

GAHC010125042015



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

Case No. : MACApp./257/2015

SRI JAGAT CHETRY
S/O SRI SHER BAHADUR CHETRY, R/O G.F. ROAD, TETELITAL, P.O. and P.S.
and DIST. GOLAGHAT, PIN....., ASSAM.

VERSUS

RELIANCE GENERAL INSURANCE CO LTD and 2 ORS
ANIL PLAZA, 5TH FLOOR, BESIDES IDBI BANK, G.S. ROAD, GUWAHATI-5
INSURER OF THE VEHICLE NO. MN-01-W-3976 SCORPIO

Advocate for the Petitioner : MR.P BARUAH

Advocate for the Respondent : MR.A TALUKDARR-1

BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG

JUDGMENT

Date : 24-02-2023

Heard Ms. P. Baruah, learned counsel for the appellant and Mr. K.K. Bhatta, learned counsel for respondent No.1.

2. This appeal filed under Section 173 of the Motor Vehicle Act, 1988 is

for enhancement of the Award amount dated 20.06.2015 passed by the learned Member, Motor Accident Claims Tribunal, Golaghat in MAC Case No.97/2011.

3. The learned Tribunal had awarded a sum of Rs.70,164/- with interest @ 7% per annum from the date of filing the claim petition till the realization of the entire amount for the injuries sustained to the claimant on 20.06.2015. Being aggrieved with the awarded amount, the appellant has come with the present appeal seeking enhancement of the compensation.

4. Facts of the case in a nutshell is that on 12.03.2010 at about 9:00 A.m, while the appellant was driving his Motor Cycle bearing registration No.MN-01-W-3976 from Golaghat side towards Rangajan side, he met with an accident with the vehicle bearing registration No. MN-01-W-3976 (Scorpio). As a result of the accident the Motor Cycle was badly damaged and the appellant sustained compound fracture of both bone (Tibia and Fibula) in his right leg.

5. The claimant was first taken to KK Civil Hospital, Golaghat, where he was given first aid treatment and was referred to another Hospital due to his serious injuries and he was thereafter admitted at Golaghat Nursing Home. The claim of the appellant was that since he could not recover from the injuries, as per the advised of the doctor, Dr. R.N. Singh, he had to go

to Patna on 4 (four) occasions for medical treatment and he had become a permanently disabled person. He submitted a report /certificate wherein disability was certified as 50%.

6. The learned Tribunal after taking evidence from both the parties and on hearing both the parties framed the following issues:

- (i) *Whether the claimant sustained grievous injuries in a motor vehicle accident which took place on 12.03.11 at about 9 am at Ranjan Tiniali under Golaghat PS caused by the driver of vehicle No.MN-01-W-3976 (Scorpio) due to its rash and negligent driving?*
- (ii) *Whether the claimant is entitled to get compensation? If so, what is the quantum, and from whom?*

After analysing the evidence and the medical report submitted, issue No.1 was decided in favour of the claimant. With regards to issue No.2, the learned Tribunal by citing the decision of the Hon'ble Supreme Court in **Raj Kumar -Vs- Ajay Kumar** reported in **2011 (1) TAC 785 (SC)** held that the claimant will be entitled to compensation under the following heads

Pecuniary Damages :

- (i) Expenses relating to treatment, hospitalization, medicine, transportation, nourishing food and miscellaneous expenses;
- (ii) Loss of earning which the injured would have made had he not been injured, comprising –
 - (a) Loss of earning during the period of treatment.;
 - (b) Loss of future earning on account of permanent disability.
- (iii) Future medical expenses;

Non pecuniary damages :

- (iv) Damages for pain, sufferings, trauma as a consequences of injury;
- (v) Loss of amenities (and/or) loss of prospect of marriage;
- (vi) Loss of expectation of life (shortening of normal longevity)

The learned tribunal held that from cash memos bills and voucher submitted the appellant was entitled to the amount of Rs.39,166/- which is the actual expenditure incurred by the claimant under head No.(i).

7. The learned Tribunal also held that the appellant was working as a teacher and drawing a monthly salary of Rs.17,000/- p.m. There was no evidence that during the period of treatment he suffered any loss of income, that he being a government servant and since he was still working, there was also no question of loss of income in future. The learned Tribunal also held that there is no medical evidence to show that he will incur medical expenses in the future and as thus is not entitled to such compensation under head no. (ii)(a) & (b) and (iii). And having regard to his age and the period of treatment and the nature and gravity of the injuries sustained by him a sum of Rs.10,000/- was awarded as compensation under head No. (iv). Regarding compensation under head No.(v) since the claimant has suffered 50% permanent disability in relation to his right leg and as such in the interest of justice, an amount of Rs.5,000/- was awarded. There is no medical evidence that the injuries

sustained by him have some bearing upon normal longevity of his life. In absence of such evidence we find that he is not entitled to compensation under this head no (vi).

8. The learned tribunal also awarded an amount of Rs.15, 998/- for the repairing of his Motor Cycle as per the document submitted.

9. Thus a total amount of compensation is assessed at Rs.70,164/- *with an interest @ 7% per annum* from the date of filing the claim petition till the realization of the entire amount for the injuries sustained to the claimant on 20.06.2015 under the head of pecuniary and non-pecuniary damages. Aggrieved by the amount awarded the appellant has approached this court for enhancement.

10. The learned counsel for the appellant submits that the learned Tribunal has not taken into consideration the pecuniary and non pecuniary hits laid down the Judgment of the Supreme Court in **Raj Kumar -Vs- Ajay Kumar (Supra)** and held that the learned Tribunal had erred and not granting compensation for loss of income since the appellant had sustained serious injuries and could not work for a long time.

11. The learned counsel further submits that as per the medical report/Disability Certificate submitted which was exhibited as Exhibit-4 was issued by the competent medical board before the learned Tribunal showing 50% disability and the injury is non progressive. The Doctor who deposed

as claimant witnesses No.2, also states that the appellant had sustained injuries which resulted in 50% disability. This aspect was not challenged by the opposite party and that the appellant because of his disability is not able to lead a normal life and needed constant caring and medication. No amount was awarded for future medical expenses and no amount was awarded for loss of future earning on account of permanent disability. She further submits that a merger amount of only Rs.5,000/- was awarded for loss of amenities and a merger amount of Rs.10.000/- for all the pain and suffering caused to him due the accident. That the learned tribunal did not consider the fact that the claimant had to travel to Pune on four occasions and has not been reimbursed for his travel expenses though he has submitted his travel tickets. For the above reasons, she has prayed that the award amount may be enhanced, the amount claimed by the appellant/petitioner before the learned Tribunal was Rs.10,43,000/-.

12. The learned counsel for the respondent No.1/Insurance Company Ltd., on the other hand submits that since the appellant was a government employee, employed as a teacher, there was no loss of earning due to the accident as he was receiving his regular pay even during his treatment.

13. He further submits that the 50% disability certificate/medical certificate exhibited as exhibit-4 cannot be relied upon since the certificate/medical report was issued in 2011. The medical report which was

issued on the same day of the accident i.e 12.03.2010 mentions that the injuries sustained was simple injury. He further submits that nowhere in the medical report does it mention that the appellant needs any further medical treatment and that 50% disability was on the right leg only. That the learned Tribunal had rightly assessed the compensation amount of Rs.70,164/- and there was no reason to interfere with the findings of the learned Lower Court.

14. Having heard the submissions made by both the parties, this court finds that the learned Lower Court while calculating the expenses relating to treatment, hospitalisation, medicine etc. had rightly relied on the vouchers that were duly submitted in the court and had rightly held that there was no loss of earning, since the appellant was a teacher in a Government School/Government servant earning Rs.17,000/- per month. There is no evidence to show that his pay was deducted due to the accident or injuries sustained by him. Thus, it can be held that there was no loss of earning during the period of treatment. There is also no evidence showing that the appellant is required to take future medical treatment. However, with regards to non-pecuniary damages, it is seen that the disability certificate issued by the medical board shows that there is 50% disability of the right leg which was not challenged by the defendant in the Lower Court.

15. The Hon'ble Apex Court in **Sidram -Vs- The Divisional Manager, United India Assurance Company Ltd. & Anr** reported in **Civil Appeal No.8510 of 2022** held that :

“In a motor accident case, no amount of money or other material compensation can erase the trauma, pain and suffering that a victim undergoes after a serious accident. Monetary compensation is the manner known to law, whereby society assures some measure of restitution to those who survive and the victims who have to face their lives.”

The Apex Court in **Anant son of Sidheshwar Dukre Vs. Pratap son of Zhamnnappa Lamzane & Anr. Civil Appeal No. 8420 of 2018 (Dated : August 21, 2022)** held that :

“In cases of motor accidents leading to injuries and disablements, it is a well settled principle that a person must not only be compensated for his physical injury, but also for the non-pecuniary losses which he has suffered due to the injury. The Claimant is entitled to be compensated for his inability to lead a full life and enjoy those things and amenities which he would have enjoyed, but for the injuries.” “The purpose of compensation under the Motor Vehicles Act is to fully and adequately restore the aggrieved to the position prior to the accident.”

16. In view of the above decisions in the instant case, the appellant was 48 years old when he sustained 50% disability on his right leg which is reported to be non progressive. Thus this court keeping in mind that this is a social welfare legislation and considering the pain and suffering and the trauma suffered by the claimant due to the accident, finds it fit to enhance

the award from the sum of Rs.10,000/- to RS. 20,000/- Regarding compensation under head No.(v) for loss of amenities since the claimant has suffered 50% permanent disability in relation to his right leg and as such in the interest of justice, the amount of Rs.5,000/- awarded is enhanced to Rs. 20,000/-. I do not find any grounds to interfere with the award amount under the other heads which is found to be reasonable and appropriate.

17. Thus the respondent No.3/Reliance General Insurance Co.Ltd after the above mentioned enhancement is to pay the appellant/claimant a total sum of Rs.95,164/- with interest @ 7% per annum from the date of filing the claim petition till the realization of the entire amount for the injuries sustained to the claimant on 20.06.2015. The said amount is to be deposited before the Motor Accident Claims Tribunal, Golaghat within 3 (three) weeks from the date of this order.

18. Accordingly, MAC.App. /257/2015 stands disposed as above.

JUDGE

Comparing Assistant