

THE HIGH COURT OF TRIPURA
A G A R T A L A

MAC App. No. 09 of 2013

Appellant-Claimant:

Sri Paresh Debnath,

S/o. Santosh Debnath, Vill-Laxmandepa, P.S-
Bishalgarh, District-Sepahijala.

By Advocate :

Mr. K. K. Pal, Adv.

Respondents:

1. Sri Sajal Dey,

S/o. Late Kalachan Dey, Vill.-Pathaliya Ghat,
P.S-Bishalgarh, District-Sepahijala.

2. The Divisional Manager,

The National Insurance Company Ltd.,
Akhaura Road, Agartala, P.S-West Agartala,
District-West Tripura.

By Advocates :

Mr. K. Bhattacharji, Adv.

Mr. D. C. Roy, Adv.

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

Date of hearing &
Judgment & Order : **18th March, 2016.**

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER (ORAL)

This appeal by the claimant for enhancement of compensation is directed against the award dated 16.10.2012 delivered by the learned Motor Accident Claims Tribunal, West Tripura, Agartala in T.S(MAC) No.109 of 2003 whereby the Tribunal awarded compensation of Rs.1,87,320/- along with interest @ 6% per annum to the claimant under the following heads:

(i) Pain and suffering	= Rs. 10,000/-
(ii) Cost of medicines	= Rs. 2,200/-
(iii) Loss of income	= Rs. 9,600/-
(iv) Future loss of income	= Rs.1,55,520/-
(v) Misc. expenses	= <u>Rs. 10,000/-</u>
Total :	Rs.1,87,320/-

[2] In this appeal the only issue which arises is whether the compensation awarded is just or not? Therefore, no other evidence needs to be discussed.

[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] Applying the aforesaid principles I now proceed to assess the compensation under the different heads.

[5] The evidence on record shows that the petitioner during the accident suffered injury to his left eye due to which he has lost his total vision

of the left eye. He also suffered a fracture of the left knee but that has healed. His disability has been assessed at 30% because of the loss of vision in one eye. The learned Tribunal awarded Rs.2,200/- only for cost of medicines. It is an admitted fact that immediately after the accident the claimant was taken to the Melaghar Hospital from where he was referred to the G. B. P. Hospital, Agartala where he remained admitted for 25(twenty-five) days. In my view people belonging to the poor strata of society who do not get reimbursement normally do not keep the receipts of the treatment. Keeping in view the length of treatment and the nature of injuries it would not be unreasonable to award of Rs.10,000/- for medical expenses.

[6] The claimant remained in hospital for 25(twenty-five) days in the year 2002. He would have required attendant round the clock. Even if the cost of one attendant in the year 2002 is taken at Rs.150/- per head, the cost of two attendants comes to Rs.300/- per day and for 25(twenty-five) days the cost of attendant charges works out to Rs.7500/-.

[7] The income assessed at Rs.2,400/- per month is reasonable keeping in view the fact that the income has to be assessed for the year 2002 and not for today. However, 50% has to be added towards the future prospect and adding 50% the income comes to Rs.3,600/- per month. Now, comes the question as to what is the loss of income. The petitioner is an Artisan. His disability may be 30%, but in a case like this one where the claimant-petitioner is an artisan who has to make artistic goods, the loss of earning capacity may be more than the percentage of disability. A person who has lost vision in his one eye cannot assess distance and depth with the same ability which a two eyed person can do. Therefore, I assess the loss of income at 50% and not

30%. Therefore, the loss of income works out to Rs.1800/- per month or Rs.21,600/- per year and since the claimant was aged 23 years at the time of accident, multiplier of 18 is applied and the amount of compensation under this head comes to Rs.3,88,800/- which is rounded off to Rs.3,90,000/-.

[8] The claimant has been awarded Rs.10,000/- for pain and suffering which in my opinion is on the lesser side and this award is enhanced to Rs.20,000/-.

[9] The claimant has not awarded anything for future discomfort and loss of amenities in life. The claimant has lost one eye. Not only is his earning affected but in future there is always the danger that if he loses vision in the second eye he will become totally blind. A normal human being even after loss of one eye can see with the other eye, but a person who has already lost one eye in the accident if he contracts any disease or problem with regard to the second eye will become totally blind. Keeping in view this factors, I award him Rs.50,000/- of future discomfort and loss of amenities in life.

[10] The total compensation is, therefore, assessed at Rs. (10,000/- + 7,500/- + 3,90,000/- + 20,000/-+ 50,000/-) = Rs.4,77,500/-. The award is accordingly enhanced from Rs.1,87,320/- to Rs.4,77,500/-i.e. by Rs.2,90,180/- which is rounded off to Rs.2,91,000/-. The claimant shall also be entitled to interest on the enhanced sum of Rs.2,91,000/- @ 6% per annum from the date of filing of the claim petition till deposit of the amount. The insurance company has already satisfied the amount awarded by the learned Tribunal. It is therefore, directed to deposit the enhanced amount of compensation along with

proportionate interest thereupon in the Registry of this Court within four months from today.

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

Send down the lower Court records forthwith.

[12] A perusal of the trial Court file shows how negligently the Judicial Officers are dealing with matters arising in motor accident claims petition. The simple claim petition was filed in the year 2003 and has been decided on 16th October, 2012. It has taken 10(ten) years to decide the claim petition. Therefore, I went through the entire record and I find that after the claim petition was taken, first the claimant did not take any steps for almost 6(six) months to serve the defendants. Sometimes the matter was adjourned because the Presiding Officer was on leave but the most astonishing facts are that the Presiding Officer did not even take care to ensure whether the notice has been served or not? No notice was served for 7(seven) years on O.P No.1 i.e. owner of the vehicle. Only because the insurance company was represented the case proceeded, issues were framed and for seven long years the Tribunal did not realise that steps have not been taken to serve respondent No.1.

The claimant-petitioner filed an amendment petition on 20th January, 2006 and no orders were passed on the same for 4(four) years. Issues were first framed in the case on 26.09.2005 but the matter kept getting adjourned and on 18.02.2009 issues were again framed. Neither the Tribunal nor the learned counsel for parties were aware that issues had already been framed. This shows the total callous nature in which the case was being pursued both by the counsel as well as the learned Tribunal. It was only after

Sri S. C. Das, now Hon'ble Judge of this Court took over that he passed an order pointing out these errors. Thereafter the respondent No.1 was served and the judgment was delivered in the year 2010. But for seven long years neither the counsel for the claimant nor the counsel for the insurance company, nor the Tribunal itself was aware of what was happening in the case.

A copy of this order shall be circulated to all the Judicial Officers in the State who are directed to ensure that they must read the entire order sheet after they are transferred to a new station to see what is happening in the old files and not to pass absurd and stupid orders as have been passed in this case leading to undue delay in disposal of cases.

CHIEF JUSTICE