

**THE HIGH COURT OF TRIPURA**  
**AGARTALA**

**MAC APP. NO.35 OF 2010**

Shri Tapash Debbarma,  
S/O. Sri Sachindra Debbarma,  
Vill.-Mukta Chandra Para,  
(West Jirania Khala), P.S.-Radhapur,  
District-West Tripura.

**..... Appellant-Claimant-Petitioner.**

**- V e r s u s -**

1. Sri Birkumar Debbarma,  
S/O. Late Arjun Debbarma,  
Vill.-Biswamani Para, Champaknagar,  
P.S.-Jirania, District-West Tripura.  
(Owner of the vehicle No.TR-01-A-3396 (Auto Rickshaw).
2. The Oriental Insurance Company Ltd.,  
Represented by the Divisional Manager,  
Having its Divisional office at Central Road,  
Kaman Chowmuhani, Agartala,  
P.S.-East Agartala, District-West Tripura.  
(Insurer of the vehicle No.TR-01-A-3396 (Auto Rickshaw).

**..... Opposite Parties-Respondents.**

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

|   |                                  |
|---|----------------------------------|
| For the appellant   | : Ms. N. Guha, Advocate.         |
| For the respondent No.2                                   | : Mr. K. Bhattacharji, Advocate. |
| Date of hearing and<br>delivery of judgment<br>and order. | : 30.01.2015.                    |
| Whether fit for reporting                                 | : <b>NO.</b>                     |

**JUDGMENT & ORDER (ORAL)**

This appeal for enhancement of compensation is directed against the award dated 22-02-2010 delivered by the learned Motor Accident Claims Tribunal, Court No.3, West Tripura, Agartala in case No. T.S.(MAC) 38 of 2008 whereby he assessed the compensation payable to the claimant at Rs.3,02,200/- under the following heads:-

|                                 |                        |
|---------------------------------|------------------------|
| Medical expenses                | :- Rs. 1,200/-         |
| Attendant charges               | :- Rs. 3,800/-         |
| Loss of income for<br>6 months  | :- Rs. 18,000/-        |
| Future loss of income           | :- Rs.2,59,200/-       |
| Pain and suffering              | :- Rs. 10,000/-        |
| <u>Mental shock &amp; agony</u> | <u>:- Rs. 10,000/-</u> |
| Total                           | :- Rs.3,02,200/-       |

2. Ms. N. Guha, learned counsel for the claimant-appellant, submits that the learned Tribunal has wrongly assessed the income of the injured at only Rs.3,000/- per month. She also submits that the injured was working as an assistant to a mason and, therefore, the injury in question has left him totally disabled and his loss of income should be assessed at 100%.

3. It is well settled law that in a case of injuries compensation is awarded under two heads; pecuniary damages and non-pecuniary damages. Under the head of pecuniary damages, the expenses of treatment, attendants, special diet, transportation, hospitalization will be covered. Under the head of pecuniary losses, the claimant will also be entitled to the amount of income which he has actually lost due to his being unable to attend his work and in case, the injury has caused a permanent disability, then the future loss of income shall also have to be considered. Under the head of non-pecuniary damages, normally damages will be awarded under the head of pain and suffering and in cases of permanent disability also for loss of amenities of life and future

discomfort in life. In cases where the claimant is a young unmarried person and the injuries affect his marital prospects, damages for loss of marital prospects can also be awarded.

4. Applying the aforesaid principles, I now proceed to assess the compensation. The claimant has placed on record certain documents. The first is a report of the injury sustained by him when he was admitted in hospital. It is not disputed that he was admitted on 09-11-2007 and was diagnosed with suffering a fracture of the right shaft femur and there was also one lacerated wound on the upper portion of the right leg. In the discharge slip, it is mentioned that the patient left against medical advice on 27-11-2007. Therefore, it stands admitted that the claimant was in hospital for about 19/20 days. He had left the hospital against medical advice. The claimant has unfortunately not examined any other doctor nor placed any other evidence on record to show that where he got his treatment thereafter. He has, however, placed on record a disability certificate issued by the District Disability Board wherein the disability of the claimant has been assessed at 40% and it has been held valid for 5(five) years. In the very same disability certificate, nature of disability is mentioned as shortening of right leg following malunited fracture. Since, there is shortening of leg and the fracture is malunited, in my opinion, this can be treated to be a permanent disability because there is nothing which can show that this disability can improve due to passage of time.

5. The main argument of Ms. Guha is that since the injured was an assistant to a mason, his loss of income is 100%.

This Court has repeatedly held that the disability of a person must be relatable to his profession and sometimes a minor disability may lead to a higher percentage of loss of income and sometimes even a grave injury may not cause loss of income. To give an example, if a clerk working in a bank suffers amputation of his leg at the hip, he may be disabled to the extent of 90% in terms of the Workmen's Compensation Act but there may not be any loss of income because he continues to work in organized employment. In the case of labourers, especially manual labourers like in the present case, the Court has to take a pragmatic view and one cannot deny the fact that a labourer requires his limbs to be working.

6. From the medical evidence on record as well as the disability certificate, it is apparent that the left leg and two upper limbs of the claimant have not at all been affected in the accident. His right leg has been affected inasmuch as the fracture which he has sustained has not united properly and his right leg has been shortened. Though this may affect his income and he may not get the wages which a normal labourer will get, it cannot be said that he will not earn any amount whatsoever. This Court in Motor Vehicles cases has to decide what is the just compensation on the basis of evidence. Unfortunately, the claimant led no medical evidence to show how the disability would affect his earning capacity. Therefore, I have taken recourse to the Employees' Compensation Act, 1923 which deals with workmen who belong to the labour class. In Schedule-I of this Act where amputation of a

foot takes place, the disability is assessed at 50%. In the present case, the claimant has not even suffered amputation of a foot but assuming that the shortening of leg is equal to that, I assess the loss of earning capacity at 50%.

7. As far as the income is concerned, the learned Tribunal held that the claimant was earning Rs.100/- per day and the monthly earning was Rs.3,000/-. It is contended by Ms. Guha that the injured was only about 20 years old and he would have earned much more and from an assistant to a mason he could have easily become a mason after passage of time and this fact should be taken into consideration. Keeping all these factors into consideration, I assess the income of the injured for the purposes of assessing the compensation at Rs.4,500/- per month.

Now, coming to the damages under various heads.

8. As far as medical expenses are concerned, the learned Tribunal has awarded only Rs.1,200/- for medical expenses. In my view, this is a ridiculously low amount. The claimant was in hospital for 19 days. He had suffered a fracture of the leg. He left hospital against medical advice in all probability because he could not even afford the treatment thereafter. This Court cannot lose sight of the fact that people belonging to the poorest strata of society who do not get any reimbursement will not keep the bills for the amount spent on medicines and other related expenses. These have to be assessed on the basis of some calculated guess work based on experience. Keeping in view the nature of injuries, the period of treatment etc., I assess the medical expenses at **Rs.10,000/-**.

9. The claimant remained in hospital for 19 days in the year 2007. He in hospital would have been attended upon at least with two attendants at any given time and if in the year 2007 the cost of one attendant is taken to be Rs.150/- per day, the cost of two attendants works out to Rs.300/- per day and for 19 days, the cost of attendants itself works out to Rs.5,700/- which is rounded off to **Rs.6,000/-**.

10. As far as loss of income is concerned, I agree with the learned Tribunal that at that time the income was Rs.3,000/- per month and, therefore, the loss of income assessed at **Rs.18,000/-** is not disturbed.

11. However, as far as loss of future income is concerned, keeping in view the future prospects the same is taken to be Rs.4,500/- per month. As I have assessed the loss of earning capacity at 50%, the datum figure works out to Rs.(2,250 x 12) = Rs.27,000/- per year and applying a multiplier of 18 the compensation under this head works out to **Rs.4,86,000/-**.

12. The claimant was remained in hospital for 19 days and he has been awarded **Rs.10,000/-** for pain and suffering which, in my opinion, is reasonable and calls for no interference.

13. However, the amount of Rs.10,000/- granted for loss of amenities of life and future discomfort in life is very much on the lower side. The claimant is a young boy. For the rest of the life he has to live with a shortened leg. He has developed a limp. This will

also adversely affect his marital prospects and, therefore, he is awarded **Rs.20,000/-** for loss of marital prospects and a sum of **Rs.50,000/-** for loss of amenities and future discomfort in life.

Therefore, the total compensation works out to Rs.(10,000 + 6,000 + 18,000 + 4,86,000 + 10,000 + 20,000 + 50,000) = Rs.6,00,000/- (rupees six lakh).

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.3,02,200/- to Rs.6,00,000/-, i.e. by Rs.2,97,800/-. On the amount of compensation so awarded, the claimant shall also be entitled to interest @ 7.5% per annum from the date of filing of the claim petition till payment/deposit of the awarded amount. Since the Insurance Company has already satisfied the award of the Tribunal, it is directed to deposit the enhanced amount of compensation along with interest in the Registry of this Court within 8(eight) weeks from today after deducting/adjusting the amount, if any, already paid/deposited by them along with proof of such earlier deposit.

15. The appeal is disposed of in the aforesaid terms.

16. Send down the lower court records forthwith.

**CHIEF JUSTICE**