

GAHC020001652020



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

Case No. : MACApp./4/2020

THE ASSISTANT MANAGER
HDFC ERGO GENERAL INSURANCE CO. LTD., MAYUR GARDENS,
GAUHATI, GROUND FLOOR, OPPOSITE RAJIV BHAVAN ABC, G.S
ROAD, GAUHATI- 781005

VERSUS

SURYA BORUAH AND ANR
S/O MOHAN CH. BORUAH,
PRESENT RESIDENT OF MOKOKCHUNG TOWN, AM ROAD, POST
OFFICE - MOKOKCHUNG, DISTRICT- MOKOKCHUNG, NAGALAND

2:AJAY SHANKAR PANDEY
S/O LATE VIJAY SHANKAR PANDEY

VILLAGE- ANANDA NAGAR
WARD NO- 8

P.O- NORTH LAKHIMPUR

DISTRICT- LAKHIMPUR
ASSAM
PIN- 78700

Advocate for the Petitioner : MOA JAMIR

Advocate for the Respondent : B. N. SARMAH

BEFORE
HON'BLE MR. JUSTICE BUDI HABUNG

Date of Hearing : 13.11.2023
Date of Judgment : 12.03.2024

J U D G M E N T & ORDER (CAV)

1. This appeal under Section 173 of the Motor Vehicle Act, 1988 is directed against the impugned judgment and order dated 22.10.2019 passed by the learned Motor Accident Claims Tribunal, Mokochung, Nagaland in MAC Case No. 43 of 2017.
2. The facts of the case in brief are that on 28.04.2017, the respondent/claimant was travelling from North Lakhimpur to Guwahati in the vehicle bearing No. AS-07J/0666 (Chevrolet Beat car). At about 4.30 AM, near Golchoak Borghat Bye Pass, due to rash and negligent driving, the driver of the vehicle lost control and collided with two guard post of the road side and rolled down below the road. As a result, the claimant sustained grievous injuries all over his body for which he was admitted in the Civil Hospital for treatment. The vehicle also got badly damaged in the said accident. The claimant had undertaken treatment at different hospitals and also undergone many operations. However, despite of such treatments, the claimant could not be cured fully and became permanently disabled. Hence, the claimant filed a claim petition before the Motor Accident Claims Tribunal, Mokochung, Nagaland claiming a compensation of ₹ 34,90,400/- (Rupees Thirty-four lakhs ninety thousand four hundred).
3. The case was contested by the respondent/appellant by filing a written statement. After considering the pleadings the learned

Tribunal framed 4 (four) issues:

- (i) *Whether the claimant sustained grievous injuries and became permanently disabled due to rash and negligent driving of the driver of the offending vehicle No. AS-07J/0666 (Chevrolet Beat car)?*
 - (ii) *Whether at the material time of accident the offending vehicle was possessing all valid and effective documents including driving license?*
 - (iii) *What is the age, avocation and income of the claimant at the time of accident?*
 - (iv) *Whether the claimant is entitled to any compensation If yes, what amount and payable by whom?*
4. During trial, the claimant examined himself as PW-1 and exhibited certain documents including Police report, Insurance policy of the vehicle, MVI report, driving license of the driver and proved that at the time the material time of accident the offending vehicle was under possession of all valid documents. He also produced medical documents including disable certificate, salary certificate to show his treatments for injuries and expenses incurred for his treatment. However, the Insurance Co. did not produce any witness.
5. After conclusion of the trial, the learned Tribunal on consideration of the material available on record and upon hearing the parties, came to the conclusion that the claimant is entitled to receive compensation and the insurer is liable to pay such compensation. The learned Tribunal while deciding the issue (i) held that the accident dated 28.04.2017 was the result of rash and negligent

driving of the owner cum driver of the offending vehicle due to which the claimant sustained grievous injuries and became permanently disabled. The issue No. (ii) was also decided in affirmative in favour of the claimant. The issue No. (iii) was settled in favour of the claimant basing on the salary certificate of the claimant exhibited as P-8 for ₹24,000/- (Rupees Twenty-Four Thousand only) per month. While deciding issue No.3, the learned Tribunal had considered Rs.14,000/-(Rupees Fourteen thousand only) as monthly income for assessment of the compensation and as the claimant at the time of accident was aged about 24 (twenty-four) years relevant multiplier was given as per the decision in the Sarla Verma's case. And with regards to issue No. (iv), the learned Tribunal has decided in affirmative and the total amount payable have been calculated as Rs. 9,80,065/-(Rupees Nine lacs Eighty Thousand and Sixty Five) only. The learned Tribunal also decided that the claimant is entitled to the interest at 9% per annum from the date of filing of the claim, i.e. from 17.12.2017 until payment against the awarded amount. And by the judgment and order dated 22.10.2019 the learned Tribunal awarded an amount of Rs. 9,80,065/- (Rupees nine lakhs eighty thousand and sixty-five) and directed the appellant/ respondent Insurance Company to deposit the awarded amount along with interest at 9% per annum from the date of filing of the claim petition, i.e. from 07.12.2017 until payment within a period of 30 days from the date of the said order.

6. Being highly aggrieved, the appellant has preferred this memorandum of appeal. However, the learned counsel for the

appellant had confined his argument on the following two grounds:

- i. That the claimant has failed to prove the negligent driving of the insured vehicle (bearing registration No. AS-07J 0666 Chevrolet Beat car) by adducing proper evidence. Thus, the finding of the learned tribunal and making the award cannot stand the test of law, hence, the same is liable to be quashed and set aside. In this regards the learned counsel for the claimant has placed reliance upon the decision of the Hon'ble Supreme Court reported in **(2014) 13 SCC 254**. The relevant portion is reproduced herein below:

"10. But simply the involvement of the bus in the accident cannot make the respondent liable to pay compensation unless it can be held on the basis of materials on record that the accident was caused by rash and negligent act of the driver, Respondent 2. On this issue, on comparing the reasons given by the Tribunal while discussing Issue 1 and those given by the High Court on p. 10 and 11 of the paper book, we find the reasons given by the High Court to be much more cogent and acceptable in coming to the conclusion noted above. Since the bus was standing at the red light and on being asked, soon after starting from the traffic signal it stopped within 100 to 150 yd, it has rightly been reasoned that the bus could not have started on a high speed. The road at the place of the accident was admittedly very narrow and PW 2, who has been found reliable by the Tribunal as well as by the High Court and was present on the spot, has not claimed that the bus driver had given a signal to the deceased motorcyclist to overtake him. This witness could not see the actual accident because at that time the motorcyclist, in an effort to overtake the bus had gone on its right side and was not visible and therefore he could only hear the sound of crash. It is not

the case of any witnesses that the bus driver took any sudden turn while proceeding forward from the traffic signal or that he swerved the bus to the right side.

- ii. The second ground taken by the appellant is that the medical Doctor who is purported to have issued the disablement certificate was not examined to prove the authenticity of the exhibit so also to reveal the nature of injury sustained by the claimant as provided under Section 142 of the Motor Vehicle Act, 1988, and submits that under the circumstances, the learned Tribunal could not have admitted the documents and decides in favour of the claimant basing on such unproved document. The further contention of the learned counsel for the appellant is that in the instant case, the medical document submitted by the claimant and exhibited as Exhibit-P-13 is not a medical certificate and as per the diagnosis, and that this certificate was issued by a completely different doctor of the Imkongliba Memorial Civil Hospital, Mokokchung, Nagaland and not by the doctor who has initially treated the claimant. Hence, the learned tribunal could not have accepted the same and treated the claimant as permanently disable person. It is further submitted that the learned Tribunal has passed the impugned judgment and order without taking into consideration as to whether the claimant has been affected by the disability affecting his earning capacity. The learned counsel for the appellant has taken reliance upon the decision of the Hon'ble Supreme Court reported in **(2011) 1 SCC 343.**

7. Based on the grounds stated above, the appellant prays that the impugned judgment and award dated 22.10.2019 passed by the learned Tribunal in MAC case no. 43/2017 be set aside and quashed.
8. Per contra, Mr. B. N. Sarmah, learned counsel for the respondents has made the following submissions:
 - i. That the grounds that there was no rash and negligent driving is incorrect in as much as the appellant in the written statement in the preliminary objection part in para-3 fairly admitted stating **"that the insurer has no liability in respect of the present claim as claimant was injured due to rash and negligent driving of alleged vehicle in which he was one of the occupants as such, the insurer/opposite party No. 2, HDFC ERCO, General Insurance Co. Ltd., is not liable for any compensation."**As they have fairly stated before the Tribunal that the accident occurred due to rash and negligent driving of the driver of the vehicle, the contention that the respondent/claimant failed to establish rash and negligent driving against the offending vehicle is contrary to their own statement. The learned counsel for the respondents further submits that in order to prove the factum of rash and negligent driving, the learned Member MACT framed an issue as issue No. 1 and appreciation of evidence adduced, the same stood proved. Whereas, the appellant did nothing to prove contrary to the evidence already proved by the claimant and or to prove their allegation. He further submitted that in his examination-in-chief, the claimant as PW-1 stated that, on 28.04.2017, he boarded in

the offending vehicle and was proceeding to Guwahati from North Lakhimpur. At about 4.30 AM near Golchoak Borghat Bye-Pass, the driver cum owner of the vehicle lost control due to high speed of the vehicle and collided with two guard posts of the road and rolled down below the road, as a result, he sustained grievous injuries of fracture lower third humerus (L), head injury and other blunt injuries in the entire body. The PW-1 further deposed that the accident occurred due to the sole negligence of the owner cum driver of the offending vehicle who was driving the vehicle at the time of accident very fast and recklessly. The evidence of the PW-1 is supported by the police report. And the above evidence of the witness could not be dislodged during cross examination, rather the PW-1 reiterated and stated that the vehicle in which he was travelling turned turtle due to careless driving of the driver. Thus, it was established that there was a rash and negligent driving of the driver of the vehicle in causing the said accident. And in contrary, no evidence could be produced by the appellant before the Tribunal. To support his stand, the learned counsel for the respondent has relied upon the following decisions:

- 1) **Janabai WD/O Dinkarrao Ghorpade and Ors –Vrs- ICICI Lomabrd Insurance Co. Ltd.,** reported in **(2022) 10 SCC 512**, where the Hon'ble Supreme Court held which is reproduced herein below:

"11. We find that the rule of evidence to prove charges in a criminal trial

cannot be used while deciding an application under Section 166 of the Motor Vehicles Act, 1988 which is summary in nature. There is no reason to doubt the veracity of the statement of appellant No. 1 who suffered injuries in the accident. The application under the Act has to be decided on the basis of evidence led before it and not on the basis of evidence which should have been or could have been led in a criminal trial..."

- 2) In the case of **Union of India & Ors. –vrs- Mrs. Saraswati Debnath & Ors.** reported in **1995 (II) GLT 117**, the Hon'ble Gauhati High Court held that:

"6. The law is settled that in a claim under the Motor Vehicles Act, the evidence should not be scrutinized in a manner as is done in a civil suit or a criminal case. In a civil case the rule is preponderance of probability and in a criminal case the rule is proof beyond reasonable doubt. It is not necessary to consider these niceties in a matter of accident claim case inasmuch as it is summary enquiry. If there is evidence to arrive at the finding that itself is sufficient. No nicety, doubt or suspicion should weight with the tribunal in deciding a motor accident claim case. The law on this is laid down by the Supreme Court in AIR 1980 SC 1354 (N.K.V. Bros (P) Ltd –Vs- M. Karumai Ammal and ors.)."

- 3) In the case of **Bimla Devi –Vrs- Himachal Road Transport Corporation & Ors.** reported in **(2009) 13SCC 530**, the Hon'ble Supreme Court held that:

"15. ... It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. ..."

- ii. With regards to the second ground of allegation that no doctor has been examined, the learned counsel for the respondent submits that in absence of any dispute with regards to the injury and disablement of the respondent/claimant non examination of the doctor cannot be the factor while deciding MAC case. He

further submits that in his examination-in-chief, the claimant deposed and stated that: *"...resultantly, I have sustained grievous injuries of Fracture Lower Third Humerus (L), head injury and other blunt injuries in the entire body. I was admitted for initial treatment at B.P. Civil Hospital, Nagaon thereafter, shifted me to Dispur Hospital Pvt. Ltd., on the same day wherefrom discharged on 03.05.17". "As directed by the Hon'ble tribunal I was re-examined by the medical board of Imkongliba Memorial Civil Hospital Mokokchung who thoroughly examined me and categorized my present disability as incurable at 25%. The disablement certificate as I have received is marked and exhibit as P-13."*The learned counsel for the respondent further submitted that the claimant was examined by the Board of expert in Dr. Imkongliba Memorial District Hospital, Mokokchung, Nagaland on the direction of the Tribunal, and the said direction was given by the learned Tribunal in the presence of the learned counsel for both the parties and there was no any objection to the said direction. The learned counsel for the respondent further submits that from the examination and cross-examination of the claimant, it is clear that there was no dispute from the opposite parties/appellant in regards to the disability of the claimant. In support of his case, the learned counsel for the respondent place reliance on the following cases:

- 1) In the case of **Oriental Insurance Co. Ltd. –Vrs- A.J. Thomas** reported in **2010 (1) TAC 414 (Gau)**, the Hon'ble High Court of Gauhati (Shillong Bench) held which is reproduced herein below:

"11. *In this appeal, the appellant has seriously questioned the finding of the*

learned tribunal on the permanent disability to the extent of 40% without taking any evidence of the doctor and awarding the compensation. In this regard, it is to be noted that the respondent-claimant produced necessary medical certificates before the learned tribunal and the appellant had opportunity to peruse the same. No doubt, the respondent claimant did not examine the concerned doctor but the appellant, at no point of time, made any prayer before the learned tribunal to summon the doctor concerned for examination to testify the veracity of the medical report and, thus, it failed to avail the chance of calling the materials witness. The learned tribunal in para 21 of his judgment rightly observed that '...The contention of the Counsel for, O.P., that no permanent disability certificate from doctors from Guwahati and Kerala has been produced is infructuous as much as that the MRI report dated 5.4.2002 (Ex.C13) indicate the permanent disability of the claimant' and came to a conclusion in para 27 that '...this tribunal is inclined to hold that the claimant has sustained permanent disablement as a consequence of the accident occurred on 15.3.2000 involving the insured vehicle with the, O.P., Insurance Company to the extent of 40% and the issue is settled in favour of the claimant.

12. *In view of the above, I do not find any infirmity in the impugned judgment and order passed by the learned Tribunal warranting any interference and as such, the appeal is found to be bereft of merit and accordingly, the same is dismissed."*

- 2) In the case of **United India Insurance Co. Ltd., -Vrs- B.L. Rochhunga & Anr.** reported in **2008 (3) GLT 931**, the Hon'ble High Court of Gauhati (Aizawl Bench) held which is reproduced herein below:

"6. *The first main submission of Mr. Malhotra, learned counsel for the appellant is that the claimant failed to adduce any medical certificate supporting his case that he suffered 100% permanent disablement and in absence of such medical evidence the impugned award passed by the learned Tribunal is bad in law and liable to be set aside. On perusal of the records, it is found that that claimant was admitted in the Civil Hospital, Aizawl on 16.12.2000, i.e., on the date of accident itself, the claimant was examined by the medical board consisting of one Chairman and two Member Doctors and it found him suffering from Traumatic Quadraparesis and it recommended for necessary investigation and treatment at INS, Guwahati. This may be seen in "board's Recommendation dated 27.12.2000" which was exhibited and marked as Exh. C-12. He was discharged from the Civil Hospital, Aizawl on 28.12.2000 with advice for treatment in INS,*

Guwahati as he was diagnosed to have been suffering from Quadriplegia, which in medical term means a person who is permanently unable to use arms and legs. This diagnosis is recorded in the discharge card, Exh. C-9. As per advice of the Civil Hospital, the claimant was admitted in the GNRC Ltd. Guwahati on 29.12.2000 and in final diagnosis he was found to have been suffering from Grade-II Spondylolisthesis C6-7. In the said Hospital he was subjected to physiotherapy and regular dressing of bed sore. Surgery was contemplated but he was not found fit for surgery and he was discharged on 7.3.2001. This report is available in the case summary and discharge report Exh. C-14 and from the same it is found that the claimant was in a very bad physical condition and he was returned without further treatment. Thereafter, he was again admitted in the Civil Hospital at Aizawl on 13.4.2002, where he was diagnosed to have been suffering from complete paraplegia; a disease of loss of control and feeling in the legs and lower body. He was discharged from Civil Hospital on 7.5.2002, which may be seen in Exh. C-9(1). His condition was not improved and as such he was again admitted in the Civil Hospital at Aizawl on 25.6.2002 for treatment of the same disease and he was discharged on 27.6.2002 as may be seen from Exh. C-9(2). The medical certificate dated 13.11.2002 (Exh. C-17) was obtained from Dr. Thangchungnung, bone and joint specialist Civil Hospital, Aizawl. According to this certificate, the claimant is suffering from cervical spine injury C6-7 and he was not improving although he was treated at Civil Hospital and GNRC, Guwahati. It was certified that the claimant was suffering from 100% disablement with all the limbs below the neck paralyzed. This certificate is supported by the Hospital documents Exh. C-9, Exh. C-9 (1), Exh. C-9 (2) and Exh. C-12 mentioned above and there is nothing to doubt about its genuineness or authenticity. In fact during the trial the appellant/opposite party did not raise any question on the genuineness of this certificate."

9. And thus, on the above grounds the learned counsel for the respondent prays for dismissal of the appeal with cost.
10. Heard Mr. M. Solo learned counsel for the appellant and Mr. B.N. Sarma, learned counsel for the respondents. I have also examined the records including the evidences adduced and the documents exhibited and considered.
11. The case of the appellant is that the claimant has failed to prove the negligent driving of the insured vehicle, as such, for the wrong of others they cannot be made liable. However, the contention of the

respondent/claimant is that the accident took place due to the rash and negligent driving of the driver of the vehicle bearing registration No. AS-07J 0666 in which the claimant was travelling as an occupant. It is also contended that the above fact has been fairly admitted by the appellant in para-3 of their written statement where it has been stated "*that the insurer has no liability in respect of the present claim as claimant was injured due to rash and negligent driving of the alleged vehicle in which he was one of the occupants as such, the insurer/opposite party No. 2, HDFC ERCO, General Insurance Co. Ltd., is not liable for any compensation.*" To prove his case, the claimant (PW-1) in his deposition stated that, on 28.04.2017, he boarded in the offending vehicle as an occupant and was proceeding to Guwahati from North Lakhimpur. At about 4.30 AM near Golchoak Borghat Bye Pass, the driver of the vehicle lost control due to high speed and collided with two guard posts of the road and rolled down below the road; as a result of the said accident, the claimant sustained grievous injuries of fracture lower third humerus (L), head injury and other blunt injuries in the entire body. The claimant has also produced the Police report as a proof of incident of accident. The above evidence of the claimant could not be rebutted during the cross examination. In fact, no contrary evidence has been produced by the appellant before the Tribunal

12. To decide this issue, an issue was framed as to whether the claimant sustained grievous injuries and became permanently disabled due to rash and negligent driving of the driver of the offending vehicle. And upon consideration and appreciation of the evidences, the learned

Tribunal had decided the said issue in affirmative. Thus, it was established that there was a rash and negligent driving of the driver in causing the said accident due to which the claimant received injuries. As seen above, the evidence of the claimant's side has not been rebutted nor any counter evidence has been produced by the appellant although an opportunity was provided to them. Under the circumstances, there is no reason to disbelieve the veracity of the statement of the claimant who suffered injuries while travelling in the said vehicle. In view of the above, the ground taken by the appellant that the liability has been fastened upon the insurer without proving the fault of the driver of the insured vehicle cannot be accepted.

13. Now coming to the second ground, the record reveals that on the claim made by the claimant of 25 % disability, the learned Tribunal during the course of trial had ordered for re-examination of the claimant to ascertain the disability. And pursuant to the said direction of the Tribunal, a team of medical board at Imkhongliba Memorial Civil Hospital Mokokchung had conducted a thorough examination and ascertained the disability of the claimant at 25% permanent in nature. The said examination report P-13 along with the medical expenditures cash memos and vouchers were produced and exhibited during the trial. And the same has not been rebutted by the appellant. In absence of any rebuttal evidence, the contention of the appellant in the appeal that no disability certificate was produced is without any substance. Under the circumstances, this court finds there is no wrong in treating the disability certificate

issued by the team of medical board at Imkhongliba Memorial Civil Hospital Mokokchung P-13 as authentic in as much as, the same was issued on the direction of the learned Tribunal and after conducting thorough examination, whereby it has been ascertained that the claimant is 25% permanently disabled person. Accordingly, this court is of the opinion that decision on the said issue does not require any interference.

14. As regards to the award of 9% interest per annum on the awarded amounts, in view of the provision under section 171 of the Motor Vehicle Act and the various decisions of the Hon'ble Apex Court in ***ICICI Lombard General Insurance Co. Ltd vs Ajay Kumar Mohandy & Anr*** reported in ***(2018) 3 SCC 686***) and ***S. Thangaraj Vs. National Insurance Co. Ltd*** reported in ***(2018) 3 SCC 605***, where it is held that the claimant is entitled to an interest at 9% per annum from the date of filing of the claim petition, the learned counsel for the appellant has not pressed for reduction. And as regards to the other grounds taken in the memo of appeal, the learned counsel for the appeal has not pressed for, hence, the same need not be discussed here being undisputed.
15. Therefore, in view of what has been considered and discussed above, this Court is of the opinion that this appeal lacks merit and accordingly the same is dismissed.
16. The statutory deposit made, if any, before this Court be returned to the Insurance Company after proper verification.
17. After deducting the withdrawn amount; if any, by the claimant, the

rest amount due to the claimant shall be paid in terms of the impugned judgment and order dated 22.10.2019 within a period of 6 weeks from today along with the interest.

18. With the above observation, this appeal stands disposed of.
Send back the LCR.

JUDGE

Comparing Assistant