

GAHC020001692022



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

Case No. : MACApp./1/2022

THE NEW INDIA ASSURANCE CO LTD.
1ST FLOOR, NEW INDIA CENTRE, 17-A COPERAGE ROAD, MUMBAI-
400001, MAHARASHTRA

VERSUS

SHRI. PALLAB JYOTI @ PALLAB BORAH AND 2 ORS
PRESIDING AT TULI TOWN, AMGURI ROAD, MOKOKCHUNG,
NAGALAND

2:JULIET DAHUTIA
D/O BALI NARAYAN BURUAH
H.NO. 22 DHARMESHWAR TARUPATI
NEAR AG. PIN 781025

3:SHRI. BABUL RAJBONSHI
POST OFFICE BAJANPATHAR
DIST- DARRANG ASSA

Advocate for the Petitioner : PFOSEKHOTTE

Advocate for the Respondent : B. N. SARMAH

Date of hearing : 13.11.2023.
Date of Judgment : 11.03.2024

BEFORE
HON'BLE MR. JUSTICE BUDI HABUNG

:: JUDGMENT AND ORDER ::

[CAV]

1. Heard Mr. PfosekhoPfotte, learned counsel for the appellant and Mr. B. N. Sarmah, learned counsel for the respondent No. 1.
2. This is an appeal under section 173 of the Motor Vehicle Act, 1988 filed against the impugned judgment and award dated 10.10.2019 passed by the learned Member, Motor Accident Claims Tribunal, Mokokchung, Nagaland in MACT case no. 44/2017.
3. The brief fact of the case is that on 19.08.2017, during the course of employment while the respondent/claimant was travelling in the vehicle No.AS-01-GC/9161 from Dhekiajuli to Tezpur and on the way at Bihaguri, due to rash and negligent driving of the driver of the offending vehicle, the vehicle fell down into the deep trench as a result, the claimant sustained grievous injuries and became permanently disabled. Having sustained injuries, the claimant has taken treatment at different hospital and incurred huge number of expenditures. After receiving treatment, the claimant filed a claim petition before the MACT against the respondent/appellant claiming a compensation of Rs. 15,69,600/-.The case was contested by the respondent/appellant by filing written statement and denied the liability of the appellant.
4. The claimant produced evidence of two witnesses and exhibited certain documents including Police report, registration certificate, fitness certificate, MVI report and driving licence of

the driver and proved that at the material time of accident the offending vehicle was under possession of all valid documents. However, the Insurance Company 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. Accordingly, by the judgment and order dated 10.10.2019 awarded an amount of Rs. 12,56,000/- (Rupees Twelve lakhs fifty-six thousand) only and directed the appellant to deposit the awarded amount along with the interest @ 9% per annum from the date of filing of the claim petition i.e., from 07.12.2017 until the payment within the period of 30 days from the date of the said order.

6. Being aggrieved, the appellant has preferred this memorandum of appeal. However, the learned counsel for the appellant had confined his argument on the following grounds:

(i) That the learned Tribunal has failed to take into consideration that the claimant has not submitted the disability certificate to establish 60 % disability, as such, the award suffers from miscarriage of justice.

(ii) That the learned Tribunal has failed to consider that the claimant has failed to prove the fault of the driver of the insured vehicle in causing the accident by adducing evidence and thus arbitrarily fastened the liability upon the insurer of the vehicle.

(iii) That the learned Tribunal has erred in law by awarding on the

head – “Future medical expenses” for Rs. 50,000/- which is not in conformity with law as no medical documents has been submitted before the Tribunal regarding the need for future treatment.

(iv) That the learned Tribunal has awarded an interest at the rate of 9 % per annum in violation of law laid down in ***Sarala Verma and others vs. Delhi Transport Corporation and other*** reported in ***(2009) 6 SCC 121*** and the Code of Civil Procedure, 1908, in as much as, the M.V. Act, 1988 under section 171 has not prescribed any specific rate of interest.

7. Based on the grounds stated above, the appellant prays that the impugned judgment and award dated 10.10.2019 passed by the learned Tribunal in MAC case no. 44/2017 be set aside and quashed.

8. Mr. B. N. Sarmah, learned counsel for the respondent submits that 50% of the awarded amount of Rs. 6,28,000/- has already been deposited by the appellant vide cheque No. 226998 dated 09.12.2022 with the Registry and the same was allowed to be withdrawn by the respondent /claimant. Opposing the submission made by the learned counsel for the appellant, the learned counsel for the respondents/claimants has made the following submissions:

(i) As regards the allegation that no fault has been established against the driver as required by section 166 of the MV Act, the learned counsel for the respondent submits that the respondent/claimant who was examined as PW-1 in his

examination-in-chief stated that, on the day of the accident during the course of employment, he was travelling from Dhekiajuli to Tezpur in the vehicle bearing No.AS-01-GC/9161, on the way at Bihaguri in order to save a cattle on the road, the driver of the offending vehicle dragged the vehicle to the extreme road side and due to high speed and rash and negligent driving, the driver failed to control the vehicle. As a result, it fell down into the deep trench and caused him grievous injuries of Poly trauma with pubic Rami fracture with lung contusion on SPC, Fracture of right Zygomatic arch. During cross-examination, he denied the suggestion that the accident dated 19.08.2017 was not the result of rash and negligent driving of the offending vehicle No.AS-01-GC/9161.

(ii) The learned counsel for the respondent further submits that the eye witness of the instant case Mr. Jyoti Prasad Gogoi PW-2 stated that he was an employee of GNRC and working in the ambulance in the offending vehicle No.AS-01-GC/9161 and on 19.08.2017 as an ambulance attendant he was travelling in the said vehicle from Dhekiajuli to Tezpur and on the way at Bihaguri, due to rash and negligent driving of the driver, the vehicle met an accident and fell down into deep trench. At the time of accident, he and the driver somehow escaped with minor injury; however, Shri Pallab Jyoti (claimant) sustained grievous injuries. After the accident they were admitted in the GNRC and were taking treatment. In his cross examination the PW-2 categorically stated and reiterated that the driver was recklessly driving and while

trying to save cattle on the way, he dragged the vehicle to the extreme side of the road and as a result fell down in the deep trench below the road.

(iii) The learned counsel for the respondent submits that from the available evidences before the learned Member, finding of fact about the rash and negligent driving of the driver of the offending vehicle is well established and no counter evidence has been produced by the appellant. Hence, no error has been committed by the learned Tribunal and under the circumstances, the ground taken by the appellant cannot stand. The learned counsel for the respondent further submits that the MACT claim is a summary civil proceeding wherein the claimant is not required to prove the case as in the case of other civil and criminal cases.

9. The learned counsel for the respondent relied on the following decisions of the Hon'ble Apex Court: (1) ***N.K.V Bros (P) Ltd -Vrs- M .Karumai Ammal & Ors*** reported in ***AIR 1980 SC 1354***; (2) ***Janabai WD/O Dinkarrao Ghorpade and Ors Vrs. ICICI Lomabrd Insurance Co. Ltd.*** reported in ***(2022) 10 SCC 512***, wherein the Hon'ble Supreme Court held that *the rule of evidence to prove charges in a criminal trial cannot be used while deciding an application under section 166 of the M.V. Act, 1988 which is summary in nature. And there is no reason to doubt the veracity of the statement of the appellant who suffered injuries in the accident.* (3) ***Union of India And Ors vs. Mrs Saraswati Debnath & Ors*** reported in ***1995 (II) GLT 117***, where the Hon'ble High court held that *the law is settled that in a claim under MV 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 in as much as it is summary enquiry. If there is some evidence to arrive at a finding that itself is sufficient.

10. As regards the allegation that no disability certificate was produced before the learned Tribunal and no amount be awarded for future treatment, the learned counsel for the respondent submits that the said allegation is incorrect, in as much as, in the instant case under order of the tribunal the respondent/ claimant was re-examined by the team of medical board who after thorough examination had ascertained the disability of the claimant at 60% permanent in nature. After examination, the board had issued the certificate and the said certificate issued by the medical board is marked and exhibited as P-13 which remained unrebutted. And when a person is suffering from 60% disability, awarding of future medical expenditures cannot be unreasonable as the respondent/claimant needs future medical treatment for the rest of his life.

11. With regards to the claim of the appellant alleging the award of 9 % interest per annum in violation of the law laid down in ***Sarala Verma and other***(supra), the learned counsel for the respondent submits that by awarding interest at the rate of 9% per annum on the awarded amount, no error has been committed by the learned Tribunal under the provision of law. The provision of law under section 171 of the Motors Vehicle Act readas under: "*Where any claims tribunal allows a claim for*

compensation made under this Act, such Tribunal may direct in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf.'

12. In this regard, the learned counsel for the respondent relied on the following judgments of the Hon'ble Apex Court: (1) ***ICICI Lombard General Insurance Co. Ltd vs Ajay Kumar Mohandy&Anr*** reported in ***(2018) 3 SCC 686***, wherein the Hon'ble Supreme Court while directing a payment of compensation of Rs. 9,10,000/- under various heads had also granted an interest at the rate of 9 per cent per annum from the date of the filing of the petition; (2) ***S. Thangaraj Vs. National Insurance Co. Ltd*** reported in ***(2018) 3 SCC 605***, where the Hon'ble Supreme Court while enhancing the compensation granted by the Tribunal had also granted an interest @9% per annum, on the total amount of compensation; (3) ***BhartibanNayabha Ker &Ors Vs. SidabhaPethabha Manke & Ors*** reported in ***AIR 2018 SC 2728***, whereby the Hon'ble Court while directing for enhancement of the quantum of compensation granted an interest at 9 % per annum from the date of the claim petition.

13. And thus, on the above ground the learned counsel for the respondent prays for dismissal of the appeal with cost.

14. Heard both the learned counsel for the parties. I have also examined the record including the evidences adduced and the documents exhibited and considered. The record reveals that the claimant has exhibited police report as Exhibit P-2 and in his deposition, the claimant (PW-1) stated that on the incident day,

he was travelling from Dhekiajuli to Tezpur in the vehicle bearing registration vehicle No.AS-01-GC/9161. And on the way at Bihaguridue to high speed and rash driving, the driver failed to control the vehicle and in order to save the cattle on the road, he dragged the vehicle towardsextreme side of the road, as a result, the vehicle fell down into the deep trench due to which he received grievous injuries on his person. The PW-2 Jyoti Prasad Gogoi who was an employee of GNRC, working as the ambulance attendance was also travelling in the said vehicle at the time of accident, and he is an eye witness to the incident. In his deposition as PW-2, stated that on the way at Bihaguri due to rash and negligent driving of the driver of the vehicle, the said vehicle met with an accident and fell down into the deep trenches. He further stated that in the said accident, he and the driver of the vehicle somehow escaped with minor injuries, but the claimant sustained grievous injuries for which he was admitted in the GNRC and was taking treatment. The cross examination of the PW-2 could not dislodge his evidence as he reiterated his statement and afirmed that the driver of the vehicle was recklessly driving due to which the vehicle met with accident and fell into the deep trench below the road.

15. As seen that the above evidences of the witnesses has not been rebutted nor any counter evidence has been produced by the appellant. Under the circumstances, there is no reason to disbelieve the veracity of the statement of the claimant who suffered injuries and the eye witness to the incident PW-2 who

also was travelling in the same vehicle and received minor injuries. 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 is without any substances.

16. Now coming to the next ground, the record reveals that on the claims made by the claimant of 60 % disability, the learned Tribunal during the course of trial had directed for re-examination of the claimant by a team of medical board to ascertain the percentage of disability. And pursuant to the said direction of the Tribunal, the team of medical board had re-examined the claimant and ascertained the disability of the claimant at 60% permanent in nature. The said examination report was produced and exhibited as P-13 which has not been rebutted by the appellant. As such, the same stands proved. Needless to say, that when the person is suffering from 60% disability, the awarding of future medical expenditure may not be unreasonable as the disable person would need further medical check-up/treatment/medication etc. from time to time for the rest of his life.

17. 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 subsequent to the decision in ***Sarala Verma and others***(supra) including the decisions in the case in ***ICICI Lombard General Insurance Co. Ltd vs Ajay Kumar***

Mohandy&Anr(supra) and ***S. Thangaraj Vs. National Insurance Co. Ltd***(supra),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 could also not demonstrate before this Court that the submission of the respondent's counsel basing on the above cited decision are untenable in law as well as in facts and circumstances of this case. Therefore, this court is inclined to accept the contention advanced by the respondent counsel.

18. 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.

19. The statutory deposit made, if any, before this Court be returned to the Insurance Company after proper verification.

20. The 50% of the awarded amount deposited by the appellant/ Insurance Company before this Court, if withdrawn by the claimant, the rest amount due to the claimant shall be paid in terms of the impugned judgment and orderdated 10.10.2019 within a period of 6 weeks from today along with the interest.

21. It is also needless to say that if any amount(s) had been paid to the respondent/claimant, the same may also be deducted while satisfying the award.

22. With the above observation, this appeal stands disposed of.

23. Send back the LCR.

Sd/-
JUDGE