

GAHC010305272019



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

Case No. : MACApp./5/2020

SHIRO BAKTI

W/O- BALARAM BAKTI @ BOLO, R/O- TEZPUR GHOGRA T.E., HOLLESWAR
LINE, P.S. RANGAPARA, TEZPUR, SONITPUR, ASSAM, T.A. DUMNI T.E.,
BAKSA, BTAD, ASSAM, PIN- 784505.

VERSUS

TATA AIG GENERAL INSURANCE CO. LTD AND 2 ORS
REGD. OFFICE- PENINSULA BUSINESS PRK, TOWER A, 15TH FLOOR, G.K.
MARG, LOWER PAREL, MUMBAI- 400013, REP. THE BRANCH MANAGER,
TATA AIG GENERAL INSURANCE CO. LTD., GAUHATI BRANCH, MAYUR
GARDEN, 3RD FLOOR, OPP. HDFC BANK, G.S. ROAD, GUWAHATI-05.

2:NIRANJAN BORO
C/O- LATE BHUTUK BORO
PUB BORA GAON
H/NO. 248
NIREN BORO PATH
P.O. GARCHUK
DIST.- KAMRUP(M)
ASSAM.

3:JUTISH RABHA
S/O- DIMBESWAR RABHA
R/O- VILL.- DUANBARI
P.O. CHARIDUAR
P.S. RANGAPARA
DIST.- SONITPUR
ASSAM
T.A.- BANGURUM
HATIGARH
PANERY

UDALGURI
BTAD
ASSA

Advocate for the Petitioner : MR. J KALITA,

Advocate for the Respondent : MS. P BORTHAKUR, MR. R GOSWAMI

**BEFORE
HONOURABLE MR. JUSTICE KARDAK ETE**

ORDER

Date : 29-08-2024

Heard Mr. J. Kalita, learned counsel for the appellant. Also heard Mr. R. Goswami, learned counsel for the respondent No.1.

2. This appeal is preferred against the judgment dated 31.10.2019 passed by the MACT, Nalbari in MAC No.292 (Injury) /2017, whereby, the learned Tribunal has awarded an amount of Rs.2,50,320/- (Rupees Two Lakh Fifty Thousand and three hundred twenty) only as compensation to be paid to the appellant with interest @ 6% per-annum from the date of filing of the claim petition dated 29.12.2017. The appellant is aggrieved of refusal to grant compensation for disability and loss of earning due to such disability.

3. The case, in brief, is that on 25.10.2017 at around 6.30 p.m, the claimant met with a vehicular accident while she was returning home on foot from her duty from Ghogra Tea Estate, Tezpur. While the claimant was on her way, a Tata Tipper Truck which was allegedly driven with rash and negligent knocked her down. In the incident, the claimant sustained injuries and soon after the accident she was taken to the hospital and had undergone medical treatment from 26.10.2017 to 13.11.2017 and ultimately her left leg had to be amputated. A case being Tezpur P.S. Case No.2225/2017 was registered.

4. The appellant/claimant has filed a claim petition under Section 166 of the M.V. Act, 1988, whereby, the owner, driver and insurer of the offending vehicle were arrayed as opposite parties/respondents claiming compensation amount of Rs.25 lakhs (Rupees twenty five lakhs) only under different heads. The respondent No.1 has filed their written statement. In the written statement, the maintainability of the claim petition was also raised while denying the allegations made by the

appellant including the allegations of rash and negligence while driving the offending vehicle.

5. The learned Tribunal, on the basis of the pleadings, has framed three issues which are as follows:-

i. Whether the claimant got injury on 25.10.2017 at about 6.30 p.m due to rash and negligent driving by the driver of the offending vehicle having Engine No.61SBE2303061K64112941?

ii. Whether the claimant is entitled to get any compensation as prayed for, and if so, to what extent and from whom?

iii. To what other relief or reliefs the claimant is entitled to?

6. The learned Tribunal on consideration of the materials /evidence on record, has decided all the issues in favour of the claimant. However, the claim for compensation for her disability with 60% and loss of future earning, although proved, has been refused. The learned Tribunal has awarded Rs. 2,50,320/- (rupees two lakhs fifty thousand three hundred and twenty) only on other heads.

7. The disability certificate which was exhibited as Exht-2, clearly reveals that the appellant/claimant has suffered disability to the extent of 60%.

8. Mr. J. Kalita, learned counsel for the appellant submits that since the disability to the extent of 60% which infact is 100% in practical, has been proved and the income which the appellant was earning has also been clearly established and proved as Rs.4342/-(rupees four thousand three hundred forty two) only per month. Since, the appellant/claimant had to resigned from her job due to her inability to perform owing to the amputation of her left leg, the learned Tribunal ought to have considered and awarded compensation for her disability considering her loss of earning capacity. Therefore, he submits that the appellant/claimant may be granted adequate compensation for her disability considering the loss of income and the age of the appellant.

9. Mr. R. Goswami, learned counsel for the respondent No.1, submits that as per the relevant provisions of law if the claimant/appellant had suffered disability to the extent of 60%, considering the different heads and age, the disability has to be rounded to 50%. He submits that having considered that the appellant/claimant has suffered disability to the extent of 60% and she was having an income of

Rs.4342/-(rupees four thousand three hundred forty two) only which has been admittedly proved and she had resigned from her job due to her disability due to her amputation of her left leg, it appears that the appellant/claimant deserves to be awarded compensation for her disability and loss of income.

10. I have considered the submissions advanced by the learned counsel for the parties and have perused the record.

11. Essentially, the grievance raised by the appellant/claimant is to the extent of not granting compensation with regard to her disability and the loss of income due to such disability. It is not disputed that the appellant had suffered disability to the extent of 60% due to the said vehicular accident. It is also established and proved that the appellant/claimant was a permanent worker in the Tezpur Ghogra Tea Estate.

12. As per Exht-6, the income of the appellant/claimant is Rs.4,342/- (rupees four thousand three hundred forty two) only per-month. It is also noticed that as per Exht 9 and 10, the appellant/claimant has tendered her resignation from her job on the ground of inability to perform her duty due to amputation of her left leg which the learned Tribunal has accepted on being proved. However, the learned Tribunal has held that since there is no evidence that the garden authority had terminated her service, although it is true that due to her disability she could not have been able to continue in her job in the garden, the garden authority could have depute her for any other job, which the appellant/claimant could have perform with her disability. The learned Tribunal has also recorded that the claimant had tendered her resignation with a prayer to employ her and there is no evidence that the garden authority had refused to accommodate the claimant in any other job in the garden, although there is no doubt that the claimant had suffered permanent disability, the appellant is not entitled to get any compensation for disability, thereby rejected the claim for loss of earning due to disability.

13. As noted above, essentially the grievance is limited to the claim for compensation for suffering disability to the extent of 60% by the appellant/claimant. The disability of 60% suffered by the appellant/claimant has been clearly proved. The income of the appellant has also been proved to be Rs.4342/-(rupees four thousand three hundred forty two) only as she was working as permanent

worker in the Tezpur Ghogra Tea Estate. It is also seen that the appellant/claimant had tendered her resignation on the ground of her inability to perform her duty as a worker in the Tezpur, Ghogra Tea Estate due to amputation of her left leg consequent to the said vehicular accident.

14. Having considered the entire materials on record and having considered that the appellant/claimant has proved her disability and her income, this Court is of the view that the appellant/claimant is entitled to be compensated for her disability and the loss of income, as despite the proof of such suffering of disability to the extent of 60% and the loss of income, which the learned Tribunal has accepted, has erroneously held the appellant/claimant to not entitle to get any compensation for her disability and loss of future earning.

15. For the forgoing reasons, this court of the view that the conclusion of the Trial court to the extent of holding the appellant/claimant not entitled to get any compensation for disability is interfered with. The appellant/claimant is entitled to be compensated for disability and her loss of earning and compensation for loss her amenities, mental anxiety medical expenses, injuries sustained for her amputation and for miscellaneous expenses.

16. In view of above, it would be appropriate to grant compensation to the appellant/claimant for her disability and loss of earning and other heads in the following tabulation-

1. Gross Salary-Rs. 4342/- p.m. as per Ext. 6
2. Age- 45 years
3. Loss of earning capacity- 50%

Future prospects corresponding to 45 years = 30%

1. Actual Income with future Prospects = $4342 \times 130\% = \text{Rs. } 5645/-$
2. Yearly income $\times 12 = 67,735/-$
3. Applicable multiplier = 14

4. Compensation formula = $50\% \times 67735 \times 14 = 474146.00$

Total Compensation

4,74,146.00

1,00,000.00 for Pain & suffering

1,00,000.00 for loss of amenities etc.

35,300.00 Medical Expenses

7,09,446.00 Total

Plus interest @ 6% from the date of filing claim petition on 29.12.2017

17. Consequently, the respondent No 1, Tata AIG General Insurance Co. Ltd, is directed to pay an amount of Rs. 7,09,446/- (Rupees seven lakhs nine thousand four hundred and forty six) only with interest at the rate of 6% from the date of filing of the claim petition i.e. 29.12.2017, to the appellant/claimant within a period of six (6) weeks from today The above amount of compensation shall be deposited before the MACT, Nalbari within above mentioned period of 6 (six) weeks from today. Needless to observed that the amount of Rs. 2,50,320/- (Rupees two lakhs fifty thousand three hundred and twenty) only awarded by the MAC Tribunal, Nalbari, shall be deducted from the total above amount compensation, if already paid to the appellant/claimant.

18. In the result, appeal stands allowed and disposed of.

JUDGE

Comparing Assistant