

**HIGH COURT OF TRIPURA
AGARTALA
MAC APP NO.26 OF 2022**

Smt. Surabala Reang,
W/o- Sri Surendra Kumar Reang,
Of Vill-Laxmi Charra,
P.O.-Laxmi Charra,
P.S.-Baikhora,
District-South Tripura.

**..... Appellant
(Original Claimant-Petitioner)**

Vs.

1. Sri Amal Majumder,
S/o- Lt. S.B. Majumder of Santirbazar,
P.S.-Santirbazar, District-South Tripura.
(Owner of the vehicle No.TR-01-4148, Commander Jeep)

2. The Divisional Manager,
National Insurance Company Limited,
Akhaura Road, Agartala,
P.O.- Agartala, P.S. West Agartala,
District-West Tripura.
(Insurer of the vehicle No.TR-01-4148, Commander Jeep)

**..... Respondents
(Original Opposite Parties)**

For the Appellant(s) : Mr. A. Nandi, Advocate

For the Respondent(s) : Mr. A.K. Deb, Advocate.

Date of hearing : 29.07.2022

Date of delivery of
Judgment & Order : 02/08/2022.

Whether fit for reporting : NO.

HON'BLE MR. JUSTICE T. AMARNATH GOUD

JUDGMENT AND ORDER

This present appeal has been filed under Section 173(1) of M.V. Act, 1988 for setting aside as well as for modification of the award dated 20.04.2021 in Case No. T.S.(MAC)59 of 2014 passed by the Motor Accident Claims Tribunal, Court No.2, West Tripura Agartala preferred by the claimant-appellant herein.

2) The facts of the case in brief, which may be relevant for the present purpose and manifest on the record are that on 16.12.2013 at about 6.30 P.M. the claimant-appellant along with others were proceeding from Nagrai Bazar towards her house at Laxmicherra by boarding one vehicle, bearing registration No.TR-01-4148 (Commander Jeep) hereinafter referred to as the offending vehicle. The said vehicle when reached at Kashipada Colony of village-Korma, the driver lost his control and met with an accident resulting which the claimant-appellant along with others received grievous injuries on their person. The claimant-appellant sustained compound fracture on her body. Immediately after the accident, the claimant-appellant was brought to Amarpur Hospital in an unconscious condition where from she was referred to Tripura

Sundari District Hospital, Udaipur for her treatment. But considering her serious condition doctors again referred her to AGMC & GBP Hospital, Agartala. There she was treated as an indoor patient for about eighteen days w.e.f. 16.12.2013 to 23.12.2013. As her condition was deteriorating she was referred to CMC, Vellore. On 23.12.2013 claimant was brought to Chennai with an escort by a doctor and she was admitted to the Apollo Hospital in the Department of Orthopedics. She got treated there as an indoor patient w.e.f. 23.12.2013 to 25.01.2014. The claimant appellant spent Rs. 12,50,000/- for her treatment. In this connection, a specific case vide Birganj PS case No. 138/2013, u/s 279/338 was also registered.

3) The claimant-appellant instituted a claim petition for granting compensation claiming Rs.49,48,000/-. The claimant-appellant claimed to be a permanent vegetable seller, aged about 36 years. In her claim petition, she impleaded the registered owner and insurer of the offending vehicle as mentioned above before the Motor Accident Claims Tribunal which was registered as T.S. (MAC)59 OF 2014.

4) The adjudication of case No. T.S.(MAC) No.59 of 2014 was done by Member, MACT No.1, West Tripura, Agartala with an award amounting to Rs.12,54,818/- dated 12.01.2018.

5). Dissatisfied thereby, the claimant-appellant preferred an appeal before this Court against the said impugned judgment dated 12.01.2018. The said appeal was registered as MAC APP No.42 of 2018.

6) On 15.03.2019, the said MAC APP No.42 of 2018 was considered, and after hearing the parties vide judgment dated 12.01.2018, the impugned award dated 12.01.2018 passed in T.S.(MAC)59 of 2014 was set aside and remanded back on the following terms:-

"(a) Impugned award dated 12.01.2018 passed by learned Member, Motor Accident Claims Tribunal No.1, West Tripura, Agartala in case No. Title Suit(MAC) 59 of 2014, titled as Smt. Surabala Reang vs. Shri Amal Majumder & another is quashed and set aside and the matter is remanded back to the Tribunal for consideration afresh;

*(b) Parties undertake to appear before the Tribunal on **8th April, 2019**, on which date, the respondents shall file their objection to the claim petition;*

(c) A date shall be fixed by the Tribunal enabling the claimant to file response thereto and lead evidence, if so required and desired;

(d) Not more than three opportunities shall be afforded to each one of the parties for such purpose;

(e) A date shall be fixed by the Tribunal enabling the parties to lead their respective evidence, if so required and desired;

(f) Parties undertake to fully cooperate and not take any unnecessary adjournments;

(g) Save and except, for official witnesses, at their own cost and responsibility, parties shall produce their entire evidence on such date as may be fixed by the Tribunal;

(h) Hearing is expedited and it is expected of the Tribunal to decide the matter within a period of six months from the date of receipt of the order;

(i) Liberty is reserved to the parties to place on record original documents before the Tribunal;

(j) Original documents, if any, filed here be returned to the Tribunal;

(k) The Registry is directed to 'forthwith' remit the records to the Tribunal. Also send a copy of the order to the Tribunal.

(l) This Court has not expressed any opinion on merits of the case;

(m) All issues are left open."

7) After the case was remanded back, the case was finally concluded by a judgment dated 20.04.2021 in the following manner:-

"Claimant petitioner is entitled to get the award of **Rs. 16,60,000/- (Rupees sixteen lacs sixty thousand)** only with 9% Simple interest per annum from the date of registration of claim i.e, w.e.f. 12.02.2014 till the date of realization thereof.

The OP No. 2, National Insurance Company Limited shall, within 30 days of the date of this award, deposit the entire amount as awarded, in favour of the Motor Accident Claims Tribunal, West Tripura, Agartala."

8) Being aggrieved and dissatisfied with the award dated 20.04.2021, the claimant-appellant has preferred this appeal and prayed for the following reliefs:-

" i) Admit this appeal.

ii) Call for the records.

iii) Issue notice in the name of the respondents.

iv. Pass necessary order granting the condonation of delay for 245 days.

v. After hearing pass necessary order of set aside the modification of award dated 20.04.2021 to the extent of appeal value Rs.32,88,000/- afresh with interest

@9% from the date of presentation of original claim petition as on 12.02.2014 till realization of payment.

vi. Pass necessary order after considering the proper appreciation of evidence of both oral and documentary in nature.

vii. Pass any other order/order as your lordship would deem fit and proper."

9) It is the case of the claimant-appellant that the present appeal is filed against the order passed by the learned Claims Tribunal in awarding Rs. 16,60,000/- as against his claim for Rs.49,48,000/-. Earlier the awarded amount was Rs.12,54,818/-, and subsequently, when the matter was re-examined the same has been enhanced to Rs. 16,60,000/-.

10) The main contention of the claimant-appellant is that due to the accident the claimant-appellant has sustained injuries and the Doctors have given a disability certificate to the extent of 60% and the same is valid up to 2025. Since the disability has not been considered by the learned Claims Tribunal, a lump sum amount of Rs. 3,00,000/- has been awarded. The claimant-appellant is before this court seeking enhancement

11) Mr. A. Nandi, learned counsel appearing for the claimant-appellant herein submits that the learned Claims Tribunal has failed to consider the future loss of income to the extent of 30% as per Apex Court citation. Mr. Nandi, learned

counsel further submitted that the claimant-appellant is entitled to loss of income to the extent of 100% more particularly when her disability stood stagnant at 60% even after the expiry of 9 years from the date of the accident. Learned counsel further submitted that the learned Claims Tribunal has failed to apply his mind in awarding compensation on the head of pain, shock and suffering; factors to be considered, prolonged hospitalization-the grievous injury sustained; the operation underwent and the consequent pain, discomfort, and suffering towards the calculation of ward.

In support of his contention, Mr. Nandi, learned counsel referred to the judgment of this High Court passed on **24.01.2020** titled as **Smt. Pinky Roy Vs. Smt. Lekha Roy and ors.** Learned counsel also pressed in support of his contention, the judgment of this High Court passed in **Shri Samir Dhar Vs. Sri Anjan Roy and anr.**, passed on **18.07.2019.**

12) Mr. A.K. Deb, learned counsel appearing for respondent No.2, Insurance Company countering the said argument submitted that the instant case herein is not a case of permanent disability but it is a case of temporary disability. Mr. Deb, learned counsel referring to the judgment of the Apex

Court passed in ***Raj Kumar Vs. Ajay Kumar and anr.***, dated **18.10.2010** reported in **(2011) 1 SCC 343** submitted that in case of permanent disability, future loss of income can be allowed, but, if it is held that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. Mr. Deb, learned counsel further submitted that the claimant-appellant stated that her monthly income was Rs.12,000/- from her vegetable business and poultry farm but in support of that she failed to adduce any corroborative evidence. So, the learned Tribunal has rightly assessed the income of the claimant-appellant as Rs.5,000/- per month. Learned counsel further submitted that regarding the disability certificate, the doctor has nowhere stated that it is a permanent disability. Mr. Deb, learned counsel further submitted that in the first disability certificate dated 15.12.2014 it is shown as 60% disability and there is no suggestion for reassessment or review and it is likely to be improved. He further submitted that no discharge certificate has been annexed. Learned counsel argued that the disability certificate dated 02.03.2020 is doubtful as in the disability certificate dated 15.12.2014, there is no suggestion for reassessment or review. He further submitted that the learned Claims Tribunal though

did not consider the permanent certificate but gave a lump sum amount of Rs.3,00,000/- in favour of the claimant-appellant. Learned counsel further submitted that 60% disability could not be considered as 100% disability and the same is not supported by the deposition of the doctor. Stating thus, learned counsel urged this Court to uphold the judgment passed by the learned claims tribunal.

13) Heard both sides.

14) After hearing both the parties and perusing the evidence on record this Court feels that the injuries suffered by the claimant-appellant herein are temporary in nature and it not permanent. The learned Claims Tribunal below has awarded Rs.3,00,000/- towards the effect of injuries on the work capability of the claimant-appellant herein and the same is appropriate in nature. No doubt, it is beneficial legislation and the claimant-appellant herein needs to be considered for fair compensation. But, at the same time it cannot be a bonanza and the respondent insurance company cannot be penalized with an exorbitant amount in favour of the claimant-appellant. Further, in the first disability certificate dated 15.12.2014, the disability of the claimant-appellant herein is assessed for 5(five) years period as 60% which is likely to be improved. In that

disability certificate, the issuing authority has not given any suggestion for review or reassessment. So the second disability certificate dated 02.03.2020 cannot be considered.

15) The judgment relied by the learned counsel appearing for the appellant are not relevant to the facts of the case as the judgments referred pertains to cases where no compensation was awarded for disability, more so in the matter of permanent disability. But in the case of claimant-appellant herein, it is only a temporary disability and the work of petitioner of selling vegetable for some time was expected to suffer and thus Rs.3,00,000/- has been awarded towards compensation. Thus, this Court feels that adequately the issue of disability has been considered by the Tribunal.

16) Thus, this Court is of the view that the award dated 20.04.2021 passed by the Member Motor Accident Claims Tribunal is just and proper and the same is not interfered with.

17) With the above observation and direction, this instant appeal stands dismissed and the award dated 20.04.2021 passed in Case No.T.S.(MAC)59 of 2014 stands affirmed. Consequently, pending application(s), if any, stands closed.

JUDGE