

GAHC010059072017



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

Case No. : MACApp./654/2017

SRI KAMAL RABHA
S/O LATE LUHIT RABHA, R/O VILL. PAHARKATA, P.O. and P.S. AGIA, IN THE
DIST. OF GOALPARA, WITHIN THE STATE OF ASSAM, PIN 783120

VERSUS

UNITED INDIA INSURANCE CO. LTD and 2 ORS
BONGAIGAON DIVISION, P.O. and P.S. BONGAIGAON, IN THE DIST. OF
BONGAIGAON WITHIN THE STATE OF ASSAM, PIN 783380

2:MD. BANISH ALI

S/O ABDUL JALIL MULLAH
R/O VILL. FARINGAPARA
P.O. and P.S. LAKHIPUR
IN THE DIST. OF GOALPARA
WITHIN THE STATE OF ASSAM
PIN 783129

3:MD. SAHAJ UDDIN SIKDAR

S/O AJGOR ALI SIKDAR
VILL. FARINGAPARA
P.O. and P.S. LAKHIPUR
IN THE DIST. OF GOALPARA
WITHIN THE STATE OF ASSAM
PIN 78312

Advocate for the Petitioner : MR.D DAS

Advocate for the Respondent : MD. A AHMED

Linked Case : MACApp./616/2017

SMTI RINA KALITA and 2 ORS
W/O LATE MADHAB KALITA

2: BHARGOB KALITA

MINOR SON OF LATE MADHAB KALITA

3: BHASHKAR KALITA
MINOR SON OF LATE MADHAB KALITA CLAIMANTS / APPELLANTS NO. 2
AND 3 ARE BEING REPRESENTED BY THE APPELLANT NO. 1 AS THEY ARE
MINOR ALL ARE RESIDING AT VILL. SANTINAGAR UNDER GOALPARA
POLICE STATION IN THE DIST. OF GOALPARA
WITHIN THE STATE OF ASSAM
PIN 783001
VERSUS

UNITED INDIA INSURANCE CO. LTD and 2 ORS
BONGAIGAON DIVISION
P.O. and P.S. BONGAIGAON IN THE DIST. OF KAMRUP BONGAIGAON
WITHIN THE STATE OF ASSAM 783380

2:MD. BANISH ALI

S/O ABDUL JALIL MULLAH
R/O VILL. FARINGAPARA
P.O. and P.S. LAKHIPUR
IN THE DIST. OF GOALPARA WITHIN THE STATE OF ASSAM
PIN 783001

3:MD. SAHAJ UDDIN SIKDAR
S/O AJGOR ALI SIKDAR
VILL. FARINGAPARA
P.O. and P.S. LAKHIPUR
IN THE DIST. OF GOALPARA
WITHIN THE STATE OF ASSAM
783001

Advocate for : MR.K SARMA
Advocate for : A AHMED appearing for UNITED INDIA INSURANCE CO. LTD and
2 ORS

BEFORE
HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the appellant : Mr. K. Sarma, Advocate.

For the Respondents : Ms. R. D. Mozumdar, Advocate.

Date of Hearing : 21.02.2023

Date of Judgment : 26.04.2023

JUDGMENT & ORDER (CAV)

1. Heard Mr. K. Sarma, learned counsel for the appellant. Also heard Ms. R. D. Mozumdar, learned counsel for the respondent Insurance Company.
2. The present appeals are directed against the common judgment dated 28.08.2017, passed by the learned Member, MACT, Goalpara in MAC Case Nos. 45/2011 and 75/2011. By the impugned judgment, both the claims have been dismissed holding that the claimants are not entitled to any compensation under provision of Motor Vehicles Act, 1988.
3. These two appeals being MACApp./654/2017 and MACApp./616/2017 are taken up together for final disposal as agreed to by the learned counsels for the parties and also for the reason that the aforesaid two appeals arise out of the same accident and the evidences and the stands of the appellant Insurance Company in their written statements are also similar and has been decided by a common judgement.
4. **Background facts for the each of the MAC Appeals:-**
 - I. **In MAC Appeal No. 616/2017 arising out of MAC Case No.**

45/2011: The claimants are the wife and the two minor sons of deceased Madhab Kalita. The deceased was serving as a Police Constable and had allegedly died in a motor vehicular accident that took place on 29.04.2011 at about 09:00 PM while he along with one Kamal Rabha, who was a Home Guard were performing their naka duty at Bhaikuntapur and in the said accident, Kamal Rabha got seriously injured.

II. In MAC Appeal No. 654/2017 arising out of MAC Case No. 75/2011: The claim was preferred by one Sri Kamal Rabha who claims to be a Home Guard and got injured in the accident, in which the Madhab Kalita who was a Police Constable was killed.

5. The case of the claimants as discussed hereinabove is that the deceased Madhab Kalita (Husband/father of the claimants in MAC Case No. 45/2011) was a constable of Assam Police and Sri Kamal Rabha (claimant in MAC Case No. 75/2011) was a Home Guard at the time of accident. It is pleaded that on 29.04.2011 at about 9-00 P.M, Madhab Kalita and Sri Kamal Rabha were performing their duty at Bhaikuntapur by keeping one Motor Cycle bearing registration No. ML-07-A-0740 by the side of the road. At that time, one 709 Truck bearing registration No. AS-18-A-3170 (offending vehicle) was coming from Krishnai side and going towards Rang sai in a high speed and in a rash and negligent manner. Madhab Kalita and Sri Kamal Rabha, apprehending that the truck had been carrying illegal goods, signalled the Truck to stop. But the driver of the Truck did not obey the signal and drove the Truck over the body of the Madhab Kalita and Sri Kamal Rabha. As a result, both Madhab Kalita and Sri Kamal Rabha sustained severe injuries upon their persons. Both legs of Sri Kamal Rabha had been fractured. Madhab Kalita succumbed to the injuries on the spot. It is the further case of the claimants that soon after the accident, the Police from Agia Police Station arrived at the place of accident and forwarded Sri

Kamal Rabha to Goalpara Civil Hospital for his treatment. The police took the dead body of Madhab Kalita to Goalpara Civil Hospital for post mortem examination. Sri Kamal Rabha was referred to the Gauhati Medical College and Hospital, Guwahati and underwent treatment at GMCH as indoor patient. Accordingly, a case has been registered being Agia Police Station Case No.52/2011 under Sections 279/304 IPC.

- 6.** The insurer of the offending vehicle i.e. United India Insurance Co. Ltd. contested the claim by filing written statement, however, the driver and the owner of the offending vehicle did not appear before the learned Tribunal below and accordingly, the matter proceeded ex-parte against them.
- 7.** It is the case of the insurance company that the deceased and the injured, after the Truck refused the stop and disobeyed their signal, chased the Truck, riding a motor cycle bearing registration No. ML-07-A-0704 in order to stop the Truck and when they reached the place of accident, they tried to stop the Truck and at that time, the driver of the Truck in order to kill them dashed the motor cycle. Therefore, the Insurance Company took a stand that since it is a case of murder, they are not liable for any compensation to be paid.
- 8.** The claimant side of MAC Case No. 45/2011 examined four witnesses and exhibited certain documents. The claimant side of MAC Case No. 75/2011 was also examined two witnesses and exhibited certain documents.
- 9.** The appellate insurance company, in both the claim cases did not adduce any witness to prove their pleadings.
- 10.** Thereafter, the learned Tribunal below has framed two issues, one relates to rash and negligent driving by the driver of the offending vehicle and the second issue was whether the claimants are entitled to any compensation.

11. The learned Tribunal below after considering the Exhibit-2, the certified copy of Ejahar lodged by the Officer-in-Charge of Agia Police Station regarding the incident and also considering the Exhibit-3, the certified copy of the Charge-sheet in the aforesaid Agia Police Station case, came to a conclusion that as the Charge-sheet has been submitted by the police against the driver of the offending truck under Sections 279/338/304/427 of the IPC, it can be presumed that it is not an accident but a murder which may be culpable homicide not amounting to murder. Accordingly, the learned Tribunal below came to a conclusion that death of Madhab Kalita and injuries sustained by Sri Kamal Rabha had not been caused by any accident and as the injuries sustained are not due to motor vehicular accident, and therefore, claims under Motor Vehicular Act, did not arise. Accordingly, both the claims were dismissed.

12. Argument of Mr. K. Sarma, learned counsel for the appellants on issue of maintainability of the claim petitions:

I. Relying on the judgment of this Court in the case of ***Basu Mati Debbarma –Vs- Anita Debbarma*** reported in ***MANU/GH/0641/2013*** and the decision of the Hon'ble Apex Court in the case of ***Rita Devi (Smt) and Others –Vs- New India Assurance Co. Ltd.*** reported in ***(2000) 5 SCC 113***, Mr. Sarma, learned Counsel contends that the decision of the learned Tribunal below in holding that the case cannot be treated as a case under Motor Vehicles Act is perverse inasmuch as in the case of Rita Devi (supra) in a similar circumstance, the Court came to a conclusion that the murder arises out of an accident then also the claim under Motor Vehicles Act shall be maintainable.

13. Decision of the Court:

- I.** In case of Rita Devi (supra), an auto rickshaw registered as a public carrier vehicle owned was taken on hire but subsequently the auto rikshaw was stolen away and driver was killed. In the aforesaid backdrop of the facts, claim was allowed by the Hon'ble Apex Court holding that though it was a case of murder and stealing away of vehicle, however, the same arose due to an accident arising out of use of a motor vehicle and therefore, it was right on the part to hold that the claimants who was the wife of the murdered man was entitled for compensation under Motor Vehicles Act.
- II.** In the case of Rita Devi (Supra) the Hon'ble Apex Court held that in common parlance murder is a felonious at where death is caused with intent and the perpetrators of the act normally have a motive against the victim of such killing. It was further held that there are also instances where murder can be by accident on a given set of facts. The difference between murder which is not an accident and a murder which is an accident, depends on proximity of cause of such murder. It was also held that if a dominant intention of the act is to kill any particular person then such killing is not an accidental murder but is a murder simpliciter, while if the cause of murder or act of murder was originally not intended and same was caused in furtherance of any other felonious act than such murder is an accidental murder and in such a case involving a motor vehicle, the deceased shall be entitled for compensation.
- III.** In the case in hand and the material available on record and as discussed hereinabove, it is clear that even if this Court assume it to be a murder as alleged in the FIR, the same was caused in

furtherance of the object to flee away from the police who asked the truck to stop. Therefore, even if, it is a murder, it is an accidental murder. Therefore, in view of the ratio laid down in case of **Rita Devi** (supra), the claim cases were maintainable.

IV. The learned Tribunal below has heavily relied upon the Ejahar and the Charge-sheet to come into the conclusion of murder and resultant non entitlement of the claimants. Even if this Court takes the FIR and the charge-sheet on its face value, it is established that deceased and injured were performing their duty and suspecting the truck to be involved in crime, tried to stop the truck and even if this Court believes that they chased the vehicle and met with the accident in question, in view of the ratio laid down in the case of Rita Devi (supra), it cannot be said that they are not entitled for any compensation under Motor Vehicles Act.

V. In view of aforesaid settled proposition of law, Ms. R. D. Mozumdar, learned counsel for the respondent Insurance Company fairly submits that the learned Tribunal below might have been wrong in dismissing the claims in limine holding that the same to be a case of under Section 304 of IPC.

VI. In view of the forgoing discussions and reasons, this court is of unhesitant view that the learned Tribunal below has fell into serious error of law in dismissing the claim petitions and accordingly same is liable to be interfered, which accordingly is done.

14. However, after holding thus, now the next question that arises is whether these two cases are to be remanded back to the learned Tribunal

below for determination on the compensation on the basis of materials available on record or this Court in exercise of its appellate power should decide the matters on merit?

15. The fact remains that the accident took place on 29.04.2011 and the claim petitions were dismissed on 28.08.2017 and this matters are being heard by this Court in the year 2023. If the matters are sent back for redetermination, that may further delay the matter. Therefore, this Court is of the considered opinion that instead of sending this matters back, this Court should exercise its appellate power to determine what should be the just compensation. Accordingly, the learned counsels for the parties also advanced their arguments on the merit of the claim.

16. Argument on merit of the claim by the learned counsel for the appellants:

i. The claimants of MAC Case No. 45/2011, had established the income and age of the deceased who was police constable under the Assam Police through the evidence of the PW1. Therefore, the wife and two minor children are entitled for compensation as decided by the Hon'ble Apex Court in the case of ***National Insurance Company Limited –Vs- Pranay Sethi and Others*** reported in ***(2017) 16 SCC 680*** and ***Magma General Insurance Company Limited – VS- Nanu Ram Alias Chuhru Ram and Others*** reported in ***(2018) 18 SCC 130*** and ***Sarla Verma (Smt) and Others –Vs- Delhi Transport Corporation and Another*** reported in ***(2009) 6 SCC 121***.

ii. It has duly been proved that deceased Madhab Kalita and

injured Sri Kamal Rabha, were both government servant. It was also proved that deceased Madhab Kalita (MAC Case No. 45/2011) was a constable of Assam Police who was receiving a salary of Rs. 17,700/- per month and Sri Kamal Rabha (MAC Case No. 75/2011) was a Home Guard used to get salary of Rs. 7,500/- per month.

- iii. The disability of Kamal Rabha was proved through the Member of the Advisory Board, which remained unshaken and the same discloses that the disability was to the extent of 60% arising out of fracture in the femure and therefore, the injured victim will not be able to get gainfully employed as a Home Guard.

17. Argument Advanced by Ms. R. D. Mozumdar, learned counsel for the respondent Insurance Company:

- I. It is established on record, more particularly from the FIR and Charge-sheet that these two police personal chased the offending truck and they tried to stop the the truck by crossing the truck and obstructing it and thereafter, they met with the accident. Therefore, there is clear contribution on the part of the deceased and injured claimants to the accident and therefore, in view of such contributory negligent on the part of the deceased and injured claimant, the insurance company should not be fasten with the entire liability. In support of her contention, Ms. Mazumdar, learned Counsel for the insurance relies on the decision of the Hon'ble Apex Court in the case of ***Bijoy Kumar Dugar –Vs- Bidyadhar Dutta and ors*** reported in ***(2006) 3 SCC 242, New India Assurance Co. Ltd. – Vs- Bismillah Bai & Others*** reported in ***(2009) 5 SCC 112*** and a judgment of this Court passed in MACApp No. 60/2016 on

09.11.2018.

- II.** The claimants of MAC Case No. 45/2011 has failed to prove the income of the deceased inasmuch only a Xerox copy of the salary certificate has been exhibited as Exhibit-6, which is not admissible under law and the Insurance company has duly raised objection to admission of such documents during the cross-examination.
- III.** The compensation cannot be granted only on the basis of the percentage of disability inasmuch as the resultant affect on the income of the injured person should be placed on record to grant compensation which the claimant in MAC Case No. 75/2011, has failed in the present case. In support of her contention, Ms. Mozumdar, learned counsel relies on a judgment of the Hon'ble Apex Court in the case of ***Raj Kumar –Vs- Ajay Kumar and Another*** reported in ***(2011) 1 SCC 343***.

18. Decision of the Court:

- I.** This Court has given anxious considerations to the submissions made by the learned Counsels for the parties. Also perused the LCR, including the depositions and exhibits.
- II.** Before going further to the other issues, let this Court first consider the issue of contributory negligence. In a case of claim of contributory negligence, the burden of proof of such contributory negligence lies upon the person who claims that there is a contributory negligence on the part of the claimant. To discharge such burden, the Insurance Company in the present case must lay foundation and prove that the claimants themselves were responsible for the accident and they ignored due diligence, which

could have avoided such consequences arising out from the negligence on the part of the driver of the offending vehicle. Therefore, in the given facts of the present case it was necessary for the Insurance Company to lay foundation and prove that it is for the omission of an act or ignorance to take due diligence by the claimants and thus the claimant contributed to the accident.

III. In the present case, the whole plank of contributory negligence is based on the FIR and the charge-sheet filed in connection with the accident. The FIR discloses that these two police personal chased the offending vehicle and tried to stop it and the offending vehicle hit them and accordingly a case under Section 302 of IPC was registered. Except the FIR and charge-sheet, which discloses that the deceased and injured Chased the vehicle and tried to stop the offending vehicle and at that moment, the offending vehicle ran over the two persons, no any other material has been laid by the Insurance Company to prove contribution of these two claimants. Further, the FIR was also not lodged by the injured claimants, who could have depicted the actual story. The Informant or the Investigating officer, who filed the charge sheet were also not examined as witnesses. In that backdrop of facts, only eye witness to the incident was the injured victim/claimant.

IV. It is well settled that a claim case under the Motor Vehicles Act is to be proved and decided on the material available on record and not solely on the basis of whatever has been stated in the FIR or the charge-sheet. In fact, the Insurance Company has not laid any additional evidence, except relying on the FIR and Charge sheet

exhibited by the Claimants to prove their pleading and contention.

V. Coming to the FIR, it has been specifically alleged that at around 09:00 PM while the injured and the deceased were doing their duty and the truck was driven at a very high speed, they indicated the truck to stop suspecting the truck to be carrying stolen material, however, the truck defying their signal ran away and while Chasing the truck, the driver of the truck with an intention to kill them ran the truck over them. The charge-sheet also in the similar line.

VI. As discussed herein above, the injured claimant was the only eye witness to the incident. He specifically deposed during his examination-in-chief that while they signaled the truck to stop, the driver of the truck instead of stopping ran over them. During cross-examination, he reaffirmed his statement. Thus from the above, this Court is of the unhesitant view that the Insurance Company has failed to discharge their burden to prove that there were contributory negligence on the part of the deceased and the injured claimant inasmuch as the evidence of the injured eye witness cannot be ignored and the allegations in the FIR be relied on to come to a conclusion of contributory negligence on the part of the deceased and the injured. Therefore, such contention of contributory negligence is rejected. Rather it well established that the driver of the offending truck drove in a rush and negligent manner and hit the deceased and the injured intentionally.

19. Having held thus, now let this Court examine what should be the just compensation.

1. **MACApp.No.616/2017:**

- I. The claimant/wife of the deceased examined herself as PW-1 and deposed that her husband was Constable No. 102 under Assam Police. He was earning an income of Rs. 17,700/- per month and his age was 44 years.
- II. The claimant also adduced the evidence of PW-3, who is a Senior Account Assistant in the office of the Superintendent of Police i.e. the employer of the deceased and he proved the Exhibit-6 i.e. Income Certificate which discloses that the deceased was earning a gross income of Rs. 17,700/- per month and a personal tax of Rs. 208/- was deducted from his salary. Though there was cross-examination of the aforesaid PW-3, however, such exhibit was not disputed during cross-examination. The fact also remains that though the claimant i.e. P.W-1 was extensively cross-examined by the Insurance Company, her evidence remained affirmed. By another witness i.e. PW-4, certain documents were exhibited such as the Admit Card of the examination conducted by the Board of Secondary Education of Assam of the deceased which was exhibited in original as Exhibit-7. The Exhibit-7 discloses that age of the deceased was 16 years 2 months on 01.03.1983 and therefore, his age was 44 on the date of accident.
- III. Though the said witness was cross-examined regarding his right to exhibit the documents, however, the documents produced in original has not been questioned or doubted during the cross-examination.

- IV. This Court also perused the aforesaid evidence on record. The Exhibit-7 is an original document bearing No. 148914 issued by the Controller of Examination, Board of Secondary Education, Assam, is an Admit Card to appear in the High School Leaving Certificate Examination. Such certificate bears the name of the deceased and his father name. On perusal of the same, this Court is having no doubt of genuineness of such certificate. In view of the aforesaid evidence on record, it can safely be concluded that the deceased was aged 44 Year on the date of accident and he was having a net income of Rs. 17,492/- as UB Constable under Assam Police.
- V. There is no dispute that on the death, the deceased left behind the claimant/wife and two minor sons aged about 10 years and 7 years respectively.
- VI. In view of the aforesaid and in terms of the decision laid down in the case of ***Sarla Verma*** (supra), and ***Pranay Sethi*** (supra), the claimant is entitled for the following compensation.
- VII. In view of the above fact and settled proposition of law, the compensation payable would be as follows:-

SL No.	Head	Amount
1.	A. Annual Income	Rs.17,492/-X12 =Rs.2,09,904/-
	B. Future Prospect @ 30% of income.	Rs. 62,971/-
	C. Less 1/3 rd	Rs. 1,81,917/-
	D. Add Multiplier	14X 1,81,917/-= Rs. 25,46,838/-

	Total compensation Rs. 25,46,838/-	
2.	Loss of Estate	Rs. 16,500/-
3	A. Spousal Consortium for wife	Rs. 44,000/-
	B. Parental consortium for childrens	Rs. 44,000 X 2= Rs. 88,000/-
	C. Funeral expenses	Rs. 16500/-
	Total = Rs.27,11,838/-	

VIII. This Court is also of the view that rate of interest @ 6% shall be justified over the compensation amount and such interest shall be applicable from the date of filing the claim petition till final payment.

IX. While not interfering with the award of interest @ 6%, awarded by the learned Tribunal, it is made clear that the interest awarded must not be calculated on the amount of compensation awarded against future prospects in terms of the decision in ***Champabati Ray*** (supra).

X. Consequently, the impugned judgment dated 28.08.2017, passed by the learned Member, MACT, Goalpara in MAC Case Nos. 45/2011, is hereby modified to the extent indicated above.

XI. Statutory deposit if any be released in favour of the Insurance Company after proper verification.

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

2. **MAC Appeal No.654/2017.**

I. The claimant examined himself as PW-1 and exhibited

certain medical documents as to his treatments which are exhibited from Exhibit-13 to Exhibit-86. He also exhibited the Exhibit-1 to Exhibit-12 which are the prescriptions, hospitalization and discharge report. Though he was cross-examined, however, no dispute was raised regarding such treatment and exhibits, though basic crux in the cross-examination was regarding whether it was an accident or was a murder.

- II. Through the aforesaid Exhibits, the claimant has been able to prove that immediately after the accident, he was admitted at Civil Hospital, Goalpara around 11:10 PM and was discharged at 11:40 PM and was referred to Gauhati Medical College and Hospital for doing further needful (Exhibit-2).
- III. From the Exhibits, it is discernible that he was admitted in the GMCH and was operated. Subsequently again he was admitted for further surgery in the month of January, 2012. The exhibits also shows that he developed some urological problem and he was referred to department of urology and continued his treatment. Finally he was discharged from hospital on 20.01.2012.
- IV. From the advise slips and money receipts of medical documents, this Court can safely conclude that the injured claimant had spent an amount of Rs. 1,77,227/-. The claimant also to have suffered permanent disability to the extent of 60%. In proof of such contention, Exhibit-87 was exhibited, a certificate issued by the District Standing Medical Board,

Goalpara. The said exhibit was proved through PW-2, one Dr. Arup Kr. Ghosh who deposed that he was one of the Member of the District Standing Medical Board, Goalpara. He along with other doctors total consisting of 5 members examined the claimant and also examined the medical documents submitted by him and it was concluded that the victim sustained fracture of right femur (compound and comminuted fracture both bone i.e. tibia and Fibula of left leg and he is having difficulty in walking and the Board concluded that he is suffering from total permanent disability is about 60%. He proved his signature as well as signature of the other Members of the Board who were present during such examination.

- V. Though he was cross-examined touching the point that he has not brought the original register, however, such finding has not been disputed or suggested to be wrong. During cross-examination he reaffirmed the name of the Chairman of the Standing Medical Board. He denied the suggestion that the certificate was not issued by following due procedure.
- VI. The claimant further deposed that he is not able to do day to day work without help of a person. The insurance company did not raise any dispute to such deposition or has not suggested anything contrary.
- VII. Regarding income, he deposed that as a Home Guard, he used to earn Rs. 7,500/- per month and he has been discharged from the work after the accident. Such evidence also remains un-rebutted during the cross-examination.

VIII. Though no documents regarding salary was exhibited, however, it was proved that the victim was a Home Guard under Assam Police that being so, his claim of salary of Rs. 7,500/- cannot also be discarded.

IX. Even otherwise, if he is treated to a skill worker being a Home Guard, his wages at the relevant point of time under the Minimum Wages Act as notified in the State of Assam by State Government should be more than Rs. 7,500/- per month.

20. In view of the aforesaid evidence laid by the claimant and also the cross-examination, this Court can safely conclude the following:

I. The claimant was under treatment from 29.04.2011 to 21.01.2012.

II. It can also safely be concluded that the claimant had to spend an amount of Rs. 1,77,227/- for his treatment for the injury sustained during the accident.

III. This Court in absence of any counter material and co-relating the evidence relating to the treatment and the medical certificate cannot discard the findings of the medical board that the injured victim had total permanent disability to the 60%.

IV. From the aforesaid evidence and in absence of any contrary evidence led by the insurance company this court is of the view that the claimant cannot discharge his previous job of a home guard.

V. Looking into the nature, this Court can also safely conclude that the claimant cannot be gainfully employed as a Home

Guard in the police department in view of such injury.

- VI. The injured victim during his evidence deposed that he cannot walk without help of stick and he cannot move and do the natural day to day work without support from any quarter.
- VII. In that view of the matter, this Court can safely determined that income of the injured victim was Rs. 7,500/-.
- VIII. The Hon'ble Apex court in the case of ***Sandeep Khanuja Vs. Atul Dande and Anr*** reported in ***(2017) 3 SCC 351*** while dealing with the determination of compensation and the correlation between permanent disability and functional disability held that the crucial factor which has to be taken into consideration is to assess whether the permanent disability has any adverse effect on the earning capacity of the injured. In the case in hand, the appellant was a home guard in police department and due to the accident and the fracture as discussed herein above he cannot be engaged as a home guard in the police department and this court is having a opinion in view of the un-rebutted evidence that the appellant needs assistance to do and perform his day to day affairs, the functional disability is also to be treated 60% inasmuch as, event to do any other job or business the injured will require to move around.
- IX. The Hon'ble Apex Court while dealing with the loss of future earnings in case of claimants sustaining injuries leading to permanent disability, in ***Rajkumar Vs. Ajay Kumar another***

reported in **2011 1 SCC 343** held that where a permanent disability suffered as a result of injuries to assess the compensation under the head of loss of future earning could be dependent upon the effect and the impact of such disability on its earning capacity inasmuch as there is no quarrel on the settled proposition of law that in cases of permanent disablement future loss of income and future prospect is required to be awarded.

X. In view of the above findings, the following award is given applying the future prospect at 30%.

SL No.	Head	Amount
1.	A. Annual Income	Rs.7500/-X12 =Rs.90,000/-
	B. Future Prospect @ 30% of income.	Rs. 27,000/-
	D. Add Multiplier	14X 1,17,000/- = Rs. 16,38,000/-
	Total loss of income Rs. 16,38,000/-	
2.	Medical expenses	Rs. 1,77,277/-
	Pain suffering	50,000/-
	Diet and Nutrition	Rs. 7,500/-
	Future treatment	Rs. 1,00,000/-
	Incidental expenses like transportation, Spl. Food, cost of attendant, nursing etc.;	Rs. 60,000/-
	Total = Rs. /- 20,32,777/-	

- XI. This Court is also of the view that rate of interest @ 6% shall be justified over the compensation amount and such interest shall be applicable from the date of filing the claim petition till final payment.
- XII. While not interfering with the award of interest @ 6%, awarded by the learned Tribunal, it is made clear that the interest awarded must not be calculated on the amount of compensation awarded against future prospects in terms of the decision in ***Champabati Ray*** (supra).
- XIII. Consequently, the impugned judgment dated 28.08.2017, passed by the learned Member, MACT, Goalpara in MAC Case Nos. 75/2011, is hereby modified to the extent indicated above.
- XIV. Statutory deposit if any be released in favour of the Insurance Company after proper verification.
- XV. LCR be sent back forthwith to the learned tribunal below.

JUDGE

Comparing Assistant