

HIGH COURT OF TRIPURA
AGARTALA

MAC App No. 31/2020

Sri Prabash Das ,

Son of late Nitai Chandra Das,
R/o. Kumarghat, Ambedkar Nagar,
P.S-Kumarghat, District-Unakoti, Tripura.

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

Versus

1. Sri Dipak Das,

Son of Dilip Das, R/o. Village-Ashram Palli,
Kumarghat near Krishna Kali Ashram,
P.S-Kumarghat, District-Unakoti, Tripura.
(Owner of the vehicle bearing Registration No.TR-02-B_2866).

2. The Divisional Manager,

Oriental Insurance Company Ltd.
Hariganga Basak Road, Agartala,
District-West Tripura.
(Insurer of the vehicle bearing registration No.TR-02-B-2866).

..... **Respondent(s).**

BEFORE
THE HON'BLE MR. JUSTICE S. G. CHATTOPADHYAY

For Appellant(s) : Ms. S. Acharjee, Advocate.

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

Date of hearing : 8th March, 2021.

Date of Judgment & Order : **30th June, 2021.**

Whether fit for reporting : NO.

JUDGMENT AND ORDER

[1] This appeal under Section 173(1) of the Motor Vehicles Act, 1988 has been filed by the claimant challenging the judgment and award dated 6.5.2020 delivered by the Motor Accident Claims Tribunal, No.1, Agartala, West Tripura in case No. TS(MAC) 27 of 2017 awarding a sum

of compensation of an amount of Rs.15,56,000/- along with 6% annual interest on the said amount to the claimant appellant who suffered from 60% disability from a road traffic accident which occurred on 28.07.2016.

[2] Factual background of the case is as under:

Twenty-five years old claimant Prabash Das, a mason by occupation was travelling in the offending vehicle bearing registration No. TR-02B-2866 from Asrampalli to Tasanta Road in Manu on 28.07.2016 at about 9.30 am. On the way, he slipped from the speeding vehicle as a result of rash and negligent driving of the said vehicle. Injured claimant was immediately taken to RGM Hospital at Kailashahar in critical condition from where he was referred to AGMC and GBP Hospital at Agartala. After few days of treatment as an indoor patient he was discharged from the hospital. Thereafter, he visited Silchar Medical College Hospital several times for better treatment. His father, Nitai Das lodged a written FIR with the Officer-in-charge of Kumarghat police station day after the occurrence accusing the driver of the said vehicle of rash and negligent driving and based on his FIR Manu P.S Case No.2016MNU028 under Sections 279, 338 and 201 IPC was registered and investigation of the case was carried out by Alauddin Majumder, Sub-Inspector of Police. After conducting the whole investigation, the said Investigating Officer submitted charge sheet against accused Dipak Das, owner-cum-driver of the offending vehicle for having committed offence punishable under Sections 279, 338 and 201 IPC and under Section 187 read with Section 134 M.V. Act.

[3] The injured claimant filed a petition under Section 166 of the Motor Vehicles Act before the Motor Accident Claims Tribunal, No.1 at Agartala claiming compensation of an amount of Rs.78,97,000/-.

[4] Notice was issued to the owner-cum-driver of the offending vehicle and the Divisional Manager, Oriental Insurance Company Ltd, Agartala who were impleaded as respondents. They appeared and filed written objections. In his written objection, the owner-cum- driver of the said vehicle pleaded that his vehicle was insured with Oriental Insurance Company Ltd. (respondent No.2) and the insurance policy was in operation on the date of occurrence. It was also pleaded by him that he was possessing valid driving license and his vehicle was also duly registered. All other documents including permit were also in operation. He, therefore, claimed that liability to pay compensation lied with the insurance company.

[5] On behalf of the Oriental Insurance Company (respondent No.2) it was pleaded that claim of the petitioner was exorbitant and its liability to pay compensation was subject to production of a valid insurance policy, valid driving license of the driver of the vehicle, its registration certificate and other necessary documents.

[6] Claimant petitioner led the evidence of three PWs including the Medical Officer who certified his disability as a Member of the District Disability Medical Board. Besides adducing the oral testimony of the witnesses, petitioner relied on as many as 13 documents. Respondent No.1 also got his oral statement recorded at the Tribunal and relied on his

driving license, the registration certificate of his vehicle, its fitness certificate and the insurance policy which were marked as Exbts. A,B,C and D respectively.

[7] Having relied on the said evidence, the Tribunal quantified the compensation at Rs.15,56,000/- and awarded the said compensation to the claimant along with 6% interest on the said amount from the date of presentation of the petition at the Tribunal till the date of realization. For quantifying the compensation, the Tribunal guessed the daily income of the claimant at Rs.300/- per day and worked out his monthly income at Rs. (300 x 25) = 7,500/-. Thereafter, Tribunal added 40% of the said amount (Rs.3000/-) towards future prospect of the claimant in terms of the judgment of the Supreme Court in **National Insurance Company Limited Vrs. Pranay Sethi and Others;** reported in **(2017) 16 SCC 680** and monthly income of the claimant was worked out at Rs. (7500 + 3000) = 10,500/- and as such the annual income of the claimant came to be Rs.(10,500x 12)= 1,26,000/- which was multiplied by the multiplier of 18 in terms of the table formulated in the judgment of the Apex Court in **Sarla Verma (Smt) and Other Vrs. Delhi Transport Corporation and Another;** reported in **(2009)6 SCC 121** and assessed the loss of future income of the claimant at Rs.22,68,000/-. Since the claimant suffered from 60% disability, his loss of future income was worked out at Rs. (22,68,000 x 60)= 13,60,800. Thereafter, an amount of Rs.30,000/- was added by the Tribunal for his actual loss of income as a result of his confinement in hospital and home and after calculating the

other expenses borne by him and other losses suffered by him, the Tribunal quantified the compensation as under:

Sl. No.	Heads	Amount
01.	For loss of future income	Rs.13,60,800/-
02.	For loss of actual income	Rs. 30,000/-
03.	For medicines	Rs. 29,000/-
04.	For transportation charges	Rs. 10,000/-
05.	For attendant charges	Rs. 26,000/-
06.	For pain and agony	Rs. 1,00,000/-
Total :		Rs.15,55,800/-
		Rounded off to Rs.15,56,000/-

[8] Aggrieved by and dissatisfied with the said award of the Tribunal, claimant petitioner being appellant has filed this appeal challenging the said award, mainly on the following grounds:

(i) Assessment of compensation made by the Tribunal is not fair and just. Particularly, for his treatment in Silchar Medical College outside the State, the claimant spent a higher amount which was not taken into consideration by the Tribunal.

(ii) Tribunal did not consider the fact that as per the disability certificate the claimant suffered from paralysis in both of his legs and completely lost his capacity to earn as a mason. Considering the extent of disability and the occupation of the claimant, the Tribunal should have taken it as 100% functional disability and allowed compensation accordingly.

(iii) The Tribunal did not also consider the fact that the attendants who accompanied the claimant to various hospitals outside the State also incurred higher expenses for this purpose.

[9] In the course of her arguments, Ms. S. Acharjee, learned counsel appearing for the claimant has relied on the decision dated 6th November, 2017 of the Apex Court in **Ankur Kapoor Vrs. Oriental Insurance Co. Ltd. (Civil Appeal No.17998 of 2017)** in which Tribunal awarded Rs. 6,60,000/- to the claimant along with 9% interest for 50% disability which was raised by the High Court to an amount of Rs.8,80,000/- with interest and the Apex Court raised the amount to Rs.22,00,000/- with uniform rate of interest at 8% per annum from the date of presentation of the claim. Counsel argues that in the given case, the appellant suffered from 60% disability and in view of the judgment of the Apex Court in **Ankur Kapoor**(supra), he would be entitled to higher amount of compensation. In the said case, the Apex Court found that the injured appellant lost whole strength and flexibility of his right arm for which he was unable to lift any weight and unable to raise the arm beyond the level of 90 degree and as a result, the appellant who was a driver by occupation was completely unable to drive a vehicle as his arm was not as strong as it was before the accident. In such circumstances, the Apex Court made a twofold enhancement of the compensation which is completely distinguishable from the facts of the present case. In the case before us, the District Disability Medical Board vide certificate dated 09.02.2017 (Exbt.9) has certified that the claimant appellant suffered from 60% disability, as a result of the accident and paraparesis was diagnosed in both of his legs. Dr. Abhishek Majumder who issued the certificate testified at the Tribunal as PW-2 and stated that physical disability of the appellant would certainly affect his ability to work as a

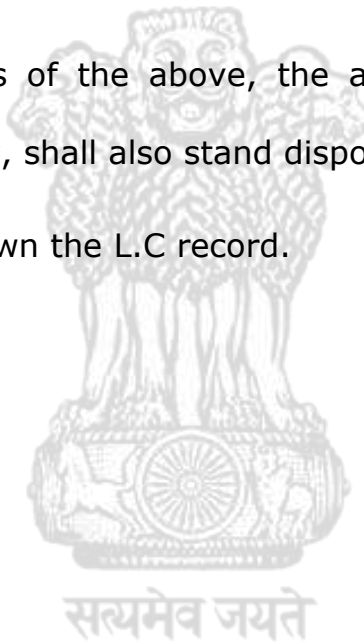
mason. There is no evidence to suggest that the claimant became completely unable to pursue his occupation.

[10] In these circumstances, the award assessed by the Tribunal appears to be just and reasonable and as such, I find no reason to interfere with the said award. Resultantly, the appeal stands dismissed. The insurance company (respondent No.2) is directed to deposit the whole amount of compensation at the Tribunal within a period of six weeks from today.

[11] In terms of the above, the appeal is disposed of. Pending application(s), if any, shall also stand disposed of.

Send down the L.C record.

JUDGE



Dipankar