

GAHC010174702017



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

Case No. : MACApp./141/2018

SRI GONESH CHOUDHURY
R/O VILL. CHOWK BAZAR, P.S. GOALPARA TOWN, DIST. GOALPARA,
ASSAM.

VERSUS

THE REGIONAL MANAGER AND 2 ORS,
NATIONAL INSURANCE CO. LTD. REPRESENTED BY BONGAIGAON,
DIVISIONAL OFFICE, P.O.AND DIST. BONGAIGAON (ASSAM)

2:MUSTT. SALEHA BEGUM
R/O VILL. HASILAPARA
P.O. GOALPARA TOWN
DIST. GOALPARA
ASSAM
PIN 783101

3:MD. ABDUL KABIL @ ABDUL MALIK
VILL. BHATIPARA
NATUN BASTI
P.O. GOALPARA-783101
DIST. GOALPARA
ASSAM

Advocate for the Petitioner : MR. A R AGARWALA

Advocate for the Respondent : MR. A J SAIKIA

PRESENT

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellant : Mr. A.R. Agarwala,
Advocate.

For the Respondents: Mr. A.J. Saikia,
Advocate.

Date of Hearing: 25.01.2023.

Date of Judgment: 17.03.2023.

JUDGMENT AND ORDER (CAV)

Heard Mr. A.R. Agarwala, learned counsel appearing for the appellant as well as Mr. A.J. Saikia, learned counsel representing the respondents.

2. This is an appeal under Section 173 of the Motor Vehicles Act, 1988 against the judgment and award dated 04.06.2016 passed by the learned Member, Motor Accident Claims Tribunal, Goalpara in MAC Case No.86/2009.

3. On 19.11.2008, Gonesh Choudhury was travelling from Goalpara to Guwahati in a bus bearing Registration No.AS-18A-0347. The bus was driven in a rash and negligent manner and therefore, it turned turtle. As a result of the accident, Gonesh Choudhury sustained injuries. In fact, he became 50% disabled because of the accident. The Medical Board gave him the certificate to that effect.

4. When he filed a claim application before the Tribunal, his monthly income was notionally held to be Rs.4,000/-. The reason for this decision was that Gonesh Choudhury could not produce any documents in

support of his income or profession.

5. Though the Medical Board issued a certificate stating the disability of the claimant to be 50%, the Trial Court without any explanation held the disability to be 20% only.

6. Finally, on the aforesaid yardsticks, the Tribunal granted a compensation of Rs.2,08,813/- only.

7. I have considered the submissions made by the learned counsels of both sides.

8. Here, at this stage, so far as notional monthly income is concerned, I have decided to agree with the Tribunal because there are no other evidence to prove the monthly income of the appellant.

9. I find that without any explanation or reasoning, the Tribunal held the disability of the petitioner to be 20% even though the medical evidence clearly showed that the appellant sustained 50% disability.

10. This Court is of the opinion that the Tribunal has erroneously applied the multiplier to be 15 whereas considering his age, the multiplier should have been 16 according to Sarla Verma's case, reported in (2009) 6 SCC 121.

11. This Court is of the opinion that the award passed by the Tribunal deserves to be modified.

12. The modified calculation would be like this –

Monthly income	Rs.4,000/-
Yearly income	Rs.48,000/-

Disability 50%

Loss of earning due to disability –

Rs.4,000/- X 12 X 50% X 16 = Rs.3,84,000/-

Future prospect of 40% = Rs.1,92,000/-

Medical expenses = Rs.19,813/-

Incidental expenses = Rs.25,000/-

Pain, shock and suffering = Rs.50,000/-

Total Rs.6,70,813/-

13. Therefore, the claimant/appellant shall be entitled to receive Rs.6,70,813/-.

14. The appeal is allowed. The impugned judgment stands modified. The Insurance Company is directed to pay the compensation of Rs.6,70,813/-. The amount of compensation shall carry an interest of 6% per annum with effect from 04.06.2016 i.e. the date when the judgment was passed by the Tribunal.

15. The appeal is disposed of.

Send back the LCR.

JUDGE

Comparing Assistant