

GAHC010234532017



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

Case No. : MACApp./167/2017

SRI SUBIR KUMAR BOSE @ SUBIR BOSE
S/O SRI ASHOK BOSE, VILL NETAJI NAGAR, WARD NO.3, P.O. PS
KHARUPETIA, DIST. DARRANG, ASSAM, PIN-784115

VERSUS

THE BRANCH MANAGER and ANR
ORIENTAL INSURANCE COMPANY LTD., BRANCH OFFICE TEZPUR
INSURANCE OF THE VEHICLE NO.AS-12/E-3420

2:THE BRANCH MANAGER
UNITED INDIA INSURANCE CO. LTD.
PANBAZAR BRANCH
GUWAHATI INSURER OF THE VEHICLE NO.AS01-CC/447

Advocate for the Petitioner : MR.R DOWARAH

Advocate for the Respondent : MR.S BHUYAN

BEFORE
HONOURABLE MR. JUSTICE K. SEMA

JUDGMENT & ORDER (CAV)

Date : 25-07-2024

Heard Mr. D. Borah, learned counsel for the appellant, Ms. M. Choudhury,
learned counsel for the respondent No.3 and Ms. M. Saikia, learned counsel for

the respondent No.4. The names of the respondent No.1 & 2 has been struck off by the Court by the order dated 30/01/2017.

2. Facts of the case in brief is that on 29/06/2014 at about 2:10 A.M while the appellant was travelling by a vehicle bearing Registration No. AS-12E-3420 and coming towards Kharupetia from Paltan bazar, the vehicle on reaching near Punia petrol pump developed mechanical defect and due to which the driver of the vehicle lost control of the vehicle and dashed/hit the vehicle bearing Registration No. AS-01-CC-4471 (Truck) from behind. As a result of the accident, the appellant sustained bodily injuries.

3. The appellant/injured thereafter filed the MAC Case No. (I)91/2014 u/s 166 & 140 (2) of the M.V Act 1988 (as amended upto date), before the learned Member Motor Accident Claims Tribunal (MACT)/Addl. District Judge (FTC) Darrang, Mangaldai, seeking compensation amounting to Rs. 20,00,000/- (Rupees Twenty lakhs) only for the injury sustained in the motor vehicular accident.

4. In the claim petition, the owner of the vehicle bearing Registration No. AS-01-CC-4471 was impleaded as the opposite party No.1, the owner of the vehicle bearing Registration No. AS-12E-3420 was impleaded as the opposite party No.2, the insurer of the vehicle bearing Registration No.AS-12E-3420 i.e. the Oriental Insurance Company Ltd. was impleaded as the opposite party No.3 and the insurer of the vehicle bearing Registration No. AS-01-CC-4471 i.e. United India Insurance Company Ltd. was impleaded as the opposite party No.4. The opposite party No. 1, 2, 3 & 4 contested the claim petition before the Tribunal by filing their written statement. In the present appeal, however, the names of the opposite party No. 1 & 2 has been struck off by the order dated 30/01/2017.

5. The learned Tribunal upon adjudication of the claim petition, by judgment dated 30/05/2016 awarded the compensation, to the appellant/injured under the following heads;

a) Total loss of income : Rs. $7000.00 \times 20\% \times 12 \times 16$ =Rs. 2,68,800.00

b) Pecuniary damage : Rs. 90,000.00

c) Pain and suffering : Rs. 25,000.00

Total=Rs. 3,83,800.00

6. The opposite party No. 3 i.e. the Oriental Insurance Company Ltd. was accordingly directed to pay the awarded amount of Rs. 3,83,800/- (Rupees Three lakhs eighty three thousand eight hundred) only with interest at the rate of 6% p.a. from the date of filing of the petition till realization, within a period of 1(one) month from the date of the order.

7. That being aggrieved by the judgment dated 30/05/2016 passed by the learned Member MACT/Addl. District Judge (FTC), Darrang, Mangaldai in MAC Case No. (I)91/2014, awarding only a sum of Rs. 3,83,800.00, the claimant/appellant has filed the present appeal, seeking for enhancement of compensation on the following grounds amongst others;

i) That the appellant at the time of the accident was working as Executive, General Insurance, Brand New Day Firm, and was earning a monthly income of Rs. 16,000/- (Rupees Sixteen thousand) only and in support of the income, the appellant had exhibited the pay slip for the month of April 2016, before the Tribunal as Ex-39. The learned Tribunal however did not consider the monthly income of the petitioner which was supported by documentary evidence, but unreasonably and without any basis fixed the income of the appellant at Rs. 7,000/- (Rupees Seven thousand) only per month.

ii) That in order to prove the bodily injury, the appellant had exhibited the disability certificate issued by the Doctor treating the appellant as Ex-126 before the Tribunal. The exhibit showed that the appellant had sustained 40% permanent impairment of the right eye. The Tribunal however ignored the disability certificate exhibited by the appellant and without any basis took only 20% as the permanent disability of the whole body.

iii) That considering that the age of the appellant at the time of the accident was 31 years, 10 months and 23 days (DOB-06/08/1982), and considering that the appellant had suffered 40% permanent physical impairment and also considering that the monthly income of the appellant is Rs. 16,000/-, the actual loss of income of the

appellant should have been Rs. $16,000 \times 40\% \times 12 \times 16 = \text{Rs. } 12,28,800/-$ (Rupees Twelve lakhs twenty eight thousand eight hundred) only. However, the Tribunal by calculating the total loss of income of the appellant as Rs. $7000 \times 20\% \times 12 \times 16 = \text{Rs. } 2,68,800/-$ (Rupees Two lakh sixty eight thousand eight hundred) only committed a gross illegality. The appeal therefore, has been filed for enhancement of the award, under the head, loss of income, in accordance with law.

iv) That the Tribunal has also failed to award damages under the non-pecuniary heads such as, future medical expenses, loss of marriage prospects, loss of future enjoyment of life, loss of amenities of life etc., but has only awarded a meager amount of Rs. 25,000/- (Rupees Twenty thousand) only under the head pain and suffering, which cannot be treated as a just and fair compensation. Moreover, the award of Rs. 90,000/- (Rupees Ninety thousand) only under the head of pecuniary damage does not commensurate with the actual expenditure incurred by the appellant for treatment.

v) That the Tribunal has also failed to take into consideration that the appellant was undergoing treatment for one and half month without getting his monthly salary and during this period the appellant had suffered a loss of Rs. 24,000/- (Rs. 16000 p.m.+Rs.8000 half month salary).

vi) In sum and substance, by taking the various grounds cited above, the present appeal has been filed by the appellant for enhancement of the compensation amount of Rs. 3,83,800/- (Rupees Three lakh eighty three thousand eight hundred) only awarded by the Tribunal.

8. In support of the grounds of appeal, Mr. D. Borah, the learned counsel for the appellant, has referred to the letter dated 02/08/2010 issued by the authorized person of the 'Brand New Day Firm' appointing the appellant as the Executive of the Firm and also the pay slip for the month of April 2014 issued by the Brand New Day Firm showing the monthly income of the appellant as Rs. 16,000/-. The learned counsel for the appellant submits that the pay slip which was exhibited before the Tribunal was neither objected to by the respondent Insurance Company Ltd. nor did the respondents cross-examine the appellant on the monthly income/salary. The learned

counsel for the appellant accordingly submits that in the absence of any other evidence to the contrary, the learned Tribunal ought to have accepted Rs. 16,000/- as the monthly income of the appellant. However, the learned Tribunal discarding the documentary evidence submitted by the appellant, without any reasonable grounds, had reduced the monthly income of the petitioner to Rs. 7,000/-. In support of his submission, the learned counsel for the appellant has relied in the case of **N. Suresh -versus- Yusuf Sharif & Another**, reported in **(2012) 11 SCC 281**, in which the Tribunal after appreciating the evidence had awarded Rs. 8,000/- as the monthly income to the appellant/injured who was working as Mail Courier in Kowdle Post Office and earning Rs. 2494/- p.m., and also as the Deputy Sales Officer in a marketing company and getting a commission of Rs. 1500/- to Rs. 3000/- p.m. along with the salary of Rs. 2000/- per month. Apart from that the appellant was also working as an Agent in FPG Ltd. Mandya and earning Rs. 2000/- to Rs. 3000/- per month. In the said case, the monthly income of Rs. 8000/- was reduced to Rs. 3000/- by the High Court. However, in appeal, the Hon'ble Supreme Court after considering the evidence on record came to a finding that the appellant was earning a minimum of Rs.8,500/- per month prior to the accident.

9. Ms. M. Choudhury, the learned counsel for the respondent No. 3 i.e. Oriental Insurance Company Ltd., on the other hand, submits that there is no infirmity in the findings of the Tribunal assessing Rs. 7,000/- as the monthly income of the appellant. Ms. M. Choudhury submits that the appellant has not led any evidence to prove that he was earning a monthly income of Rs. 16,000/- nor there is any evidence on record to prove the same. Ms. M. Choudhury further submits that the appellant has not led any evidence to prove Exhibit-39 which is the appointment letter and the pay slip of the appellant, by examining the author of the said exhibit and therefore, Exhibit-39 has no evidentiary value. In support of her submission, Ms. M. Choudhury, the learned counsel has relied in the case of **Syed Basheer Ahamed & Others -versus- Mohd. Jameel & Others**, decided on 06/01/2009 in Civil Appeal No. 10 of 2009 (Arising out of SLP(C) No. 18001 of 2006 wherein the Hon'ble Supreme Court has held that insofar as the question of earnings of the deceased is concerned, the onus lies on the claimant

to prove this fact by leading reliable and cogent evidences before the Tribunal and a bare assertion in the claim petition is not sufficient to discharge that onus.

10. This Court has perused the evidence of the appellant (PW-1) deposed before the Tribunal, by way of an affidavit, in which the appellant has deposed that he is serving as a Relationship Manager of Brand New Day, Ghy and drawing a salary of Rs. 15,000/- and in support of his statement, the appellant has exhibited the salary slip as Ext-39. In the cross-examination, the appellant has deposed that he has not examined the person who has issued the salary certificate, as a witness. The evidence of the appellant in cross-examination clearly demonstrates that the author of Ext-39 has not been examined. Merely, exhibiting the salary certificate, without examining the author issuing the certificate, by itself does not prove that the appellant was earning a monthly income of Rs. 16,000/-. In the absence of any evidence to prove Ext-39, the said exhibit, in the considered opinion of this Court, does not carry any probative value.

11. The Hon'ble Supreme Court in the case of Syed Basheer Ahamed (supra) has clearly held that insofar the question of earning is concerned, the onus lies on the claimant to prove this fact by leading reliable and cogent evidence before the Tribunal and a bare assertion in the claim petition is not sufficient to discharge that onus. In the present case too, the appellant has not been able to discharge the onus that he was earning a monthly income of Rs. 16,000/- by cogent and reliable evidence, more particularly by examining the author of Exhibit-39. In view of the discussions made above, this Court is inclined to accept the finding of the learned Tribunal that the plea raised by the appellant that he was working as a Manager of Brand New Day Company, is found not proved. Moreover, the finding of the learned Tribunal that the appellant being aged about 30 years and an able bodied person could muster a monthly income of Rs. 7,000/- is found rational and needs no interference by this Court.

12. Secondly, in order to substantiate the bodily injury suffered by the appellant in the accident, the appellant has exhibited the Disability Certificate dated 22/08/2015 (Ext-126) before the Tribunal. In the Disability Certificate, the Doctor treating the appellant has certified that the appellant has sustained 40% permanent impairment of

his right eye. In order to prove the Disability Certificate, the appellant has examined Dr. Ramesh Ch. Goswami, Joint Director of Health Services as the PW-2. It is however the case of the appellant that in spite of the Disability Certificate showing 40% permanent impairment of the right eye of the appellant, the learned Tribunal without any legal basis has only taken 20% as the permanent disability of the whole body. In support of his submission, the appellant has relied in N.Suresh (supra), in which the Hon'ble Supreme Court on examining the evidence of the Doctor has held that the appellant/injured has suffered 90% permanent disablement to earn any income. In the said case, the Doctor treating the appellant/injured, who was serving as a Manager in Marketing Company, had deposed before the Tribunal that the right leg of the appellant is 90% disabled and is permanently paralysed and the face of the appellant is also deformed and disabled to the extent of 50% to 60% and because of which the appellant/injured is not in a position to open his mouth fully. In the said case, the Hon'ble Supreme Court after examining the evidence on record held that the Tribunal and the High Court had failed to appreciate the fact and fixed the disability of the appellant at the lower level of 40% and/or 50%. Mr. D. Borah accordingly submits that when the disability certificate exhibited by the appellant clearly demonstrated that the appellant has suffered permanent physical impairment of 40%, the learned Tribunal committed an illegality by giving a finding that the 40% permanent impairment of the right eye of the appellant could be taken as 20% permanent disability of the whole body.

13. Ms. M. Choudhury, the learned counsel for the Oriental Insurance Co. Ltd. in support of the judgment dated 30/05/2016 passed by the Tribunal, on the other hand, submits that the disability certificate exhibited by the appellant was never proved by examining the Doctor who had treated the appellant and issued the disability certificate. Ms. M. Choudhury submits that to prove the disability certificate, the appellant had examined one Doctor Ramesh Chandra before the Tribunal who had neither treated the appellant nor issued the disability certificate. Ms. M. Choudhury therefore submits that the evidence of Doctor Ramesh Chandra has no evidentiary value and mere exhibition of the disability certificate by itself will not prove the

physical disability suffered by the appellant, unless the Doctor who has treated the appellant has been examined.

14. Ms. M. Choudhury further submits that 40% permanent impairment is with reference to the right eye vision and not in regard to the entire body and therefore, the learned Member has rightly accepted 20% as the permanent disability of the whole body although no evidence was led on the disability certificate adduced by the appellant. In support of her submission, Ms. Choudhury has relied in the case of **Raj Kumar -versus- Ajay Kumar and Another**, reported in **(2011) 1 SCC 343**, wherein the Hon'ble Supreme Court has held that the Tribunal may invariably make it a point to require the evidence of the Doctor who had treated the injured or had assessed the permanent disability. In the said case, it was also held that mere production of a disability/discharge certificate will not be prove of the extent of disability unless the Doctor who had treated and medically examined the claimant and had assessed the extent of disability is tendered for cross-examination with reference to the certificate.

Furthermore, in *Raj Kumar (Supra)*, it was also held that the percentage of loss of earning capacity is not the same as the percentage of permanent disability except in few cases where the Tribunal on the basis of the evidence concludes that the percentage of loss of earning capacity is the same as the percentage of permanent disability. It was also held that the Doctor who treated the injured/claimant or examined him subsequently to assess the extent of permanent disability can give evidence only in regard to the extent of permanent disability but the loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in its entirety.

15. This Court has perused the Disability Certificate dated 22/08/2015 exhibited as Ext-126 before the Tribunal. This Court has also perused the evidence of Doctor Ramesh Ch. Goswami who was examined as PW-2 to prove the disability certificate. In his examination-in-chief, before the Tribunal, Dr. Ramesh Ch. Goswami has deposed that he is working as the Joint Director of Health Service-in-charge and Ext-126 is the Disability Certificate issued in favour of the appellant by Dr. (Mrs.) Manjulla Medhi, since retired. Dr. Ramesh Chandra Goswami has also deposed that he knows the

signature of Dr. (Mrs.) Manjulla Medhi by comparison. In cross-examination, Dr. Ramesh Ch. Goswami has deposed that he came to the Court as he had received the summon. He has deposed that he has no personal knowledge that the patient S.Das was in fact given the certificate. He has further deposed that he does not know the appellant.

16. From the evidence of Dr. Ramesh Ch. Goswami, it transpires that the Doctor who had treated the appellant injured and issued the disability certificate was not examined by the appellant before the Tribunal. Therefore, merely by exhibiting the disability certificate (Ext.126) will not be proof of the extent of the disability stated in the certificate unless the Doctor who treated the appellant is examined to assess the extent of disability with reference to the certificate. The Hon'ble Supreme Court in Raj Kumar (supra) has clearly held that the Tribunal may invariably make it a point to require the evidence of the Doctor who treated the injured or assessed the permanent disability. In the said case, it was further held that mere production of a disability certificate will not be proof of the extent of disability stated therein unless the Doctor who treated the claimant or who medically examined and assessed the extent of the disability is tendered for cross-examination with reference to the certificate. This Court is in respectful agreement with the law laid down by the Hon'ble Supreme Court that the Doctor who has treated and examined the injured and has issued the disability certificate must be examined to prove the certificate.

17. This Court has also perused the judgment dated 30/05/2016 wherein the learned Tribunal has also recorded the deposition of Dr. Ramesh Ch. Goswami stating that he does not know the basis as to why the disability certificate was issued by the then Joint Director. The learned Tribunal has also observed that though the appellant has suffered permanent impairment of his right eye to the extent of 40% but it has not been proved that the appellant cannot pursue his normal avocation. The Tribunal has also observed that there is nothing to show that the appellant could not pursue his duty as a Relationship Manager of Brand New India nor there is nothing to show that the appellant was appointed as a Manager of the company. Therefore, the plea raised by the appellant that he is working as a Relationship Manager of the company is not

found proof. Therefore, taking all this facts into consideration the learned Tribunal has held that 40% permanent impairment of the right eye of the appellant could be taken as 20% permanent disability of the whole body.

18. The Hon'ble Supreme Court in the case of Raj Kumar (supra) has held as follows;

“19. We may now summarise the principles discussed above :

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.”

19. In the present case, the learned Tribunal on the basis of the evidence adduced, had held that, though the claimant has suffered permanent physical impairment of his right eye to the extent of 40% but it has not been proved that the appellant could not pursue his duty as a Relationship Manager of Brand New Day Firm although the Tribunal has further held that there is no evidence, on record, to show that the appellant was appointed as a Manger of the Firm. On the basis of such findings the learned Tribunal has held that 40% permanent impairment caused to the right eye of the appellant could be taken as 20% permanent disability of the whole body. This Court on proper perusal of the judgment dated 30/05/2016 and the evidence on record finds that there is no infirmity in the judgment dated 30/05/2016 passed by the learned Tribunal taking 40% permanent impairment of the appellant's right eye, as reflected in the disability certificate, as 20% permanent disability of the whole body.

20. In N. Suresh (supra), referred to by the learned counsel for the appellant, the

Hon'ble Supreme Court after examining the evidence adduced before the learned Tribunal came to a finding that the appellant therein was earning a minimum of Rs. 8500/- per month prior to the accident. So also in the said case, the Hon'ble Supreme Court after examining the evidence adduced by the Doctor, before the Tribunal, has held that the appellant is 90% permanently disabled to earn any income. In the instant case, neither the person who had issued the pay slip (Ext-39) to the appellant was examined nor the Doctor who had treated the appellant and issued the disability certificate (Ext-126) was examined. The case of N. Suresh (supra) therefore cited by the appellant in support of his case is, in the considered opinion of this Court, not relevant to decide the present case.

21. In the light of the discussions made above, this Court, finds no infirmity in the findings of the Tribunal holding that the appellant was earning a monthly income of Rs.7000/- and had suffered 20% permanent disability of the whole body and by applying the multiplier of 16 has assessed the total loss of income of the appellant as Rs. 2,68,800/- (Rs. 7000.00x20%x12x16=Rs. 2,68,800/-).

22. Secondly, the appellant is also aggrieved by the judgment dated 30/05/2016 awarding only a sum of Rs. 90,000/- as pecuniary damage. Mr. D. Borah, learned counsel for the appellant submits that although the appellant has exhibited medical bills/vouchers/cash receipts etc. actually amounting to Rs. 1,07,007.30/- (Rupees One lakh seven thousand seven and thirty paisa) only, the learned Tribunal has awarded only a sum of Rs. 90,000/- as pecuniary damage. The learned counsel has further submitted that the learned Tribunal has assessed only a meager amount of Rs. 25,000/- under the head pain and suffering and has also failed to award any reasonable compensation under different heads such as future medical expenses, loss of earning during the laid up period, loss of amenities and other incidental charges and loss of marriage prospects etc. The learned counsel for the appellant accordingly submits that a sum of Rs. 1,50,000/- may be granted as compensation for future treatment/eye replacement and a further sum of Rs. 1,50,000/- should be granted to the appellant as compensation for the laid up period during which the appellant was under treatment and for loss of amenities and loss of marriage prospects etc. It is

further submitted that considering the injuries suffered by the appellant, the compensation of Rs. 25,000/- awarded by the Tribunal under the head pain and suffering should be enhanced to Rs. 50,000/-. In support of the above submission, the appellant has relied in N. Suresh (supra) as well as in the case of **Syed Sadiq & Others -versus- Divisional Manager United India Insurance Company Limited**, reported in **(2014) 2 SCC 735**.

23. In N. Suresh (supra), the Hon'ble Supreme Court after examining the evidence of the Doctors adduced before the Tribunal came to a finding that the appellant is 90% permanently disabled to earn any income. The Hon'ble Supreme Court also on examining the evidence on record awarded compensation to the appellant, therein, as follows, under the following heads.

“20. If the aforesaid amount is taken into consideration towards the above said heads, then as per High Court's calculation the break-up of amounts is as follows:

1	Towards pain and sufferings (as awarded by High Court)	Rs	1,00,000
2	Towards medical expenses (as determined above)	Rs	1,86,000
3	Towards conveyance, nourishing food and attendant charges (as awarded by the High Court)	Rs	40,000
4	Towards loss of income during laid-up period (as determined above)	Rs	51,000
5	Towards loss of amenities (as awarded by the High Court)	Rs	1,00,000
6	Towards loss of future income (as determined above)	Rs	14,68,800
7.	Towards future medical expenses (as awarded by the High Court)	Rs.	30,000
	Total	Rs.	19,75,800

21. Accordingly, the appeal is allowed and the impugned judgment and award passed by the Tribunal in MVC No.106/2003 dated 9-9-2005 and the High Court in MFA No.11865 of 2005 dated 28-9-2010¹ stands modified, awarding compensation of Rs.19,75,800/- with interest at the rate of 6% per annum from the date of the petition till realisation. The second respondent New India Assurance Company Ltd. is directed to pay immediately to the appellant total amount of Rs.19,75,800/- with 6% interest, after deducting the amount already paid by them.”

24. In Syed Sadiq (supra), the Hon'ble Supreme Court dealing with the three Civil Appeals has held as follows;

Civil Appeal arising out of MFA No. 1131 of 2011 (MVC No. 149 of 2010).

In the said Civil Appeal, the Hon'ble Supreme Court has held that the appellant who is a vegetable vendor aged about 25 years at the time of the occurrence of the accident and earning Rs. 6500/- per month and has suffered disability to the extent of 85% to determine the loss of income after applying the multiplier of 18 has awarded Rs. 17,90,100/- under the head loss of future income. Besides, the award made under the head loss of future income, the Hon'ble Supreme Court also held the appellant entitle to compensation under conventional heads along with the cost of litigation as under;

<i>Towards cost of artificial leg</i>	<i>Rs 50,000</i>
<i>Towards pain and suffering</i>	<i>Rs 75,000</i>
<i>Towards loss of marriage prospects</i>	<i>Rs 50,000</i>
<i>Towards loss of amenities</i>	<i>Rs 75,000</i>
<i>Towards medical and incidental costs</i>	<i>Rs 1,00,000</i>
<i>Towards cost of litigation</i>	<i>Rs 25,000</i>

Civil Appeal arising out of MFA No. 1132 of 2011 (MVC No. 147 of 2010).

In this case too, the Hon'ble Supreme Court after observing that the appellant who is also a vegetable vendor and has sustained functional disability of 35% and considering other relevant factor has held that the appellant besides being entitled to Rs. 7,37,100/- under the head loss of future income is also entitled to compensation under the follows heads;

<i>Towards pain and suffering</i>	<i>Rs 60,000</i>
<i>Towards medical and incidental charges</i>	<i>Rs 1,00,000</i>
<i>Towards loss of amenities</i>	<i>Rs. 40,000</i>
<i>Towards future medical expenses</i>	<i>Rs 15,000</i>
<i>Towards cost of litigation</i>	<i>Rs 25,000</i>

Civil Appeal arising out of MFA No. 1133 of 2011 (MVC No. 148 of 2010).

In this appeal too, the Hon'ble Supreme Court after holding that the appellant who is working as a cleaner of lorry and has suffered functional disability to the extent of 85% and also considering other relevant factors has awarded Rs. 13,77,000/- as the future loss of income, besides awarding the compensation under the following heads;

<i>Towards pain and suffering</i>	<i>Rs 60,000</i>
<i>Towards medical and incidental expenses</i>	<i>Rs 50,000</i>
<i>Towards loss of amenities</i>	<i>Rs 50,000</i>
<i>Towards future expenses</i>	<i>Rs 5,000</i>
<i>Towards cost of litigation</i>	<i>Rs 25,000</i>

25. Ms. M. Choudhury, on the other hand, while fairly submitting that as the appellant has been able to substantiate that he has incurred Rs. 1,07,007.30/- towards his medical treatment with medical bills, vouchers, cash memos etc., the compensation granted under the head pecuniary damage may be enhanced from Rs. 90,000/- to Rs. 1,07,007.30/- and to that extent the appellant is entitled to some enhancement. Ms. M. Choudhury however submits that insofar as the claim under the other head is concerned no evidence has been led by the appellant before the Tribunal and therefore, the appellant is not entitled to any compensation under such heads. Insofar as the compensation of Rs. 25000/- awarded under the head pain and suffering is concerned, Ms. M. Choudhury submits that the learned Tribunal has reasonably assessed the compensation under the said head and therefore, no interference is called for.

26. This Court has perused the judgment dated 30/05/2016 passed by the learned Tribunal. This Court has also perused the records, called for, from the learned Tribunal. A perusal of the records, more particularly, the medical treatment certificates, reveals that after the occurrence of the motor vehicular accident on 29/06/2014, the appellant was taken to Mangaldai Civil Hospital Darrang, Assam (Ext-2) and thereafter on the same day i.e. 29/06/2014, the appellant was shifted and admitted at GNRC, Dispur, Guwahati. In the discharge summary and advised issued by the GNRC dated 04/07/2014 which is Exhibit-4(4), the appellant's injury is diagnosed as injury to head, lacerated injury-right side of face and eye injury. The appellant was advised removal of stitches on 10/07/2014 and advised rest for 6(six) weeks. On 18/12/2014, the appellant attended AKSI Advance Eye Centre Guwahati where the appellant underwent socket reconstruction and eye ball implant (Exhibit-6). Thereafter, on 17/02/2015, the appellant attended Sri Sankaradeva Nethralaya Hospital, Guwahati where the surgery of lid repair (right eye) was performed. The discharge certificate issued by the said hospital has been exhibited as Ext-5. So also on 03/03/2015, the appellant attended Chatterjee Clinic and the outpatient slip issued by the clinic is exhibited as Ext-7.

27. The discussions made in the preceding paragraph shows that the appellant, as a result of the accident, sustained injury to the head and right eye and for which the

appellant was attending the Doctors every now and then for his treatment. From the medical record exhibited by the appellant before the Tribunal, it can be said that, the appellant was reasonably prevented from discharging his normal works for at least 3/4 months. So also during the period of treatment specially during the initial days, the appellant certainly must have required the assistance of an attendant and must also have been on special diet. Moreover, the learned Tribunal in its judgment dated 30/05/2016 has given a finding that the 40% permanent impairment of the right eye of the appellant could be taken as 20% permanent disability of the whole body. However, the learned Tribunal besides awarding the compensation under the head loss of income, pecuniary damage, pain and suffering etc. has not awarded any compensation under the heads such as loss of amenities, marriage prospects, future medical expenses, conveyance, nourishing food, attendant charges etc. Further, this Court is also of the view that in the light of the decision in Syed Sadiq (supra), the appellant is also entitled to the cost of litigation.

28. Hence, besides the compensation awarded by the learned Tribunal, under the head loss of income, the appellant/claimant is also entitled to compensation under the following heads;

Towards loss of amenities	Rs 50,000
Towards loss of marriage prospect	Rs 50,000
Towards future medical expenses	Rs 20,000
Towards nourishing diet, conveyance & attendant charges	Rs 30,000
Towards cost of litigation	Rs 30,000
Towards loss of income during the laid-up period (Rs 7000x3 months)	Rs 21,000
Total	Rs. 2,01,000/-

(Rupees Two lakh one thousand) only

29. The Tribunal in the judgment dated 30/05/2016 has awarded Rs. 90,000/- under the head pecuniary damage, the learned counsel for the appellant has however submitted that the appellant has incurred Rs. 1,07,007.30/- towards medical expenses

and has exhibited the medical bills, vouchers, cash memos etc. The appellant should therefore be awarded the actual medical expenditure incurred and not Rs. 90,000/-. The compensation under pecuniary damage is accordingly enhanced and rounded off to Rs. 1,10,000/- (Rupees One lakh ten thousand) only, from Rs. 90,000/- (Rupees Ninety thousand) only.

30. Furthermore, this Court considering the injuries suffered by the appellant and taking into account the treatment and the surgery undergone by the appellant at GNRC Dispur, AKSI Advance Eye Centre and Sri Sankaradeva Nethralaya Hospital, Guwahati, deems it reasonable to enhance the compensation under the head pain and suffering to Rs. 75,000/- (Rupees Seventy five thousand) only from Rs. 25,000/- (Rupees Twenty five thousand) only awarded by the Tribunal.

31. Ms. M. Choudhury, the learned counsel for the Insurance Company, has submitted that the compensation amount of Rs. 3,83,800/- awarded by the learned Tribunal in the judgment dated 30/05/2016 along with 6% interest p.a. amounting in total to Rs. 4,40,985/- (Rupees Four lakh forty thousand nine hundred eighty five) only has been deposited by the Oriental Insurance Co. Ltd. before the learned Member MACT, Mangaldai, on 13/11/2017, vide Cheque No. 1413.

32. The respondent No. 3 i.e. the Oriental Insurance Co. Ltd. Branch Office, Tezpur, in addition to the compensation already awarded and deposited shall also pay the following modified/enhance compensation to the appellant with interest at rate of 6% from the date of filing of the present appeal petition.

Towards loss of amenities	Rs 50,000
Towards loss of marriage prospect	Rs 50,000
Towards future medical expenses	Rs 20,000
Towards nourishing diet, conveyance & attendant charges	Rs 30,000
Towards cost of litigation	Rs 30,000
Towards loss of income during the laid-up period (Rs 7000x3 months)	Rs 21,000

Enhanced pecuniary damage	Rs 20,000
Enhanced compensation under the head pain and suffering	Rs 50,000
Total	Rs. 2,71,000

(Rupees Two lakh seventy one thousand) only

33. The modified/enhanced compensation amounting to Rs. 2,71,000/- along with 6% interest from the date of filing the present appeal, shall be paid by the respondent No.3 i.e. Oriental Insurance Co. Ltd. Branch Office, Tezpur, to the appellant within a period of 30(thirty) days from the date of passing of the judgment.

34. The appeal stands allowed to the extent indicated above. No cost.

35. Return back the LCR forthwith.

JUDGE

Comparing Assistant