

(2016) 01 TP CK 0034

In the Tripura High Court

Case No : MAC App. 100 of 2012 and CO(FA) 07 of 2013

The State of Tripura and Others

APPELLANT

Vs

Sanjib Sarkar and Others

RESPONDENT

Date of Decision : 05-01-2016

Acts Referred:

Citation : (2016) AAC 921 : (2016) 3 ACC 46 : (2016) 4 Civil LJ 75 : (2016) 2 TAC 702

Hon'ble Judges : Deepak Gupta, C.J.

Bench : Single Bench

Advocate : B. Dutta, Advocate, for the Appellant; D.C. Roy and A. Bhowmik, Advocates, for the Respondent

Final Decision : Disposed off

Judgement

Deepak Gupta, C.J.

1. Both the appeal and the cross objection are being decided by one judgment since they arise out of one award dated 30.09.2011 passed by the learned Motor Accident Claims Tribunal, Belonia, South Tripura in case No. T.S.(MAC) 06 of 2010 whereby the learned Tribunal has awarded a sum of Rs. 4,33,366.50/- in favour of the claimant along with interest @ 9% per annum after holding that the claimant was also guilty of contributory negligence and, therefore, was entitled to half of the total assessed amount of Rs. 8,66,733/-.

2. The State has filed the present appeal challenging the finding on the issue of negligence and also on the quantum awarded. The claimant has filed the appeal challenging the finding of the Tribunal holding that he was contributory negligent and has also challenged the finding of the Tribunal with regard to the assessment of income etc.

3. The undisputed facts are that the claimant Sanjib Sarkar was driving TATA Indica car bearing No. TR-03-C-0286. He was driving the car from Agartala to Santirbazar. When the car was near the Charampai School at Aloycharra on the

Udaipur-Sabroom road, a commander jeep bearing No. TR-03-0948 owned by the police came from the opposite direction and there was a collision between both the vehicles. The case of the claimant is that the police jeep was being driven on the wrong side of the road. It was at a high speed and, therefore, it dashed against the Indica car.

4. The factum of the accident is not denied but the stand of the respondents is that the accident took place due to the rash and negligent driving of the claimant himself. It was also alleged that the claimant was intoxicated at the time when the accident took place.

5. Parties led evidence. I have gone through the complete evidence. The first issue which needs to be decided is who was responsible for the accident. The claimant while appearing in the witness box has put the blame totally on the driver of the police jeep. According to him, the police jeep came on the right side of the main road at a very high speed and was being driven in a rash and negligent manner and dashed against his TATA Indica vehicle. Other than making such general allegation, no detail has been given.

6. It would be pertinent to mention that at the time when the accident took place, there were three other persons travelling in the TATA Indica vehicle. None of them has been examined by the claimant in support of his case. As far as the opposite side is concerned, it examined one Shri Debasish Debbarma, Inspector of Police who is stated to be travelling in the police vehicle. This witness states that the accident occurred due to lack of knowledge of driving by the driver of the TATA Indica vehicle (claimant). He has also stated that the TATA Indica vehicle driven by the claimant came from the opposite direction on a high speed and in rash and negligent manner and that the driver of the TATA Indica vehicle had no control over the vehicle. It is also stated that on seeing the police jeep at a short distance the driver became nervous, lost balance and drove the vehicle in a disorderly manner as a result of which it dashed with the commander jeep.

7. Whereas the claimant did not examine any of the other passengers in the jeep, the State also did not care to examine the driver of the police jeep nor did it examine any other witnesses. Surprisingly, both sides did not care to summon any record from the police with regard to the site map which may have been prepared immediately after the accident which would have depicted which vehicle was on the wrong side of the road. There are allegations and counter allegations and the learned Tribunal was right in holding that it cannot be said with certainty as to who was at fault and, therefore, has held that since this is a case of head on collision both the drivers are held equally responsible for the accident. I find no error in this part of the judgment and this finding is upheld.

8. Coming to the question of quantum. The first issue to be decided is what was the income of the injured. The claimant-injured claimed that he was running a computer training institute and was earning more than Rs. 25,000/- per month. However, he led no evidence worth the name to prove the fact that he was

running a computer training institute. No record has been produced except one certificate issued by the Institute of Advance Computing, Central Road, Bishalgarh. This certificate also only gives permission to the petitioner to run a computer centre but in no manner shows that he was running a computer centre. The learned Tribunal assessed the income of the injured at Rs. 3,000/- per month. The injured is definitely not a labourer. Even in the year 2010, a labourer would also earn more than Rs. 100/- per day. The assessment of income is very much on the lower side. The injured is an owner of a car and the Inspector who appeared on behalf of the State has in his statement also stated that the injured is a moneyed man and has used his money to build a false case. The fact that the claimant had a car itself shows that he has a reasonable amount of income. He has, however, not shown that he was paying any income tax. The accident took place in the year 2010 and at that time the exemption limit was Rs. 1,50,000/-. Taking into consideration certain other exemptions, I assess the income at Rs. 15,000/- per month.

9. 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.

10. Applying the aforesaid principles, I now assess the compensation. The learned Tribunal awarded a sum of Rs. 2,200/- as attendant charges at Agartala for 11 days by taking the expenses at Rs. 200/- per day. In my view, even in the year 2010 the expenses of each attendant would not be less than Rs. 200/- per day and, therefore, this amount is increased from Rs. 2,200/- to Rs. 4,400/-.

The claimant has been entitled only a sum of Rs. 4,950/- as attendant charges for 33 days in Kolkata. It is proved that the claimant was accompanied by 2(two) attendants. Even if the cost of one attendant at Kolkata is taken at Rs. 500/- per day, the cost of two attendants works out to Rs. 1,000/- per day and for 33 days this works out to Rs. 33,000/-.

Therefore, the total amount of expenditure for attendant charges works out to Rs. (4,400 + 33,000) = Rs. 37,400/- which is rounded off to Rs. 40,000/-.

11. The claimant after remaining under treatment in Agartala was referred to Kolkata where he got admitted in AMRI Hospital. He has paid Rs. 4,94,050/- to the AMRI Hospital which amount is justified and no error can be found in the

same. He also spent a sum of Rs. 1,84,835/- for medicines at Kolkata which amount is also allowed. The claimant also spent Rs. 8,422/- for various tests and medicines at Agartala which is also allowed. The claimant again went to Kolkata and spent Rs. 2,720/- for outdoor treatment. Therefore, the medical expenses works out to Rs. $(8,422 + 4,94,050 + 1,84,835 + 2,720) = \text{Rs. } 6,90,027/-$. The claimant may have spent other amounts for which vouchers may not have been kept and, therefore, the total medical charges is taken at Rs. 7,25,000/-.

12. The claimant has filed receipts of Rs. $(42,579 + 2,079 + 2,079 + 3,000 + 5,864 + 7,903 + 1,618) = \text{Rs. } 65,122/-$ for his travelling expenses both by air and by train. In addition thereto, the claimant would have spent large amounts on taxi fare for himself and his attendants and travelling expenses are accordingly assessed at Rs. 80,000/-.

13. The claimant could not have worked for at least 4(four) months and I have assessed his income at Rs. 15,000/- per month. Therefore, he is awarded Rs. 60,000/- for loss of income.

14. Now, coming to the award of loss of future income. The claimant runs a computer institute. Even if his arm is slightly disabled, his earning capacity is not affected at all. He will earn the same amount and, therefore, I do not award him any loss for future income.

15. As far as pain and suffering is concerned, the award of Rs. 10,000/- is very much on the lower side. The claimant remained in hospital for 33 days in Kolkata and 11 days in Agartala. He remained under treatment for more than two months. The seriousness of the injuries can be gauged from the fact that he has spent almost Rs. 6/7 lakhs on his treatment alone. Therefore, this is a fit case where the amount of compensation for pain and suffering be enhanced from Rs. 10,000/- to Rs. 50,000/-.

16. Though I have not awarded any amount to the claimant for loss of future income, the fact remains that the claimant has become disabled for life. He cannot walk like a normal human being and for the rest of the life he will have to live with this disability. Therefore, he is awarded another sum of Rs. 75,000/- under the head of future discomfort and loss of amenities of life.

Therefore, the total amount of compensation works out to Rs. $(40,000 + 7,25,000 + 80,000 + 60,000 + 50,000 + 75,000) = \text{Rs. } 10,30,000/-$ (rupees ten lakh thirty thousand). Since, I have held that the claimant himself was responsible equally for the accident, he is entitled to get 50% of the compensation, i.e. Rs. 5,15,000/- (rupees five lakh fifteen thousand).

17. In view of the above discussion, the appeal filed by the State is dismissed and the cross objection filed by the claimant is partly allowed. The award of the learned Tribunal is modified and the compensation is enhanced from Rs. 4,33,366.50/- to Rs. 5,15,000/-, i.e. by Rs. 81,633.50/-. On the amount of compensation so awarded, the claimant shall also be entitled to interest @ 9%

per annum from the date of filing of the claim petition till payment/deposit of the awarded amount. The State is directed to deposit the entire amount of compensation along with interest in the Registry of this Court within 3(three) months from today after deducting/adjusting the amount, if any, already paid/deposited by them along with proof of such earlier deposit.

18. Send down the lower court records forthwith.