

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

**MAC App. No. 29 of 2011**

**Appellant :**

**National Insurance Co. Ltd.,**  
Represented by the Sr. Divisional Manager,  
Agartala Division, 42-Akhaura Road, P.S & P.O,  
Agartala, Tripura West.

**By Advocates :**

Mr. D. K. Biswas, Adv.  
Mr. G K. Nama, Adv.

**Respondents :**

**1. Sri Nur Alam @ Nur Alam Miah,**  
S/o. Sri Atim Miah, Vill-North Kalamchowra, P.O &  
P.S-Kalamchowra, Tripura west.

**2. Sri Indrajit Goswami,**  
S/o. Sri Pran Ballav Goswami of Vill-Tepania, P.O  
& P.S-Radhakishorepur, Udaipur, South Tripura.  
(Owner of vehicle No. TR-03-B0363, TATA Indica  
GLE Car)

**3. Sri Uttam kumar Das,**  
S/o. Sri Subhash Chandra Das,  
Of vill-Madhya Boxonagar, P.O & P.S-  
Kalamchowra, Distt.-West Tripura (Driver of  
vehicle No. TR-03-B0363, TATA Indica GLE Car)

**By Advocate :**

Mr. M. K. Roy, Adv.

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

Date of hearing &  
Judgment & Order : **30<sup>th</sup> June, 2015.**

Whether fit for reporting :

Yes	No
	√

**JUDGMENT & ORDER (ORAL)**

This appeal by the insurance company is directed against the award dated 06.01.2011 passed by the learned Motor Accident Claims Tribunal, Sonamura, West Tripura whereby the Tribunal awarded a sum of Rs.14,96,850/- in favour of the claimant along with interest at the @ of 6% per

annum and further ordered that in case the amount is not deposited within two months the interest payable would be 12% per annum.

**[2]** The undisputed facts are that the claimant was riding a motorcycle bearing No.TR-01-J-5012. There was a collision between the motor cycle and one car bearing registration No.TR-03-B-0363. The claimant suffered serious injuries and his leg was amputated. According to the claimant his bike was stand still on the side of the road and the car hit the bike. The claimant also claimed that he was running a grocery shop and doing agriculture work and that he had suffered 80% disability due to the amputation of his leg.

**[3]** The learned Tribunal awarded compensation to the claimant under the following heads:

(i) Attendant charges	= Rs. 10,000/-
(ii) Cost of treatment	= Rs. 2,69,852/-
(iv) Loss of future income	= Rs.11,52,000/-
(v) Pain and suffering	= Rs. 5,000/-
(vi) Future discomfort and loss of amenities	= Rs. 50,000/-
(vi) Transportation expenses	= <u>Rs. 10,000/-</u>
Total : Rs.14,96,852/-	

While awarding compensation under the various heads the award of the learned Tribunal made virtually no reference to the evidence and the award has been passed in a very casual manner.

**[4]** First, I proceed to decide the issue of negligence. According to the insurance company the claimant was also negligent. It is alleged that the claimant did not have a valid driving licence and that he did not know how to drive a motorcycle. It was also urged that there was a head on collision and therefore, this Court may presume that both sides were equally responsible.

**[5]** In the claim petition it was clearly stated that at Naljala S. B. School near the house of Zakir Miah the claimant had stopped the motorcycle for talking to Murshed Miah and others when the car hit him. In the evidence also Nur Alam, PW-1 made the identical statement. In the cross-examination it has been put to him that he did not have a valid driving licence which fact has been admitted by him. However, no suggestion was put to him that his motorcycle was not in a stationary condition at the time when the accident took place. Therefore, I uphold the judgment of the learned Tribunal that the negligence was only of the car driver. There was no contributory negligence on the part of the claimant.

**[6]** Next, coming to the question of compensation. Before deciding the issue of compensation one has to determine the income of the deceased. The claimant in his affidavit and in the claim petition had claimed that he used to run a grocery shop and besides grocery shop he has vast landed property and therefore, was earning Rs.8,500/- per month. A certificate issued by the District Collector has been produced wherein the income has been stated to be Rs.8,000/-. This has been accepted by the learned Tribunal to be gospel truth. This Court in ***Shri Tarun kumar Reang Vrs. Sri Rakesh Debnath and others: MAC App. No.02 of 2010*** decided on ***17<sup>th</sup> June, 2015*** has held as follows:

**“[10] I have highlighted all these pointes to emphasize the fact that in a Court of law, even before a Tribunal no reliance can be placed on such a certificate because such certificate has no statutory backing to it. Such a certificate is not issued to under any authority of law and as such no Court should blindly follow the certificate and the income must be assessed on the basis of the evidence led by the parties and not on the basis of such certificates.”**

No reliance can be placed on such certificate. This certificate is not worth the scrap of paper it was written on. No Tribunal or Court can rely upon such a certificate to assess the income in a motor accident claim cases.

**[7]** Having held so this Court cannot lose sight of the fact that the claimant at the time of the accident was 39 years old. There is no cross examination that he was not running a grocery shop. The accident took place in the year 2010 and therefore, it can easily be presumed that the claimant may have been earning Rs.200/- per day by running a grocery shop and therefore, his income is taken at Rs.6,000/- per month.

**[8]** 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.

**[9]** Applying the aforesaid principles I now proceed to assess the compensation under the different heads.

**[10]** Unfortunately, the learned Tribunal has not discussed the any evidence at all. The evidence shows that immediately after the accident the claimant was referred to the G.B.P Hospital, Agartala where he was admitted on 2<sup>nd</sup> January, 2010. He was discharged from G.B.P Hospital on 3<sup>rd</sup> January, 2010 and went to the Silchar City Hospital where he was treated from 3<sup>rd</sup> January, 2010 to 17<sup>th</sup> January, 2010. Therefore, the total period of treatment works out to 1(one) day at Agartala and 15(five) days at Silchar. According to the claimant after his discharge from Silchar he again came back to Agartala and was admitted at the Dr. B. R. Ambedkar Memorial Teaching Hospital, Hapania on 18.01.2010 and an operation was performed on 27.01.2010 but due to gangrene setting in his leg was amputated on 27.01.2010. He was discharged from the hospital at Hapania on 29.03.2010 after 70(seventy) days. Thereafter he was again hospitalized at Hapania on 08.06.2010 and was discharged therefrom after nineteen days. Therefore, the claimant has spent 90(ninety) days in the various hospital at Agartala. This Court can take judicial notice of the fact that in Government Hospitals attendance is required round the clock. If the cost of each attendant in the year 2010 is accepted at Rs.250/- per day, the cost of two attendants come to Rs.500/- per day and for 90(ninety) days it works out to Rs.45,000/-. In Silchar even if one attendant was there that attendant would have been required to pay the transportation charges from Agartala to Silchar, stay there in Silchar for 15(fifteen) days, pay for his boarding and lodging and therefore the expenses of the attendant at Silchar is taken at Rs.500/- per day and Rs.7,500/- is awarded for attendant charges at Silchar. The claimant also went to Apollo Hospital, Chennai where he remained admitted for 25(twenty-five) days. Even there he would have required attendant and at that time the attendant charges are fixed at Rs.500/- per day

and for 25(twenty-five) days the attendant charges at Chennai comes to Rs.12,500/-. Therefore, the total attendant charges come to Rs.65,000/-.

**[11]** The claimant has been awarded Rs.2,69,850/- for the cost of treatment only on basis of the documents produced by him. This Court cannot lose sight of the fact that over this period of almost 150 days when the claimant was hospitalized, he may have incurred many other expenses for which receipts may not have been kept and therefore, I award Rs.3,00,000/- for medical expenses.

**[12]** The claimant has been awarded only Rs.10,000/- for transportation expenses. This is ridiculously low keeping in view the fact that the claimant got treatment at Silchar as well as at Chennai. He was treated not only at Agartala but also at Silchar and at Chennai and therefore, he is awarded Rs.20,000/- for transportation.

**[13]** The claimant has not been awarded a single penny for actual loss of income. I have assessed the income at Rs.6000/- per month. The claimant remained admitted in various hospital for almost 135 days. In addition thereto, he was an out patient for a long period and it can reasonably presumed that he could not work for one year and therefore, he is awarded Rs.72,000/- for actual loss of income.

**[14]** That brings us to the question that what is the future loss of income. The learned Tribunal blindly followed the disability certificate. Loss of disability is different from loss of earning. The claimant was running a grocery shop. Even a person on crutches can run a grocery shop though his efficiency may be greatly impaired. In the present case the amputation is below the middle thigh and even under the Workmen's Compensation Act the percentage

of loss of earning capacity in such a case is only 60%. The amputation of the leg below the middle thigh cannot amount to 80% disability. I am of the view that keeping in view the nature of the job the claimant's loss of income should be assessed at 50%, however, while assessing the loss his future prospects have also to be taken into consideration. The claimant was only 39 years of old and taking into consideration his future prospect, the income is taken at Rs.9000/- and 50% of the same is assessed at Rs.4500/- per month or Rs.54,000/- per year. Multiplier of 16 is applied and the compensation works out to Rs.8,64,000/- under this head.

**[15]** Under the head of non-pecuniary losses the claimant has been awarded only Rs.5,000/- for pain suffering. This is rubbing salt into the wounds of a person whose leg has been amputated and who has remained in hospital for more than 135 days. He is awarded Rs.50,000/- for pain and suffering.

**[16]** Even the award under the heading of future discomfort and loss of amenities is very much on the lower side and the same is increased to Rs.1,50,000/-.

**[17]** The total compensation is therefore, works out to Rs.15,21,000/- which is higher than the amount awarded by the Tribunal. As such I find no merit in the appeal which is accordingly dismissed. No order as to costs.

Send down the lower Court records forthwith.

**CHIEF JUSTICE**