

HIGH COURT OF TRIPURA
AGARTALA

MAC App.76 of 2019

Sri Shekhar Dey, S/O-Late Manindra Chandra Dey, R/O- Chandinamura,
P.S-West Agartala, P.O-West Bhubanban, District- West Tripura.

-----**Petitioner(s)**

Versus

1.Sri Paritosh Paul and Anr S/O-Late Ashu Paul, R/O-Bhati Abhoynagar,
P.O- Ramnagar, P.S.-West Agartala, District-West Tripura. District-West
Tripura. (Owner of the vehicle bearing Registration No. TR-01-B-2898)

2.The New India Assurance Com. Ltd. represented by its Divisional
Manager 4- Mantri bari road, P.O- Agartala, P.S- West Agartala, District -
West Tripura (Insurer of the vehicle bearing Registration No. TR -01-B -
2898)

-----**Respondent(s)**

For the Petitioner(s)	: Mr. S.Bhattacharjee, Adv.
For the Respondent(s)	: Mr. G.S.Das, Adv.
	Ms. S.Acharjee, Adv.
Date of hearing	: 07.05.2021
Date of judgment	: 30.06.2021
Whether fit for reporting	: No.

BEFORE

HON'BLE MR. JUSTICE S.G.CHATTOPADHYAY

JUDGMENT

[1] This is an appeal under Section 173(1) of the Motor Vehicles Act, 1988 from the judgment and award dated 27.08.2019 delivered in T.S.(MAC) 101 of 2017 by the Motor Accident Claims Tribunal, No.4, West Tripura judicial District, Agartala. By the said judgment dated 27.08.2019, the Tribunal assessed and awarded compensation of a sum of Rs.6,91,856/- to the appellant along with 9%

annual interest thereon from the date of presentation of the petition at the Tribunal till payment for the damage suffered by the appellant in a road traffic accident which occurred on 26.06.2016.

[2] The appellant, a mason by occupation, was returning home on his motor bike on 26.06.2016 at about 8 O'clock in the evening. Having reached Maylakhola, he stopped his motor bike to attend a phone call. Suddenly, the offending vehicle bearing registration No.TR-01-B-2898 [a 3 wheeler auto rickshaw] hit his motor bike from the opposite direction. As a result, the appellant received multiple injuries in different parts of his body. Immediately he was taken to AGMC and GBP Hospital where he received treatment as an indoor patient for about 03 weeks from 26.06.2016 to 15.07.2016.

[3] His wife Smt. Ruma Guha Das (Dey) lodged a written FIR with the Officer-in-charge of the West Agartala Police Station on 18.08.2016 accusing the driver of the offending vehicle for causing the accident by rash and negligent driving. The said FIR was registered as West Agartala P.S. case No. 2016 WAG 0102 under Sections 279 and 338 IPC and after investigation, police charge sheeted the accused driver of the said vehicle for having committed offence punishable under Sections 279 and 338 IPC. The accident had a very serious effect on the appellant. The District Disability Medical Board, West Tripura, Agartala vide certificate dated 05.09.2018[Exbt.3 series] assessed his

disability as 75% locomotor disability and it was certified by the said Disability Medical Board that his right leg was affected and his movements were restricted due to weakness in the right lower limb with stiffness in ankle and knee joint and as such he was seriously affected in pursuing his avocation as a mason.

[4] The appellant filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 claiming compensation of a sum of Rs.10lakhs against the owner cum driver of the vehicle [respondent no.1herein]and the Insurance company [respondent no.2 herein].

[5] Respondent filed written statement raising objection against the said claim. Respondent No.1 claimed that he had no liability in the accident because the said accident occurred due to sudden failure of brake and steering. It was also pleaded by the said respondent that his vehicle was insured with New India Assurance Company Limited and on the date of the accident the vehicle had insurance coverage in terms of the insurance policy. The insurance company pleaded that claim of the petitioner was exorbitant and he could not substantiate his claim by adducing documentary evidence. It was further pleaded by the insurance company [respondent no.2] that payment of compensation was subject to production of the insurance policy in original and valid driving license, registration certificate of the offending vehicle, tax token and all other essential documents of the vehicle.

[6] Having relied on the evidence of 2 witnesses, adduced by the claimant and the documents produced in support of the claim, the Tribunal on appreciation of the evidence vide the impugned judgment awarded a compensation of Rs.6,91,856/- along with 9% annual interest payable from the date of presentation of the claim under various pecuniary and non pecuniary heads which is as follows:

Sl.No.	Head	Amount of compensation
01	Medicine and medical treatment	Rs.44856/-
02	Loss of actual income during treatment period	Rs 42000/-
03	Loss of future income	Rs 4,00,000/-
04	Total charges for future treatment	Rs 1,00,000/-
05	Pain, suffering and mental agony	Rs 60,000/-
06	Conveyance and attendant's charges including special diet	Rs 30,000/-
07	Loss of amenities and enjoyment of life and happiness	Rs 18,000/-
Total		Rs. 6,91,856/-

[7] Aggrieved by the said award, claimant has filed this appeal mainly on the following grounds:

(i) Tribunal did not assess the compensation in terms of the principles settled by various judicial pronouncements.

(ii) Tribunal did not appreciate the fact that petitioner lost the capacity to carry out any occupation to earn his livelihood as a result of the said accident and therefore 75% disability certified by the District Disability Medical Board actually amounted to 100% disability.

[8] Tribunal failed to appreciate that the appellant suffered a wrong for no fault of him and as such he should have been given a fair and just compensation to live a descent life.

[9] I have heard Mr.S.Bhattacharjee, learned advocate appearing for the appellant as well as Mr.G.S.Das and Ms. Sima Acharjee, learned advocate for the respondents. In the course of his arguments Mr.S.Bhattacharjee, learned counsel contended that a uniform formula for determination of loss of future income in similar cases has been settled by various judicial pronouncements and the appellant would be entitled to compensation at an enhanced rate in terms of such formula. Mr.Bhattacharjee has relied on the following decisions of this high court in support of his contention:

(i) Judgment dated **28.07.2019** in **MAC App No.78 of 2017** titled **Sri Samir Dhar Vs. Anjan Roy and Another.**

(ii) Judgment dated **24.01.2020** in **MAC App No.7 of 2019** titled **Smt.Pinki Roy vs. Smt. Lekha Dey Choudhury and 3 others.**

(iii) Judgment dated **31.01.2020** in **MAC App No.3 of 2019** titled **Samir Chandra Das vs. Jamal Hussain and Another.**

[10] Mr.G.S.Das, learned advocate appearing for the insurance company on the other hand submits that the Tribunal has assessed a just and fair compensation in terms of the law and the principles laid

down by the Apex Court in this regard and there is no ground to interfere with the impugned judgment.

[11] Perused the evidence led by the parties including the documents on which reliance has been placed by them.

Considered the submissions of learned counsel representing the parties.

[12] Undisputedly, the petitioner was 45 years old at the time of the accident. As per the table in the case of *Sarla Verma(Smt.) and Others vs. Delhi Transport Corporation and Another* reported in (2009) 6 SCC 121, the Tribunal should have applied the multiplier of 14 for assessment of the loss of his future income in this case which has not been done. Therefore, re-computation of compensation is necessary. It is not disputed that the petitioner was a mason by occupation. In view of his occupation, Tribunal assessed his income at Rs.6,000/- per month. The daily wages of a skilled mason of his age would not be less than 500/-. Supposing that he would have worked for at least 20 days in a month at this rate his monthly income would come at Rs.(500 x 20)=Rs.10,000/-. Since he was 45 years of age and a self employed person, he would be entitled to an addition of 25% of his income towards future prospect as per the judgment of the Apex Court in *National Insurance Company vs. Pranay Sethi* reported in (2017)

16 SCC 680 vide paragraph 59.4. This would bring the appellant's prospective monthly income to (Rs.10,000/- + Rs.2500/-) = Rs.12,500/- As per the disability certificate [Exbt.3 series] appellant suffered from 75% disability. Therefore, for 75% disability his future loss of income per month would be (Rs.12,500/- x 100 x 75%)=9375/- which would be (Rs.9375/- x 12)= Rs.1,12,500/- per annum. As per the decision of the Apex Court in the case of **Sarla Verma**(supra) multiplier of 14 will apply in this case since the appellant was in the age of 41 to 45 years. By applying the said multiplier of 14, his future loss of income would come to (Rs.1,12,500/-x14)=Rs.15,75,000/- coupled with compensation under other heads. It is true that appellant claimed Rs.10,00,000/- (ten lakh) at the Tribunal. Court is not powerless to award compensation higher than the amount claimed by the petitioner. In the given fact situation it would be appropriate to allow a higher compensation to the appellant in view of the extent of disability suffered by him and the effect of such disability on his avocation. The insurance company [respondent No.2] has not disputed the actual expenses suffered by the appellant for his treatment and engagement of attendants. His entitlement to expenses for future treatment, damages for pain and suffering etc. should also be taken into consideration and a rational amount of compensation should be granted to him for such loss.

Keeping these elements in mind, compensation payable to the claimant appellant is quantified as under:

Sl.No.	Head	Amount of compensation
01	For Loss of future income	Rs. 15,75,000/-
02	Medicine and medical treatment	Rs.44856/-
03	Loss of actual income during treatment and confinement	Rs. 27,000/
04	Attendant's charges and conveyance	Rs. 30,000/-
05	For future treatment	Rs. 25,000/-
06	For Pain and suffering	Rs. 25,,000/-
Total		Rs. 17,26,856/-

[13] Accordingly the appellant is allowed a compensation of Rs.17,26,856/-(Rupees Seventeen lakh Twenty-six thousand Eight Hundred and Fifty-six)only. The amount awarded by the Tribunal shall carry 6% annual interest from the date of presentation of claim petition at the Tribunal till payment. The amount enhanced by this court in appeal shall carry 6% annual interest from today till payment. Respondent No.2 i.e. New India Assurance Company Limited is directed to make the whole payment by depositing the money at the Tribunal within a period of 6 weeks from today. Amount already paid in terms of the award of the Tribunal, if any, shall be adjusted.

[14] In terms of the above, the appeal is allowed and disposed of. Pending application(s), if any, also stands disposed of.

Send down the LC Records.

JUDGE