GAHC010093532022

2026:GAU-AS:11469

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

Case No. : MACApp./857/2022

JAYANTA KALITA
S/O JATIN KALITA,
PERMANENT RESIDENT OF VILLAGE KHANGIYA, TINGRIMORA GAON, PO DAHOTIA, PS PULIBOR, DIST JORHAT, ASSAM 785617 AND PRESENTLY RESIDING AT VILLAGE GAURIPUR, PO AND PS CHANGSARI, DIST KAMRUP R ASSAM 781101

VERSUS

HDFC ERGO GENERAL INSURANCE COMPANY LTD.
REPRESENTED BY ITS BRANCH MANAGER, JORHAT BRANCH, SITUATED AT 2ND FLOOR ,N.K HEIGHT GARALI, PO AND PS JORHAT, ASSAM 785001

Advocate for the Petitioner : MR. R Deka, MR A CHOUDHURY,S I AKAND

Advocate for the Respondent : MR. K K BHATTA (r-1),

B E F O R E

HON'BLE MRS. JUSTICE YARENJUNGLA LONGKUMER

For the Appellant : Mr. S I Akand

For the Respondent : Mr. K K Bhatta

Date on which Judgment is reserved : NA

Date of pronouncement of Judgment : 13.08.2026

Whether the pronouncement is of the operative part of the judgment? : NA

Whether the full judgment has been pronounced? : Yes

JUDGMENT & ORDER (ORAL)

Heard Mr. S I Akand, learned counsel for the appellant and Mr. K K Bhatta, learned counsel for the respondent/Insurance Company.

2. The instant appeal under Section 173 of the Motor Vehicles Act, has been preferred by the claimant against the impugned judgment & order dated 05.03.2022, passed by the learned Member, Motor Accident Claims Tribunal, Kamrup (Rural) at Amingaon in MAC Case No. 172/2019, praying for enhancement and modification of the compensation amount.

3. The main ground taken by the appellant, herein, is that in the accident, which occurred on 06.01.2019, the appellant had completely lost the vision of his right side eye by causing 30% permanent visual disability. However, the learned Tribunal by holding that the appellant was a Government service holder held that he has not suffered any loss of income due to his disability, as the claimant/appellant had been receiving his full monthly salary in spite of his disability. Therefore, no award was made by the Tribunal towards loss of

income.

4. Another ground which the appellant has taken, herein, is that the learned Tribunal has not awarded any amount for transportation expenses and medical attendants. Even for pain and suffering and loss of amenities, only a minimum amount has been awarded by the Tribunal.

5. The learned counsel for the appellant also states that the learned Tribunal has not awarded any compensation for loss of expectation of normal life, as observed by the Hon'ble Supreme Court in the case of ***K. Suresh Vs. New India Assurance Co. Ltd. and Another*** in Civil Appeal No. 7603/2012.

6. Learned counsel also submits that in view of the judgment of the Hon'ble Supreme Court in the case of ***Uttar Pradesh Road Transport Corporation Vs. Vibhor Fialok and Another*** in Civil Appeal No(s). 1337-1338 of 2019., the appellant should have been awarded some amount for conveyance charges, future medical expenses and for disfigurement.

7. Learned counsel, therefore, prays that this Court may suitably modify the impugned judgment and award and suitably enhance the award under the head of pain and suffering, loss of amenities, diet and nutrition and also award suitable compensation for transportation charges and for medical attendants.

8. Learned counsel submits that during the course of treatment after the accident, he has spent 3 (three) months in the hospital, wherein, he has incurred expenditure for his traveling expenses, attendant charges and special diet for which he is unable to submit documents, but this Court may award some amount under such heads, as held in the case of ***Vibhor Fialok and Another*** (supra).

9. Learned counsel for the appellant has also drawn the attention of this Court to the Disability Certificate, which is Ext.9 in the Trial Court records. He submits that the Disability Certificate is dated 15.06.2019, whereas, the accident occurred on 06.01.2019 and therefore, it is evident that the disability was caused due to the accident.

10. On the other hand, the learned counsel for the respondent/Insurance Company submits that the learned Tribunal had rightly awarded the compensation and that there is no infirmity in the impugned judgment and award. He states that the claimant/appellant was a Government employee and he had not suffered any loss of income due to the accident and even during his treatment period, he was paid his normal salary.

11. As far as the disability is concerned, no doctor was examined and further, even in spite of the loss of vision by 30%, the evidence shows that the claimant is able to continue his normal activities and in the evidence, the claimant had stated that he had received full salary during the leave period.

12. Learned counsel also submits that before the Tribunal, the claimant had deposed in his evidence that he had not surrendered his driving licence, which would mean that there is no disability on the part of the claimant.

13. As far as the purported expenses of about Rs.8,00,000/- during the treatment along with traveling expenditure, attendants charges and special diet etc., the claimant has not been able to submit any documents before the Tribunal and accordingly, the Tribunal had rightly calculated only those cash memos and traveling bills and lodging bills for an amount of Rs.1,33,697/-, which was produced and exhibited by the claimant. The claimant had also

exhibited the Discharge Certificate from Sri Sankardeva Nethralaya as Ext.14, where there is an observation that his condition was satisfactory and hence, he was permitted to be discharged on 20.01.2019.

14. Learned counsel, therefore, submits that the claimant/appellant has not been able to make out any case for the interference of this Court under Section 173 of the M.V. Act.

15. This Court has gone through the pleadings, the Trial Court records and also considered the submissions of the learned counsels for the parties.

16. Regarding the factum of the accident and the injury caused to the claimant/appellant, it has been well established and it is also not denied by the respondent either.

17. Upon going through the impugned judgment and award, this Court has observed that the learned Tribunal had rightly come to a finding that there was no loss of income, as far as the claimant was concerned, because he was working as a Constable at S.P. Office, Golaghat at the time of his accident and upon cross-examination, he has stated that he resumed his normal duties and that he attended office regularly. He has also admitted in his cross-examination that he could read the contents of Exhibits 5 and 6 properly when shown to him. The claimant/appellant also stated that he had availed leave for 3 (three) months from duty during his treatment. However, it was admitted that he had received his full salary during the course of the leave period. The Tribunal therefore, had rightly come to the finding that there was no loss of income and has not awarded any amount under the Head of loss of income and this Court does not find any illegality in the said findings.

18. With regard to the award under pain and suffering, loss of amenities and diet and nutrition, the learned Tribunal had come to a finding that the claimant/appellant had deposed during his evidence that he spent about Rs.8,00,000/- for his treatment, traveling expenditure, attendant charges, special diet etc., but he was unable to submit documents due to misplacement during the course of his treatment. Accordingly, the learned Tribunal had only awarded the actual amount of Rs.1,33,697/- for which the claimant/appellant could produce the cash memos and the bills. However, this Court finds that there is no rebuttal by the respondent/Insurance Company regarding the fact that the claimant had been under treatment for 3 (three) months in the hospital after the accident. Therefore, this Court is of the view that the award under pain and suffering should be enhanced to Rs.1,00,000/- (rupees One Lakh) only.

19. It is also an admitted fact that the claimant/appellant is now lost his vision by 30% and obviously, the same would lead to some loss of expectation of normal life. Therefore, an amount of Rs.50,000/- towards loss of amenities would be appropriate in the present case. Another amount of Rs.50,000/- is awarded as conveyance and attendant charges.

20. This Court is however not inclined to interfere with the awarded amount under the Head of diet and nutrition.

21. With the above observation, the total awarded amount would now be modified to Rs. 3,33,697/- (rupees Three Lakhs Thirty Three Thousand Six Hundred Ninety Seven) and with the said modification, the instant appeal is disposed of.

22. The respondent/Insurance Company HDFC ERGO General Insurance

Company Limited shall deposit the additional amount of Rs. 1,20,000/- (rupees One Lakh Twenty Thousand) before the learned Tribunal, within 6 (six) weeks from today, with interest @6% per annum from 12.04.2021.

23. Registry shall send back the Trial Court records forthwith.

JUDGE

Comparing Assistant

Pratibha Baruah