

(2010) 09 GAU CK 0035

Gauhati High Court (Agartala Bench)

Case No: MAC App. No.105 of 2005

Sri Amar Das

APPELLANT

Vs

Smti Rita Paul

RESPONDENT

Date of Decision: Sept. 29, 2010**Acts Referred:**

- Motor Vehicles Act, 1988 - Section 173

Citation: (2011) 2 TAC 406**Hon'ble Judges:** C.R. Sharma, J**Bench:** Single Bench**Advocate:** D.C. Roy and I. Sengupta, for the Appellant; P. Gautam and Advocate for the Respondent No. 4, for the Respondent**Final Decision:** Dismissed

Judgement

C.R. Sarma, J.

By this appeal filed u/s 173 of the Motor Vehicles Act, 1988, the judgment and award, dated 31.05.2005, passed by the learned Member, Motor Accident Claims Tribunal, West Tripura, Khowai, in T.S.(MAC) No.143 of 2002, has been challenged, seeking enhancement of the award. By the impugned judgment and order, the learned Member, Motor Accident Claims Tribunal, granted compensation of Rs.56,933/-, in favour of the claimant, with interest thereon @ 7% per annum from the date of presentation of the claim application.

2. The appellant's case, in brief, necessary for deciding this matter, in brief, may be stated as follows:-

On 21.09.1999, the vehicle bearing Registration No.TR-01-1216 (Bus), in which the appellant was travelling, collided with another vehicle bearing Registration No.TR-01-1373 (Bus), coming from the opposite direction in high speed and as a result of the said vehicular accident, the appellant sustained injury in respect of his right leg. Due to the injury sustained by him, the appellant was required to undergo

medical treatment as an indoor patient. It is also claimed that, due to the said accident, the appellant sustained 15% disability, causing loss to his income and that he was earning Rs.3000/- per month as a grocery shop owner. Accordingly, the appellant, as claimant, filed a claim case, seeking compensation of Rs.12,72,000/- from the owner of the offending vehicles as well as the Insurer. The said claim case was contested by the owners of the vehicles and the Insurer. The claimant examined himself and another witness as PW Nos. 1 and 2 respectively. The learned Member, Motor Accident Claims Tribunal, by the impugned judgment and order, awarded compensation of Rs.56,993/- with interest thereon @ 7% per annum.

3. Being aggrieved by the said amount of compensation, awarded by the learned Member, Motor Accident Claims Tribunal, the claimant has come up with this appeal on the ground that the learned trial Judge failed to appreciate the evidence on record in its proper perspective and committed error by granting compensation on the basis of the notional income, without considering the monthly income of the claimant was Rs.3,000/-.

4. I have heard Ms. I. Sengupta with Mr. D.C. Roy, learned counsel, appearing for the appellant and Mr. P. Goutam, learned counsel, appearing for the respondent No.4 (Insurance Company).

5. Ms. Sengupta, learned counsel, appearing for the appellant, taking this Court through the evidence on record as well as the Memo of Appeal and the claim petition, has submitted that the appellant-claimant, in his claim petition, clearly stated that his monthly income was Rs.3,000/- per month, but the learned trial Judge committed error by failing to compute the compensation on the basis of the said income. It is also submitted, on behalf of the appellant, that the learned trial Judge failed to consider the fact that the claimant i.e. the present appellant, having sustained 15% disability, was required to undergo medical treatment and that the amount of compensation towards medical treatment was not sufficient.

6. Mr. P. Goutam, learned counsel, appearing for the respondent No.4, the United India Insurance Company Ltd. i.e. the insurer of offending vehicle No.TR-01-1373, has submitted that, in view of the failure of the claimant to substantiate his claim of income, the learned trial Judge, committed no error by computing the compensation on the basis of the notional income. It is also submitted that, as the claimant could produce the money receipts amounting to Rs.10,993/- towards his medical expenditure, the learned trial Judge rightly granted compensation of Rs.10,993/- towards the medical expenditure.

7. Having heard the learned counsel, appearing for both the parties, I have carefully gone through the materials on record, more particularly, the evidence of the claimant, who examined himself as PW.1.

8. The claimant, in his evidence given as PW.1, simply stated that he had spent an amount of Rs.40,000/- for the purpose of his treatment. He exhibited the "Discharge

Certificate", the Certificate regarding disability and the relevant vouchers/cash memos towards the purchase of medicines. The claimant, nowhere stated about his income prior to the accident and the loss of income, incurred by him, due to the disability sustained by him in connection with the said accident.

9. It is settled law that in a claim case, the claimant-petitioner is required to substantiate the claim made by him. Though the claimant, in his claim petition, stated that his monthly income was Rs.3,000/-, he failed to substantiate his said claim by adding evidence. Even he failed to make any oral statement, on oath, in support of his claim.

10. In view of the above, in my considered opinion, the learned trial Judge committed no error by holding that the claimant-petitioner failed to utter a single word about his loss of income.

11. In view of absence of any evidence regarding the income or loss of income, the learned trial Judge rightly computed the compensation by taking the notional income at Rs.15,000/- per annum. That apart, there is no dispute that the claimant could produce/prove the cash memos/money receipts amounting to Rs.10,993/- only towards his medical expenditure. The money spent towards medical expenditure is paid as a reimbursement. Therefore, it is the burden on the part of the claimant to substantiate that he had to spend the amount, claimed by him, towards the medical expenditure, by producing appropriate and reliable money receipt as well as vouchers. In the present case, though the claimant claimed that he had spent an amount of Rs.40,000/- towards his medical expenditure, he failed to establish the said claim by producing appropriate and reliable money receipt as well as vouchers. In the present case, though the claimant claimed that he had spent an amount of Rs.40,000/- towards his medical treatment, he could produce/prove money receipts amounting to Rs.10,993/- only. If the claimant had spent the amount claimed by him, there was no reason as to why he should have failed to produce the money receipts or cash memos etc. Therefore, I find that the learned Member, Motor Accident Claims Tribunal, West Tripura, Agartala, committed no error by granting an amount of Rs.10,993/- only as medical expenditure. The learned Member also awarded an amount of Rs.10,000/- towards pain and sufferings, loss of amenities, loss of happiness, enjoyment of life etc. Thus, the total amount awarded, came to Rs.56,993/-.

12. In the light of the above discussions, considering the entire materials on record, I find no sufficient merit in this appeal, requiring interference with the impugned judgment and order. In the result, the appeal is dismissed. Return the Lower Court Records.