

(2015) 05 TP CK 0036
In the Tripura High Court
Case No : MAC App. No. 4 of 2010

The National Insurance Company Ltd.	Vs	APPELLANT
Arpita Debbarma and Others		RESPONDENT

Date of Decision : 29-05-2015

Acts Referred:

Citation : (2015) 05 TP CK 0036

Hon'ble Judges : Deepak Gupta, C.J

Bench : Single Bench

Advocate : P. Gautam and S.B. Debnath, for the Appellant; A. De, Advocates for the Respondent

Judgement

Deepak Gupta, C.J.

1. This case is a sad reflection of the highly improper manner in which claim petitions under the Motor Vehicles Act are disposed of.

2. The claimant filed a claim petition claiming compensation on account of injuries allegedly suffered in a motor vehicle accident. The discharge certificate clearly reflects that the claimant had suffered injuries to the cervical spine and there was a fracture of C2 lamina with mild posterior displacement of the neural arch. No dislocation of L2/L3 junction. No disablement certificate is on record. It appears that the petition was taken up by the Lok Adalat and in the Lok Adalat the following order was passed on 09.12.2007.

"09.12.2007.

The case record is placed before the 3rd Session of Traditional Lok Adalat, 2007, in Court No. 4.

At the time of hearing the O.P. insurance company challenged the severity of the injury sustained by the victim girl. Accordingly, the victim girl is examined by an orthopedic surgeon in the Lok Adalat on duty and he opined that the injury may or may not be recovered in future. The doctor also opined that in future so many

complications may arise in the body of the victim girl.

So, the insurance company do not want to settle the case for jurisdictional question.

So, Send back the case record to the referring Court for disposal according to law.

Member (MACT) West Tripura Agartala."

This order has been passed by the same officer who finally passed the award. The order clearly shows that before the Lok Adalat the insurance company was represented. It also clearly shows that the orthopedic surgeon who was there to assist the Lok Adalat opined that the injury may or may not be recovered (sic, probably meant cured) in future. The order also shows that the doctor opined that complications may arise in future.

3. At the outset I may observe that proceedings before the Lok Adalat can be settled only with the agreement of the parties. A Lok Adalat has no right or authority to adjudicate on a matter and pass an order without the consent of the parties. A doctor is there to assist the Lok Adalat only for the purpose of assisting the Lok Adalat in coming to the conclusion as to what is the nature of injuries etc. The doctor who is present before the Lok Adalat is a person to assist the Lok Adalat and is not a witness in the case. He cannot be examined or cross-examined. His statement cannot be recorded.

4. The order only depicts that this doctor had opined that the injury may be cured or may not be cured in future. The doctor has not stated anything as to what is the percentage of disability. The Doctor obviously could not be cross-examined. In fact, in this case there is no recorded opinion or statement of the Doctor and the only material is available in the order sheet. I am clearly of the view that any material or statement made before the Lok Adalat cannot be taken into consideration by the Motor Accident Claims Tribunal while deciding the case on merits, in case no settlement is arrived at before the Lok Adalat and the matter is sent back to the Tribunal. If the matter is not settled before the Lok Adalat then the Tribunal has to decide the matter on the basis of the evidence recorded by it and the material before the Tribunal and not on the basis of some statements which were made before the Lok Adalat.

5. There is another unfortunate aspect of the case. The presiding officer of the Motor Accident Claims Tribunal has made totally false statements with regard to what transpired before the Lok Adalat. The relevant portion of the final award passed by the Lok Adalat reads as follows:

"It is also observed that the matter in dispute was put before the Lok Adalat for compromise but due to unavailability of the agent of the Insurance Company they could not make any compromise at that time and the matter ends without compromise on 09.12.2007. It also observed from the case record that the Medical Officer who attended the Lok Adalat after examining the victim/petitioner opined that the injury will not be curable and she has to bear with the said injury

during her rest part of life. So, considering the facts and circumstances and for fair ends of justice I am of the opinion that an unmarried girl at the age of 19 years after receiving such type of injury has lost everything.

So, considering the above facts and circumstances and the opinion of the doctor I do hereby award an amount of Rs. 8,00,000/- (Rupees eight lacs) for loss of amenities of life, loss of expectation or shorting of life, dejection and unhappiness of future life, expenses of keeping attendance to look after the petitioner for rest of the life and for physical and mental agony for fair ends of justice."

It is clear from the order passed by the same officer while holding the Lok Adalat that the insurance company was represented. In the final award it is stated that the compromise could not be affected before the Lok Adalat due to unavailability of agent of the insurance company. This is totally a false statement. In the award the Tribunal has stated that the medical officer who attended the Lok Adalat after examining the petitioner victim opined that the injury will not be curable and she has to bear with the said injury for the rest of her life. This is also totally false. What was recorded by the very same officer in his order dated 09.12.2007 is that the doctors opined that the injury may or not be recovered. The manner in which the award has been passed is highly unprofessional and illegal. A sum of Rs. 8,00,000/- has been awarded without giving a single reason as to how the Tribunal came to conclusion to award an amount of Rs. 8,00,000/-.

6. This Court on the administrative side would not have hesitated to take more serious action but I am told that the said officer retired a long time back and, therefore, nothing can be done against him. At the same time I am clearly of the view that because of the fault of the Judge the claimant should not suffer. The claimant was a young girl and had suffered a spinal injury and I feel, an opportunity should be given to her to lead evidence by examining a doctor or by producing a disability certificate to show what is the permanent disability, if any, suffered by her. What is the nature of disability and how it is affecting her earning capacity? All these factors must be taken into consideration and the award must be based on principles which have been settled in a catena of decisions of the Apex Court as well as of this Court.

7. In view of the above discussion, the award of the learned Tribunal dated 30.9.2008 is set aside and the matter is remitted to the Court below who shall now decide the matter afresh in accordance with law after giving an opportunity to both the parties to lead evidence. Since the case is an old one an effort may be made by the learned Tribunal to decide the same latest by 31st December, 2015. The parties through their counsel are directed to appear before the learned trial Court on 25th June, 2015.

8. A copy of the judgment be circulated to all member of the Tripura Judicial Service.

Send down the LCRs forthwith.