

GAHC010124912017



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

Case No. : MACApp./126/2017

SRI SHIBU CHAKRABORTY @ SIBU CHAKRABORTY
S/O LATE SHYMAL CHAKRABORTY, R/O DHIRENPARA, ITABHATTA, P.S.
FATASHIL AMBARI, GUWAHATI 781025, DIST. KAMRUP M, ASSAM.

VERSUS

ORIENTAL INSURANCE CO. LTD. and 2 ORS,
REGIONAL OFFICE, ULUBARI, GUWAHATI 781007

2:UNITED INDIA INS. CO. LTD.
REGIONAL OFFICE
G.S. ROAD
CHRISTIAN BASTI
GUWAHATI 781005

3:BABUL DUTTA

S/O SRI CHITTA DUTTA
R/O DHIRENPARA
ITABHATTA
SARADA PATH
P.S. FATA SIL AMBARI
P.O. DHIRENPARA
GUWAHATI 781025
DIST. KAMRUP
ASSAM. OWNER AND DRIVER OF VEHICLE AS-01/Q 682

Advocate for the Petitioner : MR.P SARMA

Advocate for the Respondent : MS.M CHOUDHURY

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Appellant : Mr. D. Mondal, Advocate.

For the Respondents : Mr. R. C. Paul, Advocate,
Ms. M. Choudhury, Advocate.

Date of Hearing : 04.01.2023

Date of Judgement : 04.01.2023.

JUDGMENT & ORDER (ORAL)

Heard Mr. D. Mondal, learned counsel for the appellant. Also heard Mr. R. C. Paul, learned counsel for the respondent No. 3, i.e. Oriental Insurance Co. Ltd and Ms. M. Choudhury, learned counsel for the respondent No. 4, i.e. United India Insurance Co. Ltd.

2. The present appeal is preferred against the Judgment and Award dated 14.07.2017, passed in MAC Case No. 1478/2011 by the learned Member of MACT, No. 2, Kamrup,(M) at Guwahati.
3. The present appellant got injured in a vehicular accident that took place on 01.07.2011. On the fateful day, the claimant was travelling in a motor cycle bearing registration No. AS-01-Q-6820 insured with respondent No. 5, as pillion rider and on the way, the offending Auto van bearing registration No. AS-15-C-1958 insured with respondent No. 3, hit the said motor cycle in a rash and negligent manner.
4. According to the claimant, immediately after the accident, he was taken to Gauhati Medical College & Hospital, Guwahati on 01.07.2011 and he was treated at hospital as inpatient till 02.07.2011. It is the claim of the claimant that as he

was not satisfied with the treatment at GMCH, he was taken to one private Nursing Home namely Guru Charan Poly Clinic and Nursing Home on 02.07.2011 and he was treated there as an inpatient till 08.07.2011. He was operated and some internal fixation was done in his right leg (Sub Trochanteric region) at Guru Charan Poly Clinic and Nursing Home. Subsequently, the appellant attended the hospital as outpatient on many occasion and he continued for physiotherapy in the same hospital by the same Doctor during the period with effect from 02.08.2011 to 01.01.2012. Subsequently, he was again admitted in the said hospital on 20.09.2013 for removal of internal fixation and same was done and he was admitted in the hospital till 26.09.2013.

5. The learned Tribunal below after consideration of the materials available on record including the documents and vouchers produced by the appellant, awarded the following compensation:-

“Medical expenditure *: Rs. 1,40,351/-*

Cost of Litigation *: Rs. 15,000/-*

Loss of income + pain, shock and suffering etc.: *Rs. 20,000/-*

Total *: Rs.1,75,351/-*

Rs. 1,75,351/- is round figured as Rs. 1,75,350/-"

6. Mr. Mondal, learned counsel for the appellant submits that by ignoring settled proposition of law, the learned Tribunal below has not awarded any compensation against loss of earning of the appellant during the period of treatment inasmuch as the appellant has proved beyond reasonable doubt that he was a partner of a business house dealing with manufacturing of Steel Almirah and Steel Table etc. He further contended that the learned Tribunal below has also not awarded any amount for transportation, nourishing food and

miscellaneous expenditure inasmuch as damages for pain, suffering and trauma as a consequence of the injuries on the lower side.

7. The further contention of Mr. Mondal, learned counsel for the appellant is that though he has duly submitted and proved his medical expenditure to an amount of Rs. 1,48,552/-, however, learned Tribunal below has erroneously awarded an amount of Rs. 1,40,351/-. Accordingly, he prays that compensation is not just, therefore, same is required to be enhanced by this Court. In support of his contention, Mr. Mondal, learned counsel relies on a decision of the Hon'ble Apex Court in the case of ***Raj Kumar –Vs- Ajay Kumar and Another*** reported in ***(2011) 1 SCC 343***.
8. Per contra, Mr. R. C. Paul, learned counsel for the respondent Insurance Company argues that the learned Tribunal below has not committed any error in appreciating the vouchers and documents and rightly calculated and awarded an amount against medical expenditure to the tune of Rs. 1,40,351/-.
9. Mr. Paul, learned counsel further submits that the learned Tribunal below has considered loss of income, pain, shock and suffering and in absence of any proof of income, has rightly awarded Rs. 20,000/- against those heads. Further the learned Tribunal below was generous to award the cost of litigation, which the appellant is not entitled.
10. It is the further contention of Mr. Paul, learned counsel that the appellant has measurably failed to bring on record any documents to show his income as has been claimed to be Rs. 10,000/- per month. Therefore, the learned Tribunal below has rightly awarded a lump sum amount against the loss of income.
11. This Court has considered the rival submissions made by the learned counsel for the parties, perused the materials available on record, including the evidence and the vouchers and documents exhibited.

12. The Hon'ble Apex Court in Raj Kumar (supra) while dealing with payment of just compensation in case of injury, amongst other, held that the compensation is required in case of personal injury against expenses relating to treatment, hospitalization, medicines, transportation, nourishing food and miscellaneous expenditure, loss of earning during the period of treatment, damages for pain, suffering and trauma as a consequence of the injuries.
13. While coming to the loss of earning during the period of treatment as urged by the learned counsel for the appellant certain facts such as that the accident that took place on 01.07.2011, that the appellant was hospitalized at Gauhati Medical College and Hospital, at Guru Charan Poly Clinic and Nursing Home and that he continued to have physiotherapy till 01.01.2012. It is also established that the injury was serious in nature and he had to continue with physiotherapy and hospitalization with effect from 01.07.2011 to 01.01.2012 i.e. for six months. However, though the learned Tribunal below has awarded a lump sum amount of Rs. 20,000/- against loss of income, pain, shock and suffering, this Court is of the considered opinion that the learned Tribunal below in view of the settled proposition of law as discussed hereinabove, ought to have determined the compensation against the said head separately.
14. Now coming to the loss of income as discussed hereinabove, though the appellant has established that he was having a partnership firm dealing with the business as discussed hereinabove, however, the appellant has failed to establish the actual income by bringing any cogent evidence. In such a backdrop, it is also well settled that the income can notionally be fixed on the basis of minimum wages paid. As the appellant has established that he was dealing with a business of manufacturing of Steel Almirah and Steel Table etc, this Court will consider him to a skill worker in absence of any proof of income.
15. It is brought on record that during the period of 2012, the State of Assam has

issued a Notification which shows that a skill worker will have an income of Rs. 7875/- per month. This Court accordingly, hold that the appellant has loss of income during the period of treatment with effect from 01.07.2011 to 01.01.2012 at the monthly rate of Rs. 7875/-.

16. So far relating to the determination of medical expenditure at the Rs. 1,40,351/-, this Court after perusal of vouchers and documents available on record and exhibited, is of the considered opinion that the learned Tribunal below has not committed any error in awarding such amount and rightly appreciated such vouchers and documents.
17. Coming to the pain, suffering and trauma as a consequence of the injuries, the learned Tribunal below has added an amount of Rs. 20,000/- along with loss of income. This Court is also of the considered opinion that such amount is not just. It is well settled that certain level guess work is required in determining the payment of award against pain and suffering etc.
18. As this Court has already separately awarded the amount against loss of income, therefore, is of the considered opinion that an amount of Rs. 20,000/- shall be just and proper against damages for pain, suffering and trauma as a consequence of the injuries.
19. So far coming to the transportation and nourishing food as urged by the learned counsel Mr. Mondal, and claims to be Rs. 10,000/- in absence of any materials available on record, this Court is not inclined to award of Rs. 10,000/-, however, this Court cannot also be oblivious of the fact that the appellant was injured, he was taken to the hospital at GMCH, then he was transported to Guru Charan Poly Clinic and Nursing Home, he had to visit the hospital for physiotherapy as well as for removal of his internal fixation. Therefore, he must have spent some money for transportation during those periods. Accordingly,

this Court is of the considered opinion that an amount of Rs. 5000/- shall be a just compensation against transportation.

20. This Court, in absence of any cross appeal or challenge by the Insurance Company to the award of Rs. 15,000/-, against the cost of litigation, is not inclined to interfere such award.

21. In view of the above decision and reasons, the award passed in MAC Case No. 1478/2011 by the learned Member of MACT, No. 2, Kamrup,(M) at Guwahati, is modified to the following extent.

i. *“Medical expenditure* : Rs. 1,40,351/-

ii. *Cost of Litigation* : Rs. 15,000/-

iii. *Loss of income + pain, shock and suffering etc.:*

: Rs. 20,000/-

iv. *Loss of earning during the period of treatment @ Rs. 7875/- per month w.e.f. 01.07.2011 to 01.01.2012 (6 months)*

:Rs. 47,250/

v. *Transportation* : Rs. 5000/-

Total ***:Rs.2,27,601/-***

22. It is submitted that the award had already been paid to the appellant and therefore, the additional amount as has been determined be paid within a period of eight weeks by the respondent No. 3 and the interest of Rs.6% as determined by the learned Tribunal below is not interfered with.

23. The appeal is allowed in the aforesaid terms.

24. LCR be sent back forthwith to the learned tribunal below.

JUDGE

Comparing Assistant