

(2014) 05 TP CK 0021

In the Tripura High Court

Case No : Mac App. No. 44 of 2008

Shri Bijan Debnath Vs Smt. Bhanumati Malla (Chowdhury) and Others

Date of Decision : 05-05-2014

Acts Referred:

Citation : (2014) 05 TP CK 0021

Hon'ble Judges : Deepak Gupta, C.J

Bench : Single Bench

Advocate : P. Ghatak, Advocate for the Appellant; K. Roy, Advocate for Respn. No. 1, Advocate for the Respondent

Judgement

Deepak Gupta, C.J.—By means of this appeal the appellant-claimant has challenged the award of the learned Motor Accident Claims Tribunal, South Tripura, Udaipur in T.S. (MAC) No. 05 of 2008 decided on 28.03.2008 whereby he assessed the compensation at Rs. 25,553/- but held that the claimant was entitled to only a sum of Rs. 12,776.50/- say Rs. 12,777/- since he had contributed to the accident to the extent of 50%. The National Insurance Company was held liable to pay this amount.

2. Ms. P. Ghatak has argued that the learned Tribunal gravely erred in holding that the claimant himself was guilty of contributory negligence to the extent of 50%. She also argues that the amount of compensation awarded is very low and may be suitably enhanced.

3. As far as the issue of negligence of is concerned the claimant stepped into the witness box and stated that he was driving his vehicle at a reasonable speed and that the other vehicle i.e. the Commander Jeep bearing No. TR-03-2810 came from the opposite side at an excessive speed. He has very clearly stated that the accident occurred due to the rash and negligent driving of the driver of the other vehicle. There is no cross examination to this part of his statement. He has not been cross-examined at all. The learned Tribunal relied upon what was stated in the FIR to come to the conclusion that the petitioner himself was also negligent. The petitioner had stepped into the witness box, stated how the accident had occurred and was not cross-examined. The driver of the other vehicle did not

even care to step into the witness box and, therefore, adverse inference had to be drawn against the said driver. The contents of an FIR cannot be read in evidence unless they are proved either by the informant at whose instance the FIR was recorded or the person who recorded the FIR should have been examined to prove the contents of the FIR. Merely because a document is exhibited does not mean that the contents of the documents are proved. Therefore, I am of the considered view that the learned Tribunal gravely erred in coming to the conclusion that the claimant had contributed to the accident to the extent of 50%.

4. As far as the quantum of compensation is concerned, the evidence on record shows that the claimant was admitted in hospital on 09.05.2007 and was shifted to the G.B.P. Hospital at Agartala on 10.05.2007 where he remained admitted for five days till 14.05.2007. He was thereafter discharged with fracture of the shoulder bone (scapula). He was conservatively treated but had to come back to the hospital time and again as an outpatient. He has also produced certain outpatient slips which shows that he came to the hospital even after the discharge. Certain cash memos have also been produced.

5. As far as the income of the deceased is concerned the claimant claimed that his income was Rs. 4500/- per month. The accident took place in the year 2007 and it would not be unreasonable for a driver of a vehicle to have total emoluments of Rs. 4500/- per month. Therefore, the income is taken at Rs. 4500/- per month. The compensation now has to be granted under the various heads:

Pain and suffering.

6. Under this head the learned Tribunal has granted only Rs. 5,000/-. The claimant remained in hospital for 5 to 6 days and suffered a fracture on the collar bone. He had to be treated as an outpatient for some time and, therefore, I am of the view that he should be awarded at least Rs. 10,000/- for pain and suffering.

7. The accident has not led to any disability and therefore, no amount is awarded for loss of amenities of life.

Loss of income:

8. The learned Tribunal has held that the claimant could not have worked for four months. I am in agreement that the loss of income would be for four months but since I have taken to be Rs. 4,500/- per month, the loss of income comes to Rs. 18,000/- and not Rs. 12,000/-.

Medical Expenses:

9. As far as medical expenses are concerned the amount has been assessed at Rs. 3,553/- only on the amount of slips produced. There are many other expenses for which receipts may not have been kept and hence this assessment

is enhanced to Rs. 5,000/- under this head.

Transportation Charges:

10. As far as the assessment of Rs. 5000/- for other expenses is concerned i.e. transportation charges, special diet, attendant charges I feel that this amount is reasonable calling for no enhancement.

11. In view of the above discussion, the appeal is allowed and the award of the MACT is modified. The claimant is held entitled to amount of Rs. 38,000/- along with interest @ 9% per annum from the date of filing of the claim petition till payment of the entire awarded amount. The National Insurance Co. Ltd. is directed to deposit the entire awarded amount with interest after adjusting the amount which has already been paid/deposited in the Registry of this Court within four months from today.

12. The appeal is disposed of in the aforesaid terms. No order as to costs.

Send down the LCRs forthwith.