

GAHC010106902021



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

Case No. : MACApp./200/2021

ORIENTAL INSURANCE CO. LTD.
HAVING ITS REGIONAL OFFICE AT GUWAHATI, ULUBARI, GUWAHATI-
781007, REP. BY THE DEPUTY MANAGER, GAUHATI REGIONAL OFFICE,
ULUBARI, GUWAHATI- 781007, KAMRUP(M), ASSAM

VERSUS

GURU PADA BHOWMIK AND 2 ORS.
S/O- LATE MANAMOHAN BHOWMIK, R/O- 8, DEB KUTIR LANE, G.S. ROAD,
P.O. ULUBARI, P.S. PALTAN BAZAR, DIST.- KAMRUP(M), ASSAM, PIN-
781007.

Advocate for the Petitioner : MS R D MAZUMDAR, MR. S P SHARMA, MS. C MOZUMDAR

Advocate for the Respondent : MR R HAZARIKA (R-1), MR. D J KALITA (R-1)

BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG

JUDGMENT AND ORDER (CAV)

Date of hearing : 12.09.2024

Date of judgment : 06.11.2024

Heard Ms. R.D. Mozumdar, learned counsel for the appellant along with Mr. S. Dutta, learned Senior Counsel assisted by Ms. I. Das, learned counsel for the respondents.

2. This is an appeal filed against the Judgment dated 05.02.2021 passed by the learned Member Motor Accident Claims Tribunal No. 1 Kamrup (M), Guwahati in MACT Case No. 264/2017, wherein the learned Tribunal had awarded a sum of Rs. 10,68,000/- with interest @ 6% p.a. to the claimant from the date of filing a claim petition till payment. The present appellant/Oriental Insurance Company Ltd. was directed to pay the awarded amount to the claimant within 2 (two) months from the date of the order. Aggrieved by this awarded amount, the appellant/Insurance Company has filed the instant appeal.

3. The facts of the case in a nutshell is as follows:-

The claimant, Sh. Guru Pada Bhaumik had filed a claim application under Sections 166 & 140 of the MV Act, claiming compensation from the opposite parties No. 1 & 2, who are the owner and driver of the accident vehicle (Motorcycle) bearing registration No. AS-01/BN-4467 and against the opposite party No. 3/Insurance Company to the tune of Rs. 16,35,000/- for the injury sustained by him in an accident which took place at ABC, GS Road, Bhangagarh, Guwahati, in front of Anil Plaza under Bhangagarh Police Station at about 7:00 PM on 27.03.2016.

4. The case of the claimant was that on 27.03.2016, at about 7:00 PM, while the claimant was walking from Christian Basti towards Bhangagarh and when he reached the front of Anil Plaza, he got down from the footpath looking for an

Auto rickshaw, when a motorcycle bearing registration No. AS-01/BN-4467, which was driven in a very high speed and in a rash and negligent manner knocked him down from behind, which caused grievous injuries on his body, requiring him to undergo medical treatment in the hospital and at home. Thereafter, the claimant had filed his application before the learned MACT Tribunal since the accident took place due to rash and negligent driving by the driver of the vehicle AS-01/BN-4467. The case was contested by the opposite parties by filing their written statement. The opposite parties No. 1 & 2 are the owner and driver of the offending vehicle and they denied most of the averments made by the claimant. They also contended that the vehicle was duly insured with the Oriental Insurance Company and that the driver had a valid driving license at the time of the accident. Hence, the insurer is liable to indemnify them in the event of any award passed against them. The opposite party No. 3, Oriental Insurance Company disputed the factual aspects of the case and also declined to accept the liability if there was any violation of the terms and conditions of the Insurance Company.

5. From the pleadings of the parties, the following issues were framed by the learned tribunal;

1) Whether the claimant/ injured, Guru Pada Bhowmik, sustained injuries in the alleged road accident dated 27.03.2016 involving vehicle no. AS-01/BN-4467 (Motorcycle) and whether the said accident took place due to rash and negligent driving of the driver of the offending vehicle?

2) Whether the claimant is entitled to get any compensation and if yes, to what extent and by whom amongst the opposite parties, the said compensation amount will be payable ?

6. During enquiry, the claimant examined himself as PW-1 and three other witnesses i.e PW-2, PW-3 & PW-4 and also produced his supporting documents. The contesting opposite parties did not adduce any evidence in support of their case. Thereafter, written argument were filed by the claimant as well as insurance company.

The learned tribunal, after hearing both the parties and on considering the evidence of PW-1 PW-2, PW-3 & PW-4 and the documents exhibited, found that in the FIR and the Police Report exhibited as Ext-1 revealed that the vehicle bearing no. AS-01/BN-4467 was driven in a rash and negligent manner and knocked down the claimant, as a result of which, he sustained serious injuries. Bhangagarh PS registered a case vide PS Case No. 78/16 u/s 279/338 IPC against the driver of the vehicle no. AS-01/BN-4467. The Police after investigation submitted charge-sheet as Ext-3, against the driver of the aforesaid offending motorcycle. Seizure list, shows that the aforesaid vehicle was seized. Filing of charge-sheet is also prima facie evidence of negligence in a case u/s 166 of the MV Act. That no rebuttal evidence has been adduced by the insurer to prove that there was contributory negligence or any other cause of the accident. Issue no.1 was decided in favour of the claimant.

7. Issue no.2 was also decided in favour of the claimant. The learned tribunal considered the evidence of the claimant wherein he had suffered serious injuries due to the accident. PW3 also deposed that the claimant was under

medical treatment continuously for 6/7 months in bed-ridden condition, when one pharmacist use to attend him at home for administering injections, saline etc and one physiotherapy for about 5/6 months from April 2016. The learned Tribunal held that Exhibit-5 showed that the claimant took treatment on the day of the accident, i.e. on 23.07.2016 and thereafter, Exhibit-6 showed that he was admitted to International Hospital on 28.03.2016 and discharged on 30.03.2016. The claimant was diagnosis as sustaining from fracture neck of femur (right) fracture dislocation of right shoulder in the accident. Exhibit-9 (1&2) shows that he took treatment at Dispur Hospital as an Outdoor patient. The learned Tribunal has also examined Exhibit-14(1&2), Exhibit-14(3&4), Exhibit-10, Exhibit-11 & Exhibit-12 and Ext-15 being statement of expenditures which totalled to Rs 3,60,334, which are the documents showing that the claimant had to be treated by a Physiotherapist and the documents are the money receipts and bills/vouchers for the treatment of the claimant, thus on the consideration of the vouchers, bills submitted, the medical expenses totalled to Rs. 4,71,500/-

8. The learned Tribunal also held that the claimant was a senior advocate practising at Gauhati High Court and he could not carry on his professional work personally, having to depend on his junior colleagues to look after his pending cases for more than a year since the accident and that he could attend Court only from August, 2017. That even though he could attend Court, he could not do his normal works as before since he is suffering from complicacies of the accident because he had loss the strength of his right leg substantially. His age at the time of the accident was also put to be 72 years 8 months 26 days.

9. From the Income Tax Return filed by the claimant for the year 2016-2017, the learned Tribunal assumed the income of the claimant at Rs. 3000/- per month. The learned Tribunal held that since the claimant was admitted in the

hospital for 5 days and after that he had to take treatment at home and could not work for at least 6 months and therefore, he was entitled to get Rs. $3000 \times 6 = 1,80,000/-$ for loss of income during the course of his treatment. Considering the nature of injuries, duration of treatment and in view of the evidence of the claimant, Rs 1,00,000/- was awarded as loss of amenities of life. Apart from that the learned tribunal held that the claimant is entitled other incidental expenses like special food, transportation, cost of attendants etc, an amount of Rs 1,00,000/- was awarded in this regard. The learned tribunal considered the bills exhibited as Ext-10, 11, 12 & 15 series as bills, money receipts and on perusal of the vouchers, found that the claimant had spent an amount of Rs 4,71,233/-, say Rs 4,71,500/- for his treatment and he is entitled to get this amount as medical expenditures.

10. The learned tribunal thus assessed the just and reasonable compensation, as under:-

Medical expenses	: Rs 4,71,500.00
Pain and suffering	: Rs 2,00,000.00
Loss of amenities of life	: Rs 1,00,000.00
Loss of income	: Rs 1,80,000.00
For physio Therapy	: Rs 16,800.00
Incidental expenses like transportation,	: Rs 1,00,000.00
Spl food, cost of attendant, nursing etc.	
Total	: Rs 10,67,800.00

The amount is rounded off to Rs 10,68,000/- . The Tribunal also awarded interest @ 6% per annum on the compensation payable with effect from the date of filing the claim case, till payment by the insurance company since the accident vehicle, motor cycle bearing registration number AS- 01/BN-4467 was duly insured with the Oriental Insurance Co. Ltd.

11. Aggrieved by the above assessment, the appellant insurance company has challenged the quantum of compensation and contended that the Award is excessive. At the same time the claimant has also challenged the Judgment dated 05.02.2021 by filing a cross objection, on the ground that on the face of the evidence on record, the Award is inadequate and needs to be enhanced.

12. Ms. R.D. Mazumdar, learned counsel for the appellant insurance company submits that the learned Tribunal had erred in granting the exorbitant amount of award to the claimant, whereby, in the documents exhibited, there is a manipulation made by the claimant in the bills submitted and some of the bills and vouchers do not have any prescriptions. The learned counsel had led this Court to the bill submitted as Exhibit No. 11(5) which total to Rs. 1,39,410/-. She then led this Court to Exhibit Nos. 11(1) and 11(iii) which are again mentioned in Exhibit 11(5) which indicates that the amounts were added twice while granting compensation. Thus, the awarded of a sum of Rs. 4,71,500 as per the 'Summary of Medical Expenses' i.e., Exhibit-15, is wrong and unjustified inasmuch as there is double entry of same expenses e.g. Rs. 79,410 claimed at Sl. 2 is already included in the sum of Rs. 139,410 claimed at Sl. 1 of Exhibit-15 and that the other expenses mentioned in the Exhibit-15 are not supported by vouchers. That in the cross-examination of the P.W. 1 i.e. the claimant, the fact was also brought out, that the claim of medical expenses was not as per the documents. The tribunal relied on Ext 10, 11, 12 & 15 to

arrive at Rs. 4,71,233.00 as the medical expenditure which is beyond the documents exhibited in the court. She submitted that though the learned Tribunal had granted Rs. 4,71,500/- for the medial expenses, if the medical expenses were to be calculated as per the vouchers and bills submitted properly supported by the doctor's prescriptions, the medical expenses would amount to only Rs. 1,94,420./-

13. The learned counsel for the appellant further stated that the learned Tribunal had erred in calculating the income of the claimant from the Income Tax Return as Exhibit-18, since the assessment was for the year 2016 to 2017, while the Income Tax Return was filed on 16.02.2017 i.e., after the date of the accident. This shows that there was no loss of income but the learned Tribunal had granted compensation under the loss of income amounting to Rs. 1,80,000/-. The learned counsel led this Court to the evidence adduced by PW-3 & PW-4, who are the juniors of the claimant, and submitted that both PW-3 and PW-4 have stated that they continued to appear before the Court on behalf of the claimant and that they were paid Rs. 5000/- to Rs. 7000/- per month by the claimant. The learned counsel submits that since the claimant is represented by his juniors in his cases, there can be no compensation for loss of income. There was no loss of income and loss of income is always related to the work done by a person. In the present case the claimant is a Senior Designate Advocate, and it is his own admission that his cases were going on as his juniors were looking after the cases in court and attending chamber, thus, the amount of Rs. 1,80,000/- granted for loss of income is to be deducted from the total amount of compensation. The claimant was not bedridden is proved by the fact that he himself went to file the F.I.R.

The learned counsel for the appellant also submitted that the claimant did not exhibit any Income Tax Return for the year of his accident to prove that there was loss of income due to the accident. As per Section 114 of the Evidence Act, 1872 presumption may be drawn that as he did not have any loss of income, since the IT Return was not exhibited. It was further submitted that the income of the claimant has not been affected in any way because of the injuries sustained by him in the accident and therefore, the learned Tribunal had granted exorbitant amount under the head pain and suffering, incidental expenses like transport, Spl. food, cost of attendant, nursing etc. .

14. The learned counsel for the appellant company further submitted that there is no document exhibited to show that the claimant was bedridden for one year and that he was continuing his treatment. The Physiotherapy expenditure at Exhibit 14 (1) and 14 (2) show that the receipt was given for treatment from 26.04.2026 to 25.05.2016 and from 26.05.16 to 25.06.2016 **i.e. for two months**. There is no prescription as to what by Physiotherapy was given. There is not document exhibited to show that any other treatment was going on. It is submitted that no doctor adduced evidence in the case and no disability certificate was exhibited in the case. Thus, the amount of Rs. 1,00,000/- granted for loss of amenities of life should not have been granted as per settled law. That the amount of Rs. 2,00,000/- granted for pain and suffering is highly exorbitant as no disability suffered and not as per the settled proposition of law. The amount is to be reduced to Rs. 65,000/-. The incidental expenses are to be reduced to Rs. 65,000/-

15. The learned counsel for the appellant thus submitted that the accident had taken place on 27.03.2016 claimant was hospitalized for 4 days till

31.03.2016 as per the medical documents, therefore the claimant is entitled to an award as calculated under ;

Medical Expenditure - Rs. 1,94,420/- say Rs, 2,00,000.00

Pain and suffering -	Rs. 65,000.00
Physiotherapy -	Rs. 16,800.00
Incidental expenses -	Rs. 65,000.00
Total -	Rs. 3,46,800.00
Plus 6% interest	Rs. 1,45,656.00 (approx.)
Grand Total	Rs. 4,92,456.00 (approx.)

It is also further submitted by the learned counsel for the appellant that Rs. 5,33,900/- was deposited in the Registry, as per the order of this Court and the sum of Rs. 4,00,000/- was already taken by claimant, therefore, the remaining amount of Rs. 92,456.00 may be allowed to be withdrawn by the claimant. The rest of the amount i.e. Rs. 41,444/-, along with the statutory deposit of Rs. 25,000/- may be allowed to be withdrawn by the Appellant company.

16. Mr. S.Dutta learned senior counsel for the claimant respondent/ cross objector, on the other hand, submitted that with regards to the medical bills and vouchers submitted by the claimant, nothing was mentioned before the learned tribunal as to how the calculation in the medical bills and vouchers submitted by the claimant was wrong. It was not disputed that the PW1 Claimant had suffered multiple grievous injuries including fracture of Right Femur (thigh bone)

and fracture with dislocation of right shoulder and during cross-examination of PW1, there was no suggestion that he was not in need of physiotherapy, nor were the expenses for physiotherapy were incurred by him challenged before the learned tribunal. The learned Sr. counsel submitted that the endorsements on the Exhibit-14[(1) & (2)], clearly proved that the monies were paid for physiotherapy and PW4 was examined to prove the same wherein her testimony was not shaken during cross examination. It is also submitted that the evidence of PW3 and PW4, proved that post surgery, he had to hire service of a pharmacist for administering saline, injection etc and take physiotherapy from another Therapist after the death of the first physiotherapist Dr. Tapan Kar. The learned Sr. counsel further submitted that the PW1 Claimant has admitted in his cross-examination that the entry at Sl. 2 in Exhibit-15 is erroneous inasmuch as the sum of Rs. 79,410 is already included in the final bill of Rs. 139,410 claimed at Sl. 1 in the Exhibit-15. Which was a bonafide mistake and the learned Sr. Counsel submitted that, save and except this fact, there is not even any suggestion made by the Insurance Co during cross-examination of the PW1 that the other sums of money mentioned in the Exhibit-15 are either wrong or excessive or have not been spent for treatment of the injuries. The expenses other than Rs. 79,410, as mentioned above, were not disputed by the Insurance Co. before the learned tribunal. The learned Sr. Counsel thus submitted that the sum of Rs. 471,500 as awarded by the Tribunal on account of medical expenses may be reduced by Rs. 79,410 making it to Rs. 392,090/- and the award of rest of expenses as indicated in the Exhibit-15 do not deserve any interference.

17. The learned Sr. Counsel further submitted that the Insurance Co. has neither disputed the accident nor the injuries sustained therein. The specific evidence of the PW1 corroborated by the PW3 was to the effect that post

surgery, the claimant remained out of practice for 16 months and could not do normal work as before and that he had to engage and pay juniors to look after old pending cases_during the period he could not attend Court. This fact has not been discredited by the Insurance Co during cross- examination. In such circumstances, award of compensation on account of loss of amenities of life being *palliative in* nature and to ameliorate the impact of the injuries on claimant's quality *of* life; cannot be faulted with. As a consequence, the claimant is also entitled to compensation on account of loss of income for 16 months.

18. The learned Sr. Counsel further submitted that the matter of non cross examination of PW3 was never raised before the learned tribunal wherein the Insurance Co could have exercised its right to move the Tribunal to summon the PW3 to stand cross-examination and thus had consciously waived its right to cross-examine the PW3

19. The learned Sr. Counsel by filling the Cross Objection, submitted that the claimant has sought for enhancement of compensation on the grounds that the monthly income of Rs. 30,000 as assessed by the Tribunal should be enhanced to Rs. 35,000/- if calculated on the basis of the monthly income as per Income Tax Return which was exhibited as Exhibit-18, and submitted that the IT Return had to be for the previous year and cannot be for the year the accident occurred wherein, the claimant had proved his taxable income in the preceding year as Rs. 4,18,040/- which translates to monthly income at Rs. 35,000/- (approx.), and thus the compensation should be further enhanced by Rs. 80,000/-. He further submitted that because of the accident and resultant injury, the claimant remained out of practice for about 16 months from 27.03.2016 till

August 2017, therefore, the learned Tribunal, ought to have awarded compensation of Rs. 480,000/-, on account of loss of income for 16 months. Further, as per the testimony of PW3, the claimant had paid Rs. 97,000 (which translates to Rs. 8000 per month) as fees to the juniors in the preceding year; and should be awarded as compensation a further sum of at least Rs. 160,000 which the claimant had to incur additionally towards payment of fees to juniors to take care of old pending cases. It was further submitted that keeping in view the serious nature of injuries sustained by the claimant the award of Rs. 100,000 towards loss of amenities of life is inadequate.

20. The learned Sr.Counsel by relying on the judgment of the Hon'ble Supreme Court rendered in the case of **Raj Kumar vs. Ajay Kumar [reported in (2011) 1 SCC 343 para 6]** which has been subsequently referred in the case of **Pappu Deo Yadav vs. Naresh Kumar and Others [reported in (2022) 13 SCC 790 para 15, 16, 21, 22, 23]** submitted that the claimant is entitled to compensation on the following heads:

Pecuniary damages (Special Damages); (i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure. (ii) Loss of earnings (and other gains) 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 earnings on account of permanent disability
- (iii) Future medical expenses

Non-pecuniary damages (General Damages);

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.
(v) Loss of amenities (marriage etc.). (vi) Loss of expectation of life (shortening of normal longevity).

The learned Sr. Counsel thus submitted that the compensation should be enhanced and modified as follows:

- i. Medical Expenses (rounded off) : Rs. 393,000.00
- ii. Pain and suffering (as awarded by the Tribunal) : Rs. 200,000.00
- iii. Loss of amenities of life : Rs. 150,000.00
- iv. Loss of income (Rs. 480,000+ Rs. 160,000) : Rs. 640,000.00
- v. For Physiotherapy (as awarded by the Tribunal) : Rs. 16,800.00
- vi. Incidental expenses (as awarded by the Tribunal): Rs.100,000.00

Total : Rs. 14,99,800.00

With interest calculated @6% per annum payable with effect from the date of filing the claim case till payment.

21. Mrs. R. Mozumdar, learned counsel for the appellant insurance company, countering the cross objection for enhancement of the compensation amount, submitted that that in the present case the claimant is a Senior Designate Advocate, and it is his own admission that his cases were going on as his juniors were looking after the cases and attending chamber. Moreover, Senior Designates are engaged only by juniors and the main cases are looked after by the juniors only. No document exhibited in the case to show that there was any loss of income for any period of time. Thus the ground of loss of income is totally not maintainable in the present case. It is also submitted that the claimant did not exhibit any Income Tax Return for the year of accident to prove

that there was loss of income due to the accident. As per Section 114 of the Evidence Act, 1872 presumption may be drawn that as he did not have any loss of income. That it is settled law that loss of income must be proved by the claimant by adducing evidence. In the present case the Cross-objector has not made out any case for enhancement of the compensation and that there was no loss of income to the claimant and there being no permanent disability, award of Rs. 180,000 on account of loss of income and Rs. 100,000 on account of loss of amenities of life are wrong and unjustified. Thus the cross-objection is devoid of any merits and deserves to be dismissed.

The learned counsel for the Insurance Company has cited the case in **Ramjas Foundation and Anr. -vs- Union of India (UOI) and Ors. Reported in (2010) AIRSCW 7091** wherein it was held that at paragraph 14 that a person who does not come to the court with clean hands is not entitled to be heard on merits of his grievances by submitted that the respondent/cross objector has not come to the court with clean hands.

22. I have considered the submissions made by the learned counsels for both the rival parties and I have also perused the documents on record. This court finds that the instant appeal is only with regards to the quantum of the award granted by the learned tribunal. The claimant had stated that he was discharged from the hospital after 5 days and thereafter he was treated as outdoor patient for one and a half month with high dose of new generation antibiotic injections, medicine, dressing of injuries etc. Thereafter his treatment continued at home with periodical check-up at International Hospital and simultaneously by physiothereapy for about one year. From the evidence adduced, it is seen that the claimant had sustained injury in the accident that occurred on 23.07.2017 due to the rash and negligent driving of the accident vehicle. The claimant /PW1

had exhibited Exhibit-5 which showed that the claimant took treatment on the day of the accident, i.e. on 23.07.2016 and thereafter, Exhibit-6 showed that he was admitted to International Hospital on 28.03.2016 and discharged on 30.03.2016. The claimant was diagnosed as sustaining fracture neck of femur (right) fracture dislocation of right shoulder in the accident. Exhibit-9 (1&2) showed that he took treatment at Dispur Hospital as an Outdoor patient. Exhibits ; Exhibit-14(1&2), Exhibit-14(3&4), Exhibit-10, Exhibit-11 & Exhibit-12 are the money receipts and bills/vouchers for the treatment of the claimant, showing that the claimant had to be treated by a Physiotherapist. Ext-15 is exhibited as the statement of expenditures which totalled to Rs. 4,71,500/- This court finds that the vouchers and bills submitted as medical expenses are proved from the evidence of PW 1 , PW3 and PW4, who have all stated to the effect, that the claimant after his release from the hospital was still under medical treatment and had to be treated by a Physiotherapist.. Ms Pranita Chetia, Advocate, is examined as PW-3. She is had been working under his guidance as advocate. She stated that after release from hospital, claimant was under medical treatment continuously for 6/7 months in bed-ridden condition, when one pharmacist use to attend him at home for administering injections, saline etc and one physiotherapy for about 5/6 months from April 2016. After death of Dr Tapan Kar, another therapist treated the claimant for a few more months. PW4 is the wife of the deceased Dr.Tapan Kar who has proved the money receipts were issued to the claimant in the said firm of her deceased husband, duly exhibited by the claimant. The evidence so adduced by the claimant and PW3 and PW4 were not shaken during their cross examination. The medical bills and also the bills submitted for the treatment of the claimant for Physiotherapy is also thus found acceptable. It is also seen that

PW1/claimant during his cross examination had admitted that the entry at Sl. 2 in Exhibit-15 is erroneous inasmuch as the sum of Rs. 79,410 is already included in the final bill of Rs. 139,410/- claimed at Sl. 1 in the Exhibit-15. The learned Sr. Counsel has explained that this was a bona fide mistake which can be corrected. Apart from this court finds that the rest of the bills vouchers were not disputed before the learned tribunal. This court thus finds that the medial expenses of Rs. 471,500 as awarded by the Tribunal is liable be reduced by Rs. 79,410, making it to Rs. 392,090/-.

23. It is seen that the claimant being a designated Senior Lawyer had produced his Income Tax return, exhibited as Exhibit-18, for the previous year as Rs. 4,18,040/- since it cannot be for the year the accident occurred. The learned tribunal has assessed the monthly income at Rs. 30,000/-, (approx.) which this court finds appropriate and need not be interfered with, considering the profession of the claimant, wherein, the monthly income of the claimant cannot be a fixed amount.

24. It is seen that PW 3 had stated that the claimant was under medical treatment continuously for 6/7 months in bed-ridden condition and also stated that due to his physical condition, claimant could not move so he did not attend courts for long time and she with Ms Mouchumi Kalita and Ms Priyam P Saikia, as juniors of the claimant had looked after the old pending cases at Gauhati High Court and Mr Jyoti Das and Mr Deepjyoti Kalita, Advocates had attended pending case of lower courts where the claimant was engaged. The claimant started attending courts from August 2017.

This court however finds that the claimant himself has not stated or given any evidence how or to what extent his earning capacity was hampered due to

the accident or that he started earning, only from when he could attend court in the month of August 2017. It is also noted that the claimant being a Senior Designate Advocate was able to pay his juniors during the period he could not attend court himself. For this reason this court finds no reason to interfere with the finding of the learned tribunal in taking a period of 6 months in calculating the loss of earning, which is found just and reasonable, considering the nature of injuries reflected in the medical documents. This court also finds no grounds to interfere with the findings to the learned tribunal in granting compensation for pain and suffering and Incidental expenses.

25. This Court has also noted that though PW3 was not cross examined, the records do not show that there was any attempt or submission made by the Insurance Company to cross examine PW3 before the learned Tribunal. This court thus finds that it would not be appropriate to discard the evidence of PW3 for non cross examination when the same was not raised before the learned tribunal.

26. Thus for the above stated reasons, this court finds it fit to interfere with the Judgment dated 05.02.2021 passed by the learned Member Motor Accident Claims Tribunal No. 1 Kamrup (M), Guwahati in MACT Case No. 264/2017, only to the limited extend of deducting the amount of Rs. 79,410 for medical expenses which was included twice in Exhibit 15 and thus reducing the medical expenses incurred by the claimant to Rs. 392,090/- from Rs. 471,500/-. This Court finds that no further interference is called for in the awarded amount. Consequently the awarded amount of Rs. 10,68,000/- is reduced to a round figure of Rs.9,88,600/- (*Rupees nine lakhs eighty eight thousand six hundred*) only.

It is seen that Rs. 5,33,900/-had already been deposited by the Insurance Company in the Registry, the remaining awarded amount is to be deposited into the Registry within a period of 2 (two) months. Interest imposed will remain the same.

Accordingly, the Mac Appeal no.200 of 2021 stands disposed of as above. Subsequently, the connected I.A.(C) No. 1416/2021 and CO No. 38/2021 also stands disposed of.

JUDGE

Comparing Assistant