GAHC010212192013

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

Case No. : MACApp./187/2013

RANJIT MALLA BARUAH,
S/O SRI SURESH MALLA BARUAH, R/O HENGRABARI MARKET,
GUWAHATI 781036, DIST. KAMRUP M, ASSAM.

VERSUS

THE D.M. , UNITD INDIA INSURANCE CO. LTD. and ANR,
BHANGAGARH, GUWAHATI-5

2:RAGHUNATH DEKA

S/O SRI N. CH. DEKA
GUWAHATI-5
OWNER OF THE VEHICLE NO. AS-01-J-238

Advocate for the Petitioner : MR.P DAS

Advocate for the Respondent : MR.P J SAIKIA

BEFORE

THE HON'BLE MR. JUSTICE PRASANTA KUMAR DEKA

ORDER

10.12.2020.

Heard Mr. S. Das, the learned counsel for the appellant. Also heard Ms. M. Choudhury, the learned counsel for the respondent No. 1.

This appeal under Section 173 of the Motor Vehicle Act, 1988 is against the Judgment and Award dated 26.11.2012 passed in MAC Case No. 2991/2006 by the learned Member, Motor Accident Claims Tribunal, Kamrup at Guwahati.

The claimant appellant on 21.07.2016 while driving a motorcycle along with one Sri Rupjyoti Kalita from Guwahati Club in the city of Guwahati towards Barowary, a City Bus bearing registration No. AS-01-J-2389 coming from the opposite direction in a rash and negligent manner and trying to overtake another vehicle hit the motorcycle of the appellant following which both the appellant and Sri Rupjyoti Kalita sustained grievous injuries. The appellant was admitted in the Down Town Hospital on 21.07.2016 and he was discharged on 31.07.2006 following his injuries resulting from the said motor vehicular accident. The appellant filed a claim petition and same was contested by the present respondent Insurance Company. The driver of the offending vehicle did not contest the case which proceeded ex-parte against him. The owner of the vehicle who was impleaded as opposite party No. 1 in the claim petition in his written statement denied all the averments made by the claimant. The learned Tribunal vide the impugned Judgment and Award dated 26.11.2012 awarded a total sum of Rs. 1,51,880/- breakup of which is shown hereinbelow:-

Medical expenditure	:	Rs. 106,880.00
Pain, shock and suffering etc	:	25,000.00
Incidental expenses	:	20,000.00
Total	:	Rs. 1,51,880.00

The amount is round off to Rs.1,52,000/-

Being aggrieved by the impugned Judgment and Award, the appellant has filed this appeal seeking for enhancement. The main ground stated by Mr. Das, the learned counsel for the appellant is non consideration of the permanent disability suffered by the claimant appellant though the disability certificate Exhibit-8 was very much produced and exhibited supporting the fact of disablement of the claimant by 50%.

On perusal of the impugned award it is found that the claimant did not examine the Doctor who issued the disability certificate and accordingly, the learned Tribunal did not

accept the said Exhibit-8, disability certificate. It is the contention of Mr. Das, that the learned Tribunal failed to consider the said Exhibit -8 though the same was marked as Exhibit-8 in respect of the claim of the appellant claimant.

The said contention of Mr. Das is countered by Ms. Choudhury the learned counsel for the respondent No. 1. Referring Exhibit-2, the discharge certificate issued by the Down Town Hospital, Guwahati it is submitted that at the time of discharge nowhere it was opined that the appellant suffered permanent disability to the extent of 50%. The appellant was discharged on 31.07.2006. Referring Exhibit-8, Ms. Choudhury submits that the said disability certificate was issued on 19.01.2008 i.e. almost one and half years after the appellant was discharged from the hospital. The claimant did not examine Dr. Pawan Kr. Padmapati who issued the disability certificate to prove the same. Under such circumstances, the learned Tribunal has rightly discarded the Exhibit-8. In support of the contention and findings of the learned Tribunal, Ms. Choudhury relies the case law of ***Raj Kumar –Vs- Ajay Kumar & Anr*** reported in ***(2011) 1 SCC 343*** and submits that the Apex court noted that the Tribunal should act with caution, if it proposed to accept the expert evidence of doctor who did not treat the injured but who gave 'ready to use' disability certificate, without proper medical assessment. Accordingly it was held that the learned Tribunal is required to take the evidence of the doctor who treated the injured or who assessed the permanent disability. Mere production of a disability certificate shall not be the proof of the extent of disability stated therein unless the doctor who treated the claimant or who medically examined and assessed the extent of disability of claimant is tendered for cross-examination in order to prove the certificate. Citing the said ratio, it is the contention of Ms. Choudhury that there is no failure of jurisdiction on the part of the Tribunal while passing the impugned award.

I have given due consideration to the submissions of the learned counsel. In the present case in hand, the doctor who issued the Exhibit-8, the disability certificate did not come and prove the contents of the said disability certificate. There is not even a single statement made in the claim petition that after release of the claimant from Down Town Hospital on 31.07.2006, he was under the treatment of the concerned doctor who issued the permanent disability certificate. Mere submission of the certificate marking as Exhibit-8 does

not prove the contents of the certificate. The author of the certificate forming an opinion on the basis of the some materials is required to prove that on the basis of those materials the opinion was given in the certificate. The materials on the basis of which the author had drawn the opinion must come before the court and prove the contents of the certificate which he issued. In the present case in hand, it is totally unbelievable that the appellant was under treatment of the doctor who issued the permanent disability certificate. Though the certificate shows that author treated the present applicant but as the author doctor himself failed to come and prove the said certificate as such the certificate and the contents thereof cannot support the case of the appellant. The Apex Court in ***Raj Kumar –Vs- Ajay Kumar & Anr*** reported in ***(2011) 1 SCC 343*** (supra) held that the Tribunal is not bound to accept any disability certificate unless the same is proved by the doctor concerned who treated the concerned person and issued in favour of him the disability certificate. Under the present factual matrix, considering the aforesaid ratio, I do not find any merit in the present appeal and accordingly the same stands dismissed.

Send back the LCRs.

JUDGE

Comparing Assistant