts are that the claimant was running a photography shop. He met with an accident and suffered injuries in the accident.

3. According to the claimant, he was first taken to the Tripura Sundari District Hospital, Udaipur on 20<sup>th</sup> March, 2007 and remained admitted up to 21<sup>st</sup> March, 20007 i.e. for two days. He was suffering from '*fracture of left shaft of the left humerus*' and he consulted private doctors and finally he was admitted in Tropical Orthopaedics & Related Research Centre Nursing Home at Agartala on 20<sup>th</sup> April, 2007 and discharged there from on 24<sup>th</sup> April, 2007 after an operation was performed and surgical plate & screws were inserted to help the healing of the fractured bone. The learned Tribunal did not

award any amount for the treatment rendered in the Tropical Orthopaedics & Related Research Centre Nursing Home on the ground that the claimant could have gone to a government hospital and he was not required to go to a private doctor. This reasoning is wholly incorrect. It is for the patient to decide where he should get his best treatment.

4. This Court is not oblivious to the fact that treatment even today in the government hospitals in Tripura is very primitive. Any person who can afford, gets his treatment done privately. This Court cannot lose sight of the fact that government doctors are permitted private practice in Tripura and even when the patients go to them in government hospitals *more often than not* the patients are asked by the doctors to come to their clinics in the evening and pay them hefty fees. This system may not be good but cannot be rectified by the Court and has to be rectified by the powers that may. However, the patients cannot be denied the right to go to the private doctors.

5. Unfortunately, in this case no doctor was examined and, therefore, on 31<sup>st</sup> October, 2014 this Court had directed the person-in-charge of the Tropical Orthopaedics & Related Research Centre Nursing Home to appear in Court along with the necessary record. The record was wholly defective. There was no record of cash memos, no record of the receipts and the record as produced could not be relied upon to support the receipts given by the claimant.

However, one thing is clear that the claimant did undergo an operation in this Tropical Orthopaedics & Related Research Centre Nursing Home and underwent treatment there for four days. Therefore, his total hospitalization for six days, two days in Udaipur and four days in Agartala. Even if the cost of one attendant is taken at Rs.250/- per day the cost of two attendants comes to Rs.500/- and for six days the cost of attendants itself works out to **Rs.3,000/-**.

6. The claimant for his treatment in Udaipur itself has produced documents for a sum of Rs.3,760/- for purchase of medicines. I feel that the claimant may not have kept some records and therefore, he is awarded **Rs.5,000/-** on account of purchase of medicines.

7. The next important issue is what should be granted to the claimant for his treatment at the hospital at Agartala. As pointed out earlier when the person-in-charge of the Tropical Orthopaedics & Related Research Centre appeared in Court he could not produce any account books or records to show what was actually paid by the claimant. According to the claimant, he has spent more than Rs.20,000/- and he has paid Rs.15,000/- only as fees of the operation. Surprisingly, though this cash memo/bill is stated to have issued by the Manager of the Tropical Orthopaedics & Related Research Centre, when the record was called for there was no record of such cash memo and it was stated that the record is not available.

8. This Court has to be sympathetic towards claimants who have suffered injuries and go to hospitals but at the same time this Court cannot grant compensation just for the asking. The claimant must lead some evidence to show what is the amount actually spent. The receipts and bills produced by the claimant are not supported by the record which was called for from the Tropical Orthopaedics & Related Research Centre. Therefore, this Court only has to assess the amount spent on the basis of guesswork.

9. The occurrence is of the year 2007. The claimant was admitted in the nursing home for four days and also underwent an operation there. Therefore, keeping in view all these factors I award **Rs.10,000/-** as medical expenses for the treatment in this private hospital. It is made clear that this has been done by guesswork in view of the fact that the hospital authorities could not produce any record of the cost of treatment when asked to do so by the Court.

10. Coming to the issue of pain and suffering, the learned Tribunal awarded only Rs.5,000/- which is on the lower side. The claimant remained admitted for six days in hospital over two different spells and was obviously in great pain and agony for more than a month. Therefore, he is awarded **Rs.10,000/-** for pain and suffering.

11. Lastly comes the issue of the actual pecuniary loss suffered by the claimant. There is no dispute that the claimant was a

photographer and had a studio. He claimed that his income was Rs.6,000/- per month but the learned Tribunal assessed the income at Rs.4,000/- per month and granted him compensation for loss of income only for only one month. In my view, the claim of the appellant that his income was Rs.6,000/- per month cannot be said to be excessive. The learned Tribunal compared the income of a '*daily waged labourer*' with that of a '*photographer*'. It is a well-known fact that a person who is running a photography studio will earn much more than a daily waged worker and his income can easily be assessed at Rs.200/- per day even in the year 2007 and therefore, I accept the income at Rs.200/- per day or Rs.6,000/- per month.

12. The next question is for what period should the claimant be awarded this amount. According to the claimant, he could not work for one year but this fact is not supported by any medical evidence. The certificate of the Tropical nursing home relied upon by the claimant itself shows that when he was discharged on 24<sup>th</sup> April, 2007 he was found to have improved. There is no permanent disability but keeping in view the nature of the injuries which was a fracture of the leg this Court can reasonably presume that he may not have been able to work for three months. Therefore, he is awarded **Rs.18,000/-** for loss of income.

13. The total compensation is, therefore, assessed at Rs.(3,000 + 5,000 + 10,000 + 10,000 + 18,000/-) = Rs.46,000/- (Rupees forty six thousand).

14. In view of the above discussion, the appeal is allowed. The award of the learned Tribunal is modified and the compensation is enhanced from Rs.13,560/- to Rs.46,000/- i.e. by **Rs.32,440/-** The claimant shall also be entitled to interest on the enhanced sum of Rs.32,440/- @ 7.5% per annum from the date of filing of the claim petition till payment/deposit of the awarded amount. It appears that the insurance company has already satisfied the awarded amount and, therefore, it is directed to deposit the balance awarded amount with the Registry of this Court within 12(twelve) weeks from today. Obviously, the insurance company shall be entitled to adjust the amount(s), if any, which it has already paid or deposited.

Send down the LCRs forthwith.

CHIEF JUSTICE