

THE HIGH COURT OF TRIPURA

AGARTALA

MAC App. No. 02 of 2010

Appellant-Claimant:

Shri Tarun Kumar Reang,
S/o. Late Panjiam Reang,
of Madhya Kathalia, P.S-Santir Bazar,
District- South Tripura.

By Advocate :

Mr. B. Majumder, Adv.

Respondent-Opposite Parties :

1. Sri Rakesh Debnath,
S/o. Narayan Debnath of Raimohan Datta para
(W. Kathaliacherra) P.S- Santir Bazar, Dist.-
South Tripura.(Owner of TR-03-2706) Auto
Rickshaw.

2. Sri Jaharlal Debnath,
S/o. Harimohan Debnath,
Of Betaga, P.S. Santir Bazar, Dist. South
Tripura.(Driver of TR-03-2706) Auto Rickshaw.

3. Oriental Insurance Co. Ltd.,
Represented by the Branch Manager, Udaipur
Branch, P.O & P.S- R. K. Pur, Dist. South Tripura.
(Insurer of Vehicle No. TR-03-2706 (Auto
Rickshaw).

4. Sri Swapan Niyogi,
S/o. Jamejoy Niyogi of S.B.C Nagar,
P.S. Belonia, Dist. South Tripura.
(Owner of Vehicle No. TR-03(A)-1638) Auto
Canter.

5. Sri Pradip Malakar,
S/o. Ratan Malakar,
C/o. Sri Swapan Niyogi,
S/o. Janmajoy Niyogi of Vill + P.O. S.B.C Nagar,
P.S-Belonia.
(Driver of vehicle No.TR-03(A)—1638)Auto Canter.

(As per Hon'ble Court's order dated 12.04.2010
passed in C. M. Appl. No.75 of 2010, the address of
respondent No.5 corrected as above)

6. National Insurance Co. Ltd.,
Represented by its Branch Manager, Udaipur
Branch, P.O & P.S.- R. K. Pur, District-South
Tripura (Insurer of TR-03-A-1638) Auto Center.

By Advocates :

Mr. T. D. Majumder, G. A.
Mr. A. Bhowmik, Adv.
Mr. P. Gautam, Adv.
Mr. K. Bhattacharji, Adv.

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

Date of hearing &
Judgment & Order : **17th June, 2015.**

Whether fit for reporting :

Yes	No
√	

JUDGMENT & ORDER (ORAL)

This appeal for enhancement of compensation is directed against the award dated 22.12.2009 delivered by the learned of the Motor Accident Claims Tribunal, Belonia, South Tripura in T.S(MAC) No. 07 of 2009 whereby the Tribunal awarded sum of Rs.27,758/- along with interest @ 6% per annum to the claimant under the following heads:

- | | |
|---|---------------|
| (i) Medical expenses | = Rs. 6,168/- |
| (ii) Loss of income | = Rs.14,400/- |
| (iii) pain and suffering | = Rs. 5,000/- |
| (iv) Loss of income during the
period of his treatment | = Rs. 2,160/- |
| Total : | Rs.27,758/- |

[2] The undisputed facts are that the claimant receipt injuries in a motor vehicle accident. The vehicle involved in the accident was bearing registration No.TR-03-2706(Auto Rickshaw). In the said accident the claimant suffered fracture of three ribs. The claimant was admitted in Tripura Sundari District Hospital, Udaipur from 17.11.2008 to 25.11.2008 i.e. for a period of 8(eight) days and after discharge he was advised to take rest for 3(three) weeks and to visit the OPD thereafter. It appears that later the claimant consulted a private doctor at Agartala and medicines have been prescribed to him from time to time. X-ray was also done. The claimant has also produced on record a disability certificate, according to which he had suffered disability of partial stiffness of the left shoulder and the disability has been assessed at 20% for five

years. I am not clear that how this stiffness of the left shoulder is in anyway relatable to fracture of the 7th, 8th and 9th ribs because no medical evidence has been led to show that the stiffness in the shoulder could be a result of these injuries. However, assuming that this stiffness may occur due to these injuries this Court is proceeding to decide the matter.

[3] 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.

[4] The claimant remained in hospital for 8(eight) days. He would have required attendants round the clock. Since the accident took place in 2008 the cost of each attendant is assessed at Rs.250/- per attendant and the cost of two attendants at Rs.500/- per day, for 8(days) the cost of attendants works out to Rs.4,000/-.

[5] The claimant has proved expenses of Rs.6,198/-. I am clearly of the view that the claimant may have incurred other expenditure for which he may not have kept the receipts and, therefore, he is awarded total sum of Rs.10,000/- for medical expenses.

[6] Coming to the head of pecuniary damages. First the income of the injured claimant has to be assessed. The claimant has relied upon a certificate issued by the Deputy Collector and Magistrate, Santirbazar, South Tripura wherein it has been certified that the claimant has a monthly income of Rs.16,000/- per month, Rs.10,000/- from business and Rs.6,000/- from agriculture. Below that there is another certificate of the Block Development Officer, Bokafa R. D. Block, South Tripura which shows that the claimant is one of the beneficiaries of rubber project scheme under Madhya Kathalia RPS from the financial year 2007-08. This is the entire material on record. The learned Tribunal assessed the income at Rs.12,000/- and it is urged before me by the learned counsel for the claimant that in view of the certificate the income should have been assessed at Rs.16,000/-.

[7] Time and time again certificates issued by the revenue authorities are being produced before the Motor Accident Claims Tribunal and are also being relied upon by the Tribunals to assess compensation. This Court has in many cases expressed a doubt as to whether such certificates can be issued by the Collector or not. In view of the increasing tendency of production of such certificates, on 20th April, 2015 this Court had passed the following order:

"20.4.2015

One of the main grounds raised on behalf of the petitioner is that the learned Tribunal has wrongly assessed the income of the claimant at Rs.12,000/- whereas the '*income certificate*' issued by the Deputy Collector & Magistrate, Santribazar, South Tripura shows the income of the claimant to be Rs.16,000/-.

I am not sure under which provision of law this *income certificate* is issued by the Deputy Collector & Magistrate, Santribazar. What is the basis of issuing such certificates is not clear. How can the Deputy Collector & Magistrate determine the income from business? Therefore, a notice be issued to the Deputy Collector & Magistrate, Santribazar, South Tripura along with copy of the certificate dated 5th August, 2009 which is at page 72 of the Paper Book asking him to produce the entire record on the basis of which this certificate was issued. List on 17th June, 2015.

The Deputy Collector & Magistrate, Santirbazar, South Tripura shall appear-in-person along with the entire record on the next date."

Today, Sri Narayan Ch. Majumder, Deputy Collector & Magistrate, Santirbazar, South Tripura has not only filed his short affidavit but has also appeared before me along with the relevant record. He has in his affidavit clearly stated that there is no provision under law under which the said certificate is issued by the Collector or the Magistrate. According to him this is a convention being followed for a long time and as per this convention the certificate is being issued. This Court is not there to guide the administration how to function. It is for the administration to decide whether the Collector should issue such certificates or not. However, this Court has the jurisdiction to decide as to what is the evidentiary value of such a certificate. Admittedly, certificates are not issued under any provision of law. Therefore, they are not statutory certificates. They are also not public documents. They are certificates issued at the asking of the claimant and such a certificate has in my opinion no evidentiary value in a Court of law and is not worth the scrap of paper it is written on. No Tribunal or Court can rely upon such a certificate to assess the income in a motor accident claim cases. The claimant shall have to lead evidence and prove the income of the claimant or the deceased as the case be in such matters.

[8] I have gone through the record produced by Sri Majumder and I find that an application was made by the applicant on 20th July, 2009 in which he prayed that an income certificate be granted to him and that his monthly income was Rs.20,000/- per month. On 5th August, 2009 without there being a scrap of evidence on record, without any inquiry being conducted, without any evidence being recorded, without finding out whether the claimant has any business or not, the Tehsilder put up a note which reads as follows:

"Applicant is a Businessmen. His monthly family income is Rs.15,000/- (Fifteen Thousand) from all source. Salary-Nil, Agriculture-5,000/-, Business-10,000/-, Others-Nil. So may be issue a income certificate in favour of applicant.

**S/d
Signed
(05.08.09)"**

What is nature of the business is not reflected. What is the source of agriculture income is not reflected. The documents attached with the application are Ration Card, Voter Identity Card, certificate showing that the claimant belongs to the Scheduled Tribe, a certificate showing that the claimant has a licence to deal in food grains and sugar etc. a certificate issued by the Legal Metrology Department of the State of Tripura and a certificate of Sri S. Majumder, Block Development Officer that the claimant is a beneficiary of a rubber project scheme. On the basis of this material obviously the certificate has been issued. This material could at best show that the claimant had a business dealing in food grains, sugar etc. But this would not show what is the income from such shop. The documents attached may also show that the petitioner is also a beneficiary of a body which has a rubber plantation. There are some details with regard to the rubber plantation also. But nobody has assessed what is the age of the rubber plantation. Whether the rubber plantation is at the stage of producing rubber or it is still at the plantation stage. According to the certificate relied upon by the claimant he was became a beneficiary from the year 2007-08. The accident took place in 2008. Therefore, it means that the rubber plantation is only one year old and at this stage there would only be investment in the rubber plantation and no income therefrom.

[9] Even more shocking is the fact that though the Tehsilder as mentioned hereinabove recommended that the certificate be issued for Rs.15,000/-, i.e. Rs.10,000/- from business and Rs.5,000/- from agriculture, the

Collector has issued a certificate showing the income of Rs.16,000/- per month. On what basis this has been done is not apparent from the record.

[10] I have highlighted all these points 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.

[11] As far as the present case is concerned, the claimant was aged about 59 years at the time of the accident. He no doubt was running a ration shop and he may have invested money in a rubber plantation but I do not feel that he could have been earning any amount from the rubber plantation because the same was only about one year. Be that as it may, keeping in view the fact that the claimant was almost 60 years of age, it could reasonably be expected that he would be earning about Rs.10,000/- per month from such ration shop.

[12] The learned Tribunal has not awarded any amount to the claimant for loss of income. As pointed out above he was in hospital for about one week. He was advised rest for 3(three) weeks thereafter and I am of the opinion that he could not have immediately started his work and, therefore, I assess his loss of income for two months and the same is assessed at Rs.20,000/-.

[13] As far as future loss of income is concerned, the learned Tribunal has assessed the income at Rs.12,000/- per month at the loss of 2%. First of all the certificate cannot be totally co-related to the injury suffered. Secondly, the disability is so minor that it would have no major impact on the income of the claimant. The disability is only stiffness to the shoulder. It will not affect the work of the claimant who was running a ration shop. Even as far as agriculture is

concerned from the little evidence which is on record the claimant is one of the beneficiaries of a rubber plantation and was probably not doing any manual work himself in the rubber plantation. Therefore, I do not award any amount under the head of loss of future income.

[14] Coming to non-pecuniary damages the learned Tribunal has only awarded Rs.5000/- to the claimant for pain and suffering. This is very much on the lower side. He is awarded Rs.10,000/- under this head.

[15] The learned Tribunal has not awarded any amount to the claimant for the discomfort and loss of amenities of life in future. Though I have held that the stiffness to the shoulder will not cause any loss of income but it is definitely going to cause discomfort to the claimant. It effects his movements and I award another sum of Rs.10,000/- under this head.

[16] The total compensation is, therefore, assessed at Rs. (4,000/- + 10,000/- + 20,000/- + 10,000/- + 10,000/-) = Rs.54,000/-. The award is accordingly enhanced from Rs.27758/- to Rs.54,000/-. The claimant shall also be entitled to interest on the awarded sum of Rs.54,000/- @ 9% per annum from the date of filing of the claim petition till deposit of the amount. This amount is to be paid equally by the two insurance companies i.e. the Oriental Insurance Company Ltd. and the National Insurance Company Ltd. They are, therefore, directed to deposit the awarded amount of Rs.54,000/- in equal share of Rs.27,000/- each along with proportionate interest thereupon in the Registry of this Court within four months from today. Obviously, both the insurance companies shall be entitled to adjust the amount(s), if any, which they have already paid or deposited.

[17] The appeal is disposed of in the aforesaid terms. No order as to costs.

Send down the LCRs forthwith.

[18] Copy of this judgment be circulated to all the Judicial Officers in the State to be followed scrupulously. The Judicial Officers must take note of the provision of the Indian Evidence Act and decide what are the documents which are per se admissible in evidence and what are the documents which have to be proved in accordance with law. Even before Tribunals though formal proof can be dispensed with but the document must have some legal sanctity and evidentiary value before it can be admitted in evidence.

CHIEF JUSTICE