

GAHC010234992017



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

PRINCIPAL SEAT AT GUWAHATI

MAC Appeal No. 185 of 2017

Sri Pinaki Roy,
S/O Sri Pijush Kanti Roy,
Resident of Lalganesh, Sri Nagar Path,
House No. 59, P.S. Fatashil Ambari,
Guwahati- 781034, District-Kamrup (M), Assam.

.....Appellant/Claimant

-Versus-

1. Divisional Manager
SBI General Insurance Company Limited,
Guwahati Branch, Avantica Niloy, 2nd Floor,
Bazar Road, Ulubari,
Guwahati – 781007
District – Kamrup (M), Assam.
(Insurer of the Vehicle No. AS-01-AC-7431,[DI MAX]).

2: Sri Krishna Das,
Son of Madhab Das,
Resident of Bangra Kereata,

P.O.-Bangra,
P.S.- Palashbari,
District- Kamrup (R), Assam,
(Owner of the vehicle No. AS-01-AC-7431,[DI MAX]).

3. Md Hafzur Rahman,
Son of Md. Abdul Hakim,
Village-Birsing Part-1,
P.S.-Fakirganja,
Dhubri, Assam.
(Driver of Vehicle No. AS-01-AC-7431,[DI MAX]).

.....Respondents.

Advocates for the appellant : Ms D Kalita,
Advocate for the respondents : Mr T Kalita, R-1

**BEFORE
HON'BLE MRS. JUSTICE MALASRI NANDI**

Date of Judgment : 09.02.2023

JUDGEMENT AND ORDER (CAV)

Heard Ms D Kalita, learned counsel appearing for the appellant and Mr T Kalita, learned counsel for the respondent No. 1.

2. The claimant as appellant has filed the appeal under Section 173 of MV Act, 1988, against the Judgment and Order dated 21.12.2016, passed by the learned Member, MACT No. 2, Kamrup (Metro), at Guwahati in MAC Case No. 42/2014, whereby the claim petition of the

appellant/claimant was dismissed.

3. The brief facts of the case is that on 28.10.2013, while the appellant/claimant was coming from Fatasil Ambari Tiniali towards Cycle Factory by driving his bike TVS Victor bearing Registration No. AS-01-X-0322, one DI Max Vehicle bearing No. AS-01-AC-7431, coming in a rash and negligent manner from same direction hit the appellant/claimant from back side, near Bharalu Pool, as a result of which, the appellant sustained grievous injuries on this head, leg and back side of his body. Immediately he was taken to Hayat Hospital, Guwahati, wherein he was treated as an indoor patient.

4. The opposite parties, i.e., owner, driver of the vehicle as well as the Insurance Company had entered appearance before the Tribunal and contested the case by filing their respective written statements.

5. The claimant himself had adduced evidence on affidavit as PW-1 and he was also cross-examined. The learned Member, MACT vide Judgment and Order dated 21.12.2016, dismissed the claim petition by holding that although the accident occurred due to rash and negligent driving of the DI Max vehicle and the said accident caused injuries to the claimant/appellant, but the claimant/appellant is not entitled to any compensation, as he has failed to prove the discharge certificate and other medical documents regarding his treatment.

6. Learned counsel for the appellant has submitted that the discharge summary of Hayat Hospital, Guwahati was misplaced and could not be exhibited before the Tribunal, as a result of which, the learned trial Court took the view that claimant is not entitled for any compensation.

7. It is also submitted by the learned counsel for the appellant/claimant that the findings of the learned Member, MACT are perverse, because, in spite of producing an exhibited discharge certificate, the learned MACT had come to a wrong finding that the appellant/claimant had not filed any discharge certificate.

8. Learned counsel for the appellant/claimant has further contended that the learned Member, MACT while answering the first issue came to a finding that the accident occurred due to rash and negligent driving of DI MAX Vehicle No. AS-01-AC-7431 and due to the alleged accident, the appellant/claimant had sustained injuries, but dismissed the claim petition, which are not as per provision of law and are liable to be set aside.

9. Learned counsel for the claimant/appellant has also submitted that learned Tribunal has failed to appreciate that the Motor Vehicles Act is a social beneficial legislation enacted by the Parliament to give solace and relief to the victims of the motor vehicle accident. In that view of the matter, the Judgment and Order dated 21.12.2016 is liable to be set aside.

10. On the other hand, Mr T Kalita, learned Standing Counsel for the respondent No. 1 has argued that the learned Tribunal has rightly passed the Judgment and Order, by dismissing the claim petition of the claimant/appellant, as because the appellant has failed to produce any document that he was treated at Hayat Hospital after the accident. Hence the Judgment and Order dated 21.12.2016, passed by the learned MACT No. 2, Kamrup (Metro) at Guwahati, does not call for any interference by this Court.

11. I have considered the submissions made by the learned counsel for both the sides and also perused the record of MAC Case No. 42 of 2014.

12. The factum of accident has not been disputed in this case. The learned MACT has

dismissed the claim application on the ground that the claimant has failed to produce the discharge certificate as well as the other medical documents of his treatment at Hayat Hospital.

13. On perusal of the documents, it reveals that discharge certificate was not exhibited in the Tribunal, but two cash memos of Hayat Hospital, vide Exhibit – B (2) and B (3) dated 28.10.2013, were issued in the name of the claimant/appellant, Pinaki Roy, for purchasing some medicines and injections etc. and it is also reflected in Exhibit-B (2) that he took treatment as an outdoor patient in Hayat Hospital on 28.10.2013. It transpires that on the date of accident, i.e., on 28.10.2013, the claimant/appellant had visited Hayat Hospital for his treatment. Exhibit- B(1) is the hospital bill of Hayat Hospital, which shows the seat rent, cabin charge etc. It is also mentioned in Exhibit B (1) that the claimant/appellant was admitted to Hayat Hospital on 29.10.2013 and discharged on 30.10.2013. So, without discharge certificate, it can be assumed that the claimant/appellant had undergone treatment in Hayat Hospital since the day of his accident. Hence, he is entitled to get the amount, which he has spent for his treatment.

14. As per medical documents available in the record, the appellant/claimant sustained injuries on his head and other parts of his body. But the CT Scan Brain is not available in the record. As per Exhibit-B (1), the claimant/appellant was treated at Hayat Hospital as an indoor patient for only one day. It transpires that there was no any grievous or serious injuries noticed by the Medical Officer, for which he was advised to take treatment as an indoor patient for more days in the hospital. There is no mention/indication in the Exhibit-B (1), that the claimant had left the hospital against medical advice.

15. As per claim petition, the claimant/appellant is a service holder in Ajanta Pharma Limited, having monthly salary of Rs. 27,712/- (Rupees Twenty Seven Thousand Seven Hundred and Twelve) Only, but no any document has been produced or exhibited by the appellant/claimant that during the period of his treatment, he did not get any salary from his employer. It transpires that there was no any loss of income.

16. However, the claimant/appellant is entitled to get the amount of medical expenditure, i.e., Rs. 21,977/- incurred for his treatment. He is also entitled for an amount of Rs. 30,000/- on the head of pain and suffering; Rs. 30,000/- for Loss of Amenities; Rs. 10,000/-, towards diet, food and nourishment charges, Rs. 10,000/- be awarded towards transportation and attendant Charges.

17. After computation of compensation, the award would come as follows:-

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|----|--|----------------|
| A. | Towards medical treatment | = Rs. 21,977/- |
| B. | Pain and Suffering | = Rs. 30,000/- |
| C. | Loss of amenities of life | = Rs. 30,000/- |
| E. | Towards diet, food and nourishment charges | = Rs. 10,000/- |
| F. | Transportation and Attendant Charges | = Rs. 10,000/- |

Total – Rs. 1,01,977/-

(Rupees One Lac One Thousand Nine Hundred and Seventy Seven) Only.

18. In the result, the appeal is allowed. The Judgment and Order dated 21.12.2016, passed

by the learned Member MACT No. 2, Kamrup (Metro) at Guwahati, Assam, in MAC Case No. 42 of 2014, is set aside. The respondent No. 1, i.e., the Divisional Manager of SBI General Insurance Company Limited, Guwahati Branch, Ulubari, is directed to deposit the amount of Rs. 1,01,977/- (Rupees One Lac One Thousand Nine Hundred and Seventy Seven) Only, in the savings account of the claimant/appellant, Sri Pinaki Roy, through NEFT. The amount of compensation shall carry an interest @ 6% per annum, from the date of filing of the case, till full and final realization. The respondent No. 1 is directed to discharge the liability of the award within a period of 30 days from the date of receipt of the order. The claimant/appellant, Sri Pinaki Roy is directed to furnish his bank details of any nationalized bank to the SBI General Insurance Company Limited, Guwahati branch, Ulubari, for necessary payment.

19. Send down the LCR.

JUDGE

Comparing Assistant