

GAHC010283642019



2024:GAU-AS:10000

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : MACApp./674/2019

ABUL HUSSAIN

S/O- LATE KASHEM ALI, R/O- VILL. AND P.O. GOBINDPUR, P.S. AND DIST.-
GOALPARA, ASSAM, PIN- 783101.

VERSUS

THE BRANCH MANAGER, UNITED INDIA INSURANCE CO. LTD. AND 2
ORS.

GOALPARA BRANCH, P.O. AND DIST.- GOALPARA- 783101, ASSAM.

2:GOLBHANU BEGUM

W/O- ABUL HUSSAIN

R/O- VILL. AND P.O. GOBINDPUR- 783101

P.S. AND DIST.- GOALPARA

ASSAM

3:HEBZUR RAHMAN

S/O- SONTESH ALI

R/O- VILL. AND P.O. GOBINDPUR- 783101

P.S. AND DIST.- GOALPARA

ASSA

Advocate for the appellant : Mr. A.R. Agarwal

Advocate for the respondents : Mr. A.J. Saikia

BEFORE
HON'BLE MRS. JUSTICE MARLI VANKUNG

JUDGMENT AND ORDER (CAV)

Date of hearing : 10.09.2024.

Date of judgment : 30.09.2024

Heard Mr. A.R. Agarwal, learned counsel for the appellant along with Mr. A.J. Saikia, learned counsel for respondent No. 1/Insurance Company.

2. This is an appeal against the Judgment and award dated passed by the learned Member, Motor Accident Claim Tribunal (MACT), in MAC Case No. 373/16 dated _The appellant is the claimant in MAC Case No. 373/16, who had filed the claim application before the learned Member, Motor Accident Claims Tribunal, Goalpara claiming compensation of Rs. 10,00,000 (Rupees ten lakhs) only for injuries sustained by him due to a motor vehicular accident that occurred on 06/10/2016.

4. The claimant's case, in brief, is that on 06.10.2016 at about 10:00 AM, while the claimant/appellant Abdul Hussain was going on foot towards Gobindapur Bazar, on reaching near Gobindapur LP School, he was knocked down by a truck having registration No. AS-18-C-6405, which was driven by its driver, in a rash and negligent manner, as a result of which the appellant/claimant sustained grievous injuries. He was taken to Solace hospital, but was later shifted to GMCH, Guwahati as an indoor patient till 27.10.2016. The case was registered under the Goalpara PS vide Goalpara PS Case No.

505/16 under Section 279/338 IPC and the driver of the offending vehicle was charge sheeted accordingly. The claimant/appellant had filed the claim application claiming for compensation of Rs. 10,00,000/- for the injuries sustained by him in the accident. The opposite party No. 1, United India Insurance Co. in their Written Statement denied that the alleged accident occurred due to rash and negligent driving by the driver of the offending vehicle having Registration No. AS-18-C-6405 and also denied all the averments made in the claim petition. The owner of the vehicle/opposite party No. 2 stated that at the time of the accident, the vehicle was duly insured with the opposite party No. 1 having a valid policy No. 1306043115P112226680. The opposite party No. 3, the driver of the offending vehicle in his written statement, claimed that the accident did not occurred due to his rash and negligent driving and that at the time of the driving, the said vehicle was having a valid driving license No. AS-1820150015031, valid upto 07.03.2018.

From the pleadings of both the parties, the learned Tribunal framed the following issues:-

(i) Whether the claimant Abdul Hussain sustained injuries in the alleged motor accident dated 06.10.2016 involving the vehicle bearing registration No. AS-18-C-6405 (Truck) and whether the accident had taken place due to rash and negligent driving of the aforesaid vehicle.

(ii) Whether the claimant is entitled to compensation? And if yes to what extend and by whom amount the opposite parties, the said compensation will be payable?

5. The claimant examined two witnesses and the claimant/PW-1, exhibited Exhibit No. 1 to Exhibit No. 165, which included certified copy of the FIR, certified copy of the charge sheet, certified copy of the MVI report, certified copies of the medical report along with the cash memos and investigation done for the treatment of the claimant. The nature of injury sustained by the claimant is multiple fracture of right ribs and shattered Spleen. The claimant also exhibited disablement certificate as Exhibit No. 151. The claimant/appellant also stated that he was an agriculturist having 5 bighas of land and earned Rs. 8000/- per month as a cultivator. He was the only earning member of the family and had suffered 70% disability affecting him in his work, as a result of the accident. PW-2 is Dr. S. Ali, who proved the Disability Certificate (Exhibit No. 151) by adducing his evidence. None of the opposite parties adduced any evidence before the Tribunal.

6. The learned Tribunal on considering the materials on record decided issue No. 1 in favour of the claimant and held that claimant Abdul Hussain sustained injuries in the motor accident dated 06.10.2016 involving the vehicle bearing registration No. AS-18-C-6405 (Truck), due to the rash and negligent driving of the aforesaid vehicle.

7. With regard to the quantum of the award, the learned Tribunal noted that the claimant sustained multiple fracture of ribs of right side and Haemoperitonium with grade iv splenic laceration (shattered spleen) for which the claimant claimed he spend Rs.1,86,979/-, by submitting the medical documents and vouchers. The learned Tribunal on careful scrutiny of the medical documents held that the claimant spent Rs. 37,000/- in his treatment and had also incurred some expenditure towards conveyance, maintenance

attendant, food etc. and therefore, the claimant is entitled to some amount of pecuniary damages as accidental expenditure as the claimant had sustained grievous injury. The learned Tribunal also observed that Dr. S.Ali /Pw2 stated that on, 24.01.2017, he was one of the member of the District Standing Medical Board, which issued a 70% disability certificate to the appellant on the examination of the physical injuries sustained by the appellant. The learned Tribunal observed that injuries have caused disability which may be calculated at 40% permanent partial disability, which would definitely reduce the earning capability of the claimant and hence held that the claimant is entitled to 40% loss of earnings due to the disability along with other damages.

8. The learned Tribunal relied on the medical documents and held that the age of the claimant was 40 years at the time of the accident. The learned Tribunal also observed that though the claimant had said that he was an agriculturalist by profession, from which he used to earn Rs. 8000/- per month, however, since there were no supporting evidence produced by him to prove his monthly income, thus, considering the minimum wage structure prevailing, the learned Tribunal held that the income of the claimant would be Rs. 4000/- per month. The multiplier used was 15, since the age of the claimant was taken in the age group of 36-40 years.

9. The learned Tribunal thus held that the claimant is entitled to compensation as assessed herein under:-

Medical Expenses..... Rs. 37,705.00

Loss of earnings p.a.....Rs. 48000 x40%x15 = Rs. 2,88,000.00

Accidental expenditure	Rs. 25,000.00
Pain, Shock and suffering :.....	Rs. 25,000.00
Total	Rs. 3,75,705.00

10. The learned Tribunal also found that the driver of the offending vehicle AS-18-C-6405 (Truck) was having a valid driving license at the time of the accident. It was also found that the offending vehicle was validly insured with the opposite party No. 1 at the time of the accident and therefore, held that the opposite party No. 1 was liable to pay compensation to the claimant. Accordingly, the learned Tribunal directed that the awarded amount of Rs. 3,70,705/- with interest of 6% p.a from the date of the institution of the claim petition till the date of the payment, was to be borne by the Insurance Company/respondent No. 1.

Aggrieved by the above judgment and award, the claimant has filed the instant appeal for enhancement of the compensation amount awarded by the learned Tribunal.

11. Mr. A.R. Agarwal, learned counsel for the appellant submits that the learned Tribunal had failed to take into consideration the evidence on record in its proper perspective while deciding the case and that the awarded amount is inadequate and unjust. The learned counsel submits that the learned Tribunal had erred in taking Rs. 4000/- only as the monthly income of the insured victim, while it is clear that the victim was an agriculturalist earning Rs. 8000/- per month at the time of the accident, that the earnings of the insured victim which is proved by the oral evidence and cross examination of PW-1/claimant. He

further submitted that the insured victim had suffered 70% disablement and the learned Tribunal had erred in not making proper assessment of the pecuniary loss suffered by the claimant and had assessed the loss of earnings only as 40% without giving any reason or justification. The learned counsel submits that due to the serious injuries sustained by the claimant, wherein he himself used to work towards cultivation, his earning capacity has reduced to 100%. For the above reason, the award is liable to be modified and enhanced. His Disability Certificate is exhibited as Exhibit 151, issued by the District Standing Medical Board Goalpara . The permanent disability is 70% but the learned Tribunal had not taken into consideration the physical disability as assessed by the Medical Board and had erred in finding that the loss of earning capacity is only 40% .

12. The learned counsel for the appellant further submits that the learned Tribunal had erred in awarding only Rs. 37,705/- as medical expenses in spite of the fact that the claimant/appellant had incurred more than Rs. 1,86,979/- in his treatment and medical bills/vouchers were duly submitted. The learned counsel also submits that non-acceptance/non-consideration of some medical bills and reduction from the bills and vouchers submitted is unwarranted and without any reason.

13. The learned counsel thus submits that the awarded amount made by the Tribunal is on the lesser side and should be enhanced. The learned counsel for the appellant has relied on the judgment of the Apex Court in ***Syed Sadiq Vs. Divisional Manager, United India Ins. Company***, reported in **(2014) 2 SCC 735**, **Smt. Neeta vs. The Divisional Manager, MSRTC** reported in **2015(1) T.A.C 340(SC)**, **(Principal Seat) in Colap Lata Goswami and Anr vs. Ajit Deka and ors.** reported in **(2016) 4 GLR1**

14. The learned counsel also relied on the following rulings for the enhancement of the award due to the permanent disability suffered by the claimant/appellant ; ***Raj Kumar Vs. Ajay Kumar & Anr.***, reported in **(2011) 1 SCC 343**, ***Sanjay Batham Vs. Munnalal Parihar & Ors.***, reported in **(2011) 10 SCC 665**, ***Basappa Vs. T. Ramesh & Anr.***, reported in **2014 (4) T.A.C 663 (S.C)**, ***Sri Laxman Vs. Divisional Manager, Oritl. Ins. Company Ltd. & Anr.***, reported in **(2012) 1 TAC 376**. The judgment of a Coordinate Bench of this Court (Agartala Bench) in ***Narayan Chandra Banik Vs. Siddarthan Sankar Ray & Ors.***, reported in **(2013) 2 GLR 522**. ***Sanjay Verma Vs. Haryana Roadways***, reported in **(2014) 3 SCC 210**, the judgment of the Allahabad High Court in ***Oriental Insurance Company Ltd. Vs. Surendra Umrao & Anr.***, reported in **2007 (3) T.A.C 40 (All.)**. ***MD Goffar Ali Vs. MD Golam Ali***, reported in **2015 (2) T.A.C 197 (Gau)**,

15. Mr. A.J. Saikia, learned counsel for respondent No. 1/Insurance Company, on the other hand submits there were no grounds to interfere with the judgment of the learned Tribunal since the learned Tribunal had rightly assessed the amount to be awarded to the appellant as per the documents produced and available on record. The learned counsel also submits that in the medical documents submitted and the deposition of PW-2, it is stated that the claimant/appellant can be cured slowly. That the injury is on the ribs and thus, the nature of disablement is temporary and is not a permanent disability as claimed by the claimant/appellant. The learned counsel also submits that since no documents to prove the income of the claimant is produced, the learned Tribunal has rightly taken the income of the claimant at Rs. 4000/- per month which is a reasonable amount.

16. I have heard the contentions of both the parties and have also perused the documents on record. The instant appeal is with regards to the quantum of the award granted by the learned Tribunal. It is seen that the claimant/appellant has claimed that he owned 5 bighas of land and earned his living as a cultivator/agriculturist earning an income of Rs.8000/ per month. However since no income certificate was produced, the learned tribunal had taken the income at Rs.4000/- per month.

The coordinate bench of this court in **Smt. Neeta vs.The Divisional Manager, MSRTC(supra)** had held that *the court would be entitled to resort to rational guess work so as to ascertain the income of the deceased when no definite materials are available so as to establish the same* by applying the ratio laid down by the **Apex Court in Aswini Kumar Mishra v.P.Muniam Babu reported in (1999)SLT 447**, wherein it was held that *whenever a tribunal is required to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of disability caused. However all such elements are required to be viewed with objective standards. While assessing damages, the court cannot base its opinion merely on speculation or fancy though conjectures to some extent is inevitable.*

It is seen that the Apex court in **Syed Sadiq ETC vs. Divisional Manager,United India INS Co.(supra)** held that a labour involved in an unorganized sector doing his own business is not expected to produce documents to prove his monthly income. Going by the present state of economy and rising prices in agricultural products held that a vegetable vendor is reasonably capable of earning Rs.6,500/- per month.

This court is thus of the considered view that the learned Tribunal has assessed the income of the claimant on the lower side and find it appropriate to enhance the income of the claimant/appellant from Rs.4000/- to Rs. 6500/- per month.

17. This court also finds that the learned tribunal held that the claimant spent Rs.37,705/- without giving any reasons, as to why, the medical bills and vouchers duly exhibited, have not been accepted in total, thus, this court finds it fit to accept the medical bills and vouchers amounting to Rs.1,86,979/- for the treatment of the grievous injury sustained by the claimant, wherein, he is shown to have sustained multiple fracture of ribs if right side and Haemoperitonium with grade iv spleen laceration (shattered spleen) and was hospitalized from 06.10.2016 to 27.10.2016.

18. This court however finds that there is no mention in the disablement certificate exhibited as Ext.No.151, that the disability is of permanent nature, but on considering the nature of the injury sustained by him, wherein, the claimant being a cultivator will require active physical activity, the 70% disablement is likely to affect his earning capacity to a great extend and therefore this Court find it fit if 50% is taken as functional disability. This Court also find it appropriate if the amount for pain, shock and suffering is increased to Rs. 50,000/- from Rs. 25,000/-. Accordingly, the awarded amount is enhanced as below:-

Medical Expenses..... Rs. 1,86,979.00.

Loss of earnings p.a.....Rs.6500x12 x50%x15 = Rs. 5,85,000.00

Accidental expenditure	Rs. 25,000.00
Pain, Shock and suffering :.....	Rs. 50,000.00
Total	Rs. 8,46,979.00

19. The enhanced award with an interest of 6% per annum from the date of the institution of the claim petition till the date of the payment, is to be borne by the Insurance Company/respondent No. 1. The enhance awarded amount of Rs. 8,46,979/- (*Rupees eight lakh forty six thousand nine hundred and seventy nine*) only should be deposited into this registry after adjusting the original awarded amount, if already received by the claimant, and the appellant is at a liberty to withdraw the same after due verification by the registry.

The award granted by the learned Tribunal would thus stand modified in the above manner by granting the aforesaid enhancement.

Accordingly, MAC Appeal No. 674/2019 stands allowed to the extent indicated above.

No order as to costs.

JUDGE

Comparing Assistant