

**HIGH COURT OF TRIPURA
AGARTALA**

Mac App No.59/2013

Shri Narayan Saha, S/o- Shri Swapan Saha, Vill- Jangalia, P.O.- Bishalgarh, P.S. Bishalgarh, District- West Tripura.

---- Claimant-appellant(s)

Versus

1. Shri Dilip Dey, S/o. Lt. Paresh Chandra Dey, Village- Lembutali, P.O. Nehalchandranagar, P.S. Bishalgarh, District- West Tripura.(Owner of vehicle No.TR-01-A-1368(Mini-Bus)).

2. The Branch Manager, The New India Insurance Company Ltd., Mantribari Road, Agartala-799001, West Tripura. (Insurer of No.TR-01-A-1368 (Mini-Bus), Policy No.53060231090100208785, valid from 23-03-2010 to 21-03-2011.

----Respondent(s)

For appellant(s) : Mr. S. Deb, Sr. Advocate.

For Respondent(s) : Mr. K. Bhattacharjee, Advocate.

HON'BLE THE CHIEF JUSTICE MR. AJAY RASTOGI

Order

27/03/2018

The appeal has been filed at the instance of the claimant/appellant under 173 of the Motor Vehicles Act, 1988 for enhancement of compensation awarded by the Motor Accident Claims Tribunal, Court No.4, Agartala, West Tripura in Case No. T.S.(MAC) 351/2010.

[2] The indisputed facts, which has come on record and manifest from the record, are that on 31st March, 2010 the claimant/appellant,

who was serving as an Assistant-Cum-Cleaner, boarded the vehicle bearing No.TR-01-B-2959 (Safari Jeep) which was coming from Melaghar towards Agartala and sat at the rear side of the vehicle. At about 11.30 am, while the vehicle reached Kuripukur, Amtali with a view to give pass to another vehicle, the driver of the vehicle stopped the vehicle on an under construction culvert of the road. At that point of time, another offending vehicle bearing No.TR-01-A-1368 (Mini Bus) which was passing towards Agartala suddenly dashed the vehicle of the appellant from the back and caused a terrible accident. As a result, the claimant/appellant sustained grievous injuries on his person. Soon after the accident, the claimant/appellant was taken to GB Hospital, Agartala where he was treated as an indoor patient. Due to the accident, he suffered multiple fractures on his right leg and head injury and became physically disabled.

[3] After discharge from the hospital, he remained under treatment for a long time. From the disability certificate issued by the District Disability Board dt. 4th July, 2012 indicates that he suffered 60% disability for a period of 5 years and subsequent Locomotor Disability Certificate issued on 5th July, 2017 indicates that the disability is reduced to 40% although there is observation made by the medical board that this disability of 40% may be reduced at a later point of time but it is only a presumption. How far his working efficiency has been impaired and whether there will be further deterioration or improvement is not possible even for a doctor to assess at the relevant point of time.

[4] In the earlier certificate issued by the District Disability Board, the claimant/ appellant suffered from "Movement Deformity of RT Lower Limb with Flexion Deformity of right knee due to RTA". The subsequent certificate certifying 40% disability indicates that he suffered "Flexion Deformity RT Lower Limb with Partial Restricted Movement." It is not disputed that he suffered injuries and also suffered with permanent disablement, percentage may vary from time to time.

[5] The materials on record indicates that the claimant/appellant was less than 21 years of age on the date of the alleged accident and his earning was 3,500/- per month and looking to the nature of injuries and the disability which the claimant/appellant suffered with permanent disablement though the disability has reduced from 60% to 40%, in the given circumstances, the quantum of compensation comes to $(3,500 \times 12 \times 18 \times 40) \div 100 = 3,02,400/-$. On the rest of the claim which has been awarded by the Tribunal, either of the party has not addressed the court. The Tribunal has awarded interest @ 7% per annum from the date of presentation of the application i.e. 15th September, 2010 in default it shall carry interest @ 9% per annum from the date of filing of the claim petition.

[6] After having heard counsel for the parties and taken into consideration the materials which have come on record and the indisputed facts which has been noticed, the claimant/appellant has made out a case for enhancement of compensation. The enhanced amount of compensation payable to the Claimant/appellant comes to

3,02,400 - 2,08,480 = **93,920/-**. The balance amount shall be paid along with interest @ 7% from the date of filing of the claim petition i.e. 15th September, 2010. If the insurer fails to make payment of the enhanced amount of compensation within 3 months in default shall pay interest @ 9% until actual payment. The insurer shall pay the enhanced amount of compensation along with interest to the claimant within eight weeks from today.

[7] The appeal stands disposed of in the above terms. Send the lower court records forthwith. A copy of this order be supplied to counsel for the parties.

CHIEF JUSTICE

सत्यमेव जयते

Dipesh