

HIGH COURT OF TRIPURA
AGARTALA

MAC APP. No.102/2018

Smt. Khukhumoni Sarkar,
D/o Sri Lal Mohan Sarkar,
Vill : Sonamura, Thakumura, P.S : Sonamura,
District : Sepahijala.

Presently residing at – C/o Jalal Uddin, Golchakkar,
South Ramnagar, P. : West Agartala, District : West Tripura.

..... Appellants(s).

Vs.

1. Sri Biswajit Nath,
S/o Anil Chandra Nath, Vill : South Mirzapur, Sarasima,
P.O : Sarashima, P.S : Belonia, District : South Tripura.
*[Owner of vehicle bearing registration No.TR-08-0366
Chevrolet].*

2. National Insurance Company Ltd.
Akhaura Road, Agartala, P.O. Agartala,
P.S. West Agartala, Dist : West Tripura.
*[Insurer of vehicle bearing registration No.TR-08-0366
Chevrolet].*

..... Respondent(s).

_B_E_F_O_R_E_

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI

For Appellant(s) : Mr. D C Roy, Advocate.
For Respondent(s) : Mr. S D Choudhury, Advocate,
Date of hearing : 23rd September, 2020.
Date of judgment : 30th September, 2020.
Whether fit for reporting : No.

J U D G M E N T

This appeal is filed by the original claimant. She seeks enhancement of the compensation awarded by the Motor Accident Claims Tribunal, West Tripura, under impugned award dated 14th March, 2018.

[2] Brief facts are as under :

On 14th May 2016, the claimant was going to a temple on foot when she met with a vehicular accident causing serious injuries on her leg. Opponent No.1 is the owner and opponent No.2 is the insurer of the vehicle involved in the accident. She claimed compensation of Rs.10,00,000/-. The Claims Tribunal awarded a compensation of Rs.1,21,000/-. Hence this appeal.

[3] The claimant examined herself before the Claims Tribunal. In her deposition, she stated that the vehicle was driven rashly and negligently which caused the accident. She received injuries on the left leg and other parts of the body. She was the first taken to Melaghar Hospital from where she was referred to G.B.P Hospital, Agartala. She took treatment as an indoor patient from 14th May, 2016 to 1st June, 2016. She had spent Rs.2,00,000/- for her medical treatment. She produced disability certificate issued by the Disability Board certifying that she was suffering disability

to the extent of 60%. She claimed that at the time of accident she was teaching school students from which she would earn Rs.8,000/- per month. On account of the injury, it is difficult for her to walk and go to the residence of the students. There was no worthwhile cross-examination of this witness by either of the two opponents.

[4] The claimant examined Dr. D B Roy who was a member of the District Disability Medical Board at the relevant time. He deposed that after examining the claimant the disability certificate was issued assessing her disability at 60%. In the cross-examination, it is stated that the injury had not shorten the leg but it was fractured. She experienced trouble in walking. He clarified that certificate of disability was for a temporary period.

[5] Based on such evidence, the Claims Tribunal held that the driver of the vehicle was solely negligent in causing the accident. With respect to compensation, the Tribunal awarded Rs.10,000/- towards medical treatment noting that the claimant was treated as an indoor patient for 18 days. The Tribunal believed that she would be totally incapacitated for a period of 2 months. Believing her income to be Rs.4,000/- per month, the Tribunal awarded Rs.8,000/- towards actual loss of salary. Towards future loss, the Tribunal referred to the disability of 60% certified by the Medical

Board but was of the opinion that the same was temporary. The Tribunal opined that such disability in the left leg will not affect the earning capacity of the claimant as a private tutor. However, for temporary disability and for pain, shock and suffering, the Tribunal awarded a lump sum amount of Rs.1,00,000/-. Tribunal Further awarded Rs.3,000/- towards transportation between Sonamura and Agartala and thus awarded a total compensation of Rs.1,21,000/-.

[6] On 8th July 2020, this appeal was taken up for hearing when the question of disability of a claimant was discussed. Two aspects which had come to my notice were that the disability certificate issued by the Board was for a temporary period. Further, I had *prima facie* found that assessment of 60% disability for a fractured leg which did not result into shortening of the limb, seemed highly exaggerated. The claimant was, therefore, asked to appear before the disability board and obtain a fresh certificate. The order passed on 8th July, 2020 may be reproduced :

“08/07/2020

This appeal is filed by the original claimant seeking enhancement of the compensation awarded by the Claims Tribunal. The appellant had received injuries principally on her leg in a vehicular accident. The disability certificate issued by the District Disability Medical Board, West Tripura, Agartala was produced at Exbt.5. In the certificate it was stated that the appellant was suffering from locomotor disability (temporary). It was further stated that

“restricted movement due to fracture both bone middle part by RTA”. Disability was assessed at 60%. This certificate contained following two further clauses:

- “(i) This condition is progressive.*
- (ii) Re-assessment is recommended after 5 year 0 month and validity of certificate up to 11th October, 2022”.*

Dr. D. B. Roy, who was the panel doctor, was examined as P.W-2. He deposed that upon examination the petitioner found to be carrying disability to the tune of 60% according to the certificate issued by the medical board. In the cross-examination, he agreed that the leg of the claimant had not shortened due to the injury. However, the disability certificate was issued as she found difficulty in walking. The certificate was for a temporary period.

Two disturbing aspects emerged from the disability certificate and the deposition of the panel doctor. Firstly, the disability certificate which is issued for a temporary period, leaves the claimant to a great disadvantage. No permanent assessment of loss of income could be made on account of the disability certificate having a limited life. If the disability was permanent, the medical board ought to have assessed such permanent disability.

This pattern of issuing disability certificates with a limited validity period came up for consideration before this Court in case of Samir Chandra Das Vrs. Md. Jamal Hossain and another in Mac App No.03 of 2019 dated 31st January, 2020 wherein the Court deprecated such practice and provided that henceforth unless special circumstances exist, disability certificates would be issued on permanent basis.

The second disturbing aspect of the matter is that there is no basis for assessing the disability of the injured as high as 60% when the certificate and the deposition of the doctor suggest that there was no shortening of the limb and the injured merely suffered difficulty in walking. The certificate does not specify whether 60% disability is of the body as a whole or it is of the particular limb. In order to assess loss of income in motor accident claim cases it would be crucial for

the Tribunal or the Court to gather the disability of the body as a whole and not merely localized for a particular limb of the body.

It is simply not possible to accept that the appellant had suffered 60% disability of the body as a whole. Even the disability of 60% of a particular limb is highly exaggerated, particularly when the evidence suggests that there was not even a shortening of the leg.

Under the circumstances, let the appellant appear before the District Disability Medical Board, West Tripura, Agartala within a period of two weeks from today. The Board shall assess the disability of the claimant and state whether there is permanent disability or not? If there is permanent disability, the assessment shall be given of the body as a whole and not confined to one limb only. Let such certificate be produced before the Court on the next date of hearing.

List the matter on 5th August, 2020.”

[7] Accordingly, the claimant appeared before the District Disability Medical Board, West Tripura, Agartala, which has issued a fresh certificate of disability dated 22nd July, 2020 which is taken on record. Relevant portion of this certificate reads as under :

“This is to certify that I/We have carefully examined Kum. Khokomani Sarkar Daughter of Shri Lal Mohan Sarkar Date of Birth 03/12/1997 Age 22 years(s) Female, Registration No.1606/00000/2007/0612937 resident of House No. Near Thakur Mura, Sonamura, Sonamura – 799181 Sub District Melaghar District Sepahijala State/UTs Tripura.

Whose Photograph is affixed above, and I/We satisfied that :

(A) She is a case of Locomotor Disability

*(B) The diagnosis in her case is DIFFICULTY TO MOVEMENT
DUE TO FRACTURE BOTH BONE LEFT LOWER LIMB*

MIDDLE PART AND MILD WASTING OF MUSCLE DUE TO RTA.

(C) She has 62%(in figure) Sixty Two percent(in words) Permanent in relation to her as per guidelines (to be specified)."

[8] Few things emerge from this certificate. Firstly, the claimant is not fully cured after 5 years and continues to suffer disability. This is why the disability board has this time, certified her disability as permanent. Secondly, while assessing her disability as 62% a fleeting reference is made to the guidelines. However, what is the nature of these guidelines is not specified. More importantly, the certificate does not specify whether such disability is of the limb concerned or of the body as a whole. The certificate records that the claimant suffers from locomotor disability which is described as *"difficulty of movement due to fracture both bone left lower limb middle part and mild wasting of muscle due to RTA"*.

[9] Though it is not specified in the said certificate one way or the other, going by the nature of injuries recorded, one must believe that the assessment of disability is of the lower limb and not the body as a whole. In other words, the said disability certificate cannot be interpreted as to suggest that the claimants suffered 62% permanent disability of the body as a whole. In absence of any more reliable material, we may safely assess her disability at 30% of the body as a whole.

[10] The Tribunal had committed two errors:

Firstly, assessing income of Rs.4,000/- per month in case of a young lady aged about of 19 years at the time of accident and stated to be engaged in private teaching of school students, was very low. As noted, with respect to the engagement of the claimant, her deposition was unchallenged by both the opponents. Her income, therefore, could be taken as Rs.8,000/- per month at the time of accident.

Second error that the Tribunal committed was to hold that mere incapacity to move freely due to the leg injury, the claimant should suffer no loss of income. When the claimant is stated to be a teacher giving private tuitions, that too in remote areas, her agility and mobility are of considerable importance. She would have to go to the houses of students who may be very young. In the process, if her mobility is restricted on account of permanent disability and difficulty in movement due to injury on her leg, her earning capacity would certainly reduce substantially. Applying 30% drop in her income, her loss in earning capacity shall have to be worked out. Before doing that, she must provide for future rise in income. Her current income is assessed at Rs.8,000/-. Applying 40% rise for future income, as prescribed by Supreme Court in case of *National Insurance Company Limited Vs. Pranay Sethi & others* reported in

(2017) 16 SCC 680, her prospective income will come to Rs.11,200/- per month. 30% thereof would come to Rs.3,360/- per month or Rs.40,320/- per annum. Looking to her age, multiplier to be applied would be 18. Future loss of income, therefore, would be Rs.7,25,760/-.

[11] The claimant was a young lady. Her pronounced limp in walking would certainly be a limiting factor for her marriage and full enjoyment of a long life ahead of her. A sum of Rs.1,00,000/- would, therefore, be awarded towards pain, shock and sufferings and loss of enjoyment of life. Compensation for medical expenditure and transportation charges is left unchanged. The total compensation, therefore, works out is as under:

(i)	Future loss of income.	:	Rs.7,25,760/-
(ii)	Pain, shock and sufferings and loss of enjoyment of life.	:	Rs.1,00,000/-
(iii)	Medical expenditure.	:	Rs. 10,000/-
(iv)	Transportation.	:	Rs. 3,000/-

Total Rs.8,38,760/-

[12] Additional compensation awarded in this appeal shall be deposited before the claims Tribunal by the insurance company with proportionate cost and interest simple interest @ 7.5% per annum from the date of claim petition till deposit. This shall be done within 8(eight) weeks from today. Once such amount is deposited, the Claims Tribunal shall

release 30% thereof in favour of the claimant. Remaining 70% shall be invested in any nationalized Bank in a fixed deposit for a period of 5(five) years. Upon completion of the period of 5(five) years, the amount shall be paid over to the claimant. In the meantime, the interest accruing on such fixed deposit shall be paid to the claimant periodically.

Appeal is disposed of accordingly. Records may be transmitted to the Claims Tribunal. Pending application(s), if any, also stands disposed of.

(**AKIL KURESHI**), CJ



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