

GAHC020005772023

2025:GAU-NL:385



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

Case No. : MACApp./3/2023

NATIONAL INSURANCE CO. LTD
THE DIVISIONAL MANAGER, DIMAPUR NAGALAND

VERSUS

SHRI SANJIB SAIKIA AND ANR
S/O HAREN SAIKIA TUENSANG TOWN, NAGALAND

2:SHRI SOMNATH DAS
S/O SHYAM SSUNDER DAS
WARD NO. 10
GOPINAGAR COLONY
P.O. NORTH LAKHIMPUR
ASSAM
787001
OWNER OF VEHIVLE REGD NO. AS-22-D/2169(MAHINDRA BOLERO

Advocate for the Petitioner : MOAJUNGLA, THUYEKHRULU,YANGPILA,SETALU

Advocate for the Respondent : B. N. SARMAH, NONGOSA,IMTIWAPANG

BEFORE
HON'BLE MR. JUSTICE RAJESH MAZUMDAR

JUDGMENT & ORDER (ORAL)

18.08.2025

Heard Ms. Moajungla, learned counsel for the appellant. Also heard Mr. B.N. Sarma, learned counsel for the respondents.

2. The instant appeal, preferred by the Insurer of the ill-fated vehicle involved in a road traffic accident, is arising from the judgment and award dated 12.07.2023 in MAC Case No. 26/2019 whereby the learned Member, Motor Accident Claims Tribunal, Tuensang, Nagaland had awarded an amount of Rs. 20,51,000/- along with interest @7.5% from the date of filing the claim petition, *i.e.*, 30.09.2019. The appeal was admitted by Order dated 11.12.2023 of this Court and the LCR have been received on requisition.

3. The brief facts leadings to the filing of this appeal is that the claimant, accompanied by another person, claimed to have been riding on a motorcycle bearing No. AS-22D-2169 to their residence at Kechukhana Kacharigaon when near Chauldhowa Police Station, the offending vehicle bearing Registration No. AS-07E-4961 came from the opposite side and knocked down the motorcycle. Due to the aforesaid road traffic accident the claimant claimed to have sustained grievous injury and he had to undertake treatment at different places incurring a huge amount of expenditure, and it was also claimed that he had become permanently disabled due to the injuries arising out of the road traffic accident.

4. The claimant had thereafter filed MAC Case No. 26/2019 in the Motor Accident Claims Tribunal, Tuensang, Nagaland. The pleadings having been complete, the following issues were framed by the learned Tribunal:

Issue No. 1. Whether the claimant involved in the accident dated 21.04.19 and sustained grievous injuries due to sole rash and negligent driving of the driver of the offending vehicle No. AS-07E-4961 and become permanently disabled?

Issue No. 2. Whether at the material time of accident the vehicle was possessing all valid documents as per law?

Issue No. 3. Whether the claimant prove his age and income?

Issue No. 4. Whether the claimant is entitled to any compensation? If yes?
What amount, and payable by whom?

The claimant examined himself as PW-1 and no defense witnesses were examined by the opposite parties despite opportunities having been granted. In its judgment delivered on 12.07.2023, the learned Tribunal answered the first issue in favour of the claimant. The second issue was also settled in the affirmative. With regard to the third issue the Tribunal accepted the age of the petitioner to be 21 years and considered Rs. 12,000/- per month as income to be reasonable for assessment of compensation. While computing the entitlement of compensation the learned Tribunal awarded as follows:

(i) The monthly income Rs. 12,000/-X = Rs. 16,84,800/-

12 X 18 X 65%

(ii) *Medical expenditures* = Rs. 2,56,200/-

(iii) *Pain and suffering* = Rs. 30,000/-

(iv) *Frustration, discomfort &* = Rs. 50,000/-

shortening of life.

(v) *Future medical expenditures* = Rs. 30,000/-

Total = Rs. 20,51,000/-

(Rupees Twenty Lakhs Fifty One Thousand) only.

The learned Tribunal also awarded interest @ 7.5% per annum from the date of filing of the claim until payment.

5. Ms. Moajungla, learned counsel for the appellant/Insurer submits that though the appellants have filed this appeal challenging the entire Judgment and Order dated 12.07.2023 passed in MAC Case No. 26/2019, the grievance of the appellants is essentially with regard to the effect that the learned Tribunal had assessed the disability of the petitioner at 65% for life, *i.e.*, permanent disability of 65%, whereas the claimant had produced certificate which certified that the disability suffered by the petitioner was of a temporary nature and was required to be reviewed on a yearly basis. She argued that a close look at the disability certificate, which was exhibited as Exhibit P-9 in the proceedings before the learned

Tribunal would reveal that the disability allegedly suffered by the petitioner was non-progressive and a re-assessment of the disability was recommended after one year. The certificate was specifically made valid till 2023. She has drawn the attention of this Court to the Judgment rendered by the Hon'ble Supreme Court in the case of **Raj Kumar versus Ajay Kumar** reported in **(2011) 1SCC 343** to re-emphasize that it was the duty of the learned Tribunal to first decide whether the claimant had suffered any permanent disability and if so the extent of such permanent disability. This, the learned counsel submits would mean that the Tribunal should consider and decide with reference to material evidence as to-

*"9. ...(i) whether the disablement is permanent or temporary; (ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement, (iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person. If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity."***(Raj Kumar versus Ajay Kumar, supra)**

6. She further argued that a perusal of the judgment rendered by the learned Tribunal would show that there was no attempt made by the Tribunal to assess the extent of the disability suffered by the claimant and further there was no attempt by the Tribunal to find out whether any loss of income had been suffered by the claimant because of such permanent disability. She further submitted that the Judgment and Order passed by the learned Tribunal in the connected MAC Case deserves interference of

this Court to the extent of being set aside.

7. On the other hand, Mr. B.N. Sarma has argued that this appeal is not maintainable in its present form and deserves outright dismissal. The learned counsel appearing for the respondents has drawn the attention of this Court to the judgment and order of the Hon'ble Apex Court in the case of ***National Insurance Co. Ltd., Chandigarh Versus Nicoletta Rohtagi and Others*** reported in ***(2002) 7 SCC 456***. He has referred to the following paragraphs.

"25. We have earlier noticed that motor vehicle accident claim is a tortious claim directed against tortfeasors who are the insured and the driver of the vehicle and the insurer comes to the scene as a result of statutory liability created under the Motor Vehicles Act. The legislature has ensured by enacting Section 149 of the Act that the victims of motor vehicle are fully compensated and protected. It is for that reason the insurer cannot escape from its liability to pay compensation on any exclusionary clause in the insurance policy except those specified in Section 149(2) of the Act or where the condition precedent specified in Section 170 is satisfied

26. For the aforesaid reasons, an insurer if aggrieved against an award, may file an appeal only on those grounds and no other. However, by virtue of Section 170 of the 1988 Act, where in course of an enquiry the Claims Tribunal is satisfied that (a) there is a collusion between the person making a claim and the person against whom the claim has been made or (b) the person against whom the claim has been made has failed to contest the claim, the tribunal may, for reasons to be recorded in writing, implead the insurer and in that case it is permissible for the insurer to contest the claim also on the grounds which are available to the insured or to the person against whom the claim has been made. Thus, unless an order is passed by the tribunal permitting the insurer to avail the grounds available to an insured or any other person against whom a claim has been made on being satisfied of the two conditions specified in Section 170 of the Act, it is not permissible to the insurer to contest the claim on the grounds which are available to the insured or to a person against whom a claim has been made. Thus where conditions precedent embodied in Section 170 is satisfied and award is adverse to the interest of the insurer, the insurer has a right to file an

appeal challenging the quantum of compensation or negligence or contributory negligence of the offending vehicle even if the insured has not filed any appeal against the quantum of compensation. Sections 149, 170 and 173 are part of one Scheme and if we give any different interpretation to Section 173 of the 1988 Act, the same would go contrary to the scheme and object of the Act.

31. *We have already held that unless the conditions precedent specified in Section 170 of 1988 Act is satisfied, an insurance company has no right of appeal to challenge the award on merits. However, in a situation where there is a collusion between the claimants and the insured or the insured does not contest the claim and, further, the tribunal does not implead the insurance company to contest the claim in such cases it is open to an insurer to seek permission of the tribunal to contest the claim on the ground available to the insured or to a person against whom a claim has been made. If permission is granted and the insurer is allowed to contest the claim on merits in that case it is open to the insurer to file an appeal against an award on merits, if aggrieved. In any case where an application for permission is erroneously rejected the insurer can challenge only that part of the order while filing appeal on grounds specified in sub-sections (2) of Section 149 of 1988 Act. But such application for permission has to be bona fide and filed at the stage when the insured is required to lead his evidence. So far as obtaining compensation by fraud by the claimant is concerned, it is no longer res integra that fraud vitiates the entire proceeding and in such cases it is open to an insurer to apply to the Tribunal for rectification of award."*

8. Going further, the learned counsel for the respondents has referred to the Judgment and Order of the learned Tribunal to emphasize that the claimant had undergone an examination by a medical board constituted under orders of the Tribunal to assess his present disability. Such examination was undertaken on 02.07.2022 and the competent authorities had certified the disability of the petitioner as follows: "Permanent physical impairment/disability- 65%".

9. The learned counsel for the respondents has also drawn the attention of this Court to the evidence filed by the claimant before the

learned Tribunal, where a specific stand had been taken that the claimant had suffered permanent disability injuries arising out of the traffic accident. He drew our attention to the fact that the evidence of the claimant remained unshaken during the proceedings even in cross-examination and it was not the case of the appellants herein that the certificate relied upon by the Tribunal was either fake or a forged certificate. He emphasized that, in fact, such certificate was issued by a Board constituted by the Tribunal itself and when the said Board has assessed the disability to be of a permanent nature and as 65% it would not lie in the mouth of the Insurance Company to challenge the said certificate or to challenge the decision passed on such a certificate.

10. I have duly considered the submissions made by the parties and I have also perused the records available.

11. The maintainability of this appeal having been questioned at the outset by the learned counsel for the claimant, the said issue is being taken up first.

12. The records requisitioned from the Tribunal show that a vakalatnama and a written statement was filed on behalf of the insurer on 25-09-2021. When the said documents were produced, it was revealed that verification of the written statement was not dated. Shockingly, even in the affidavit supporting the written statement, the relevant portion at paragraph 2, which related to quoting of the paragraphs of the written statement which

were stated to be true as per records or as per knowledge was also left blank. The date on which the affidavit was purportedly sworn was also left blank. There is no identification of the deponent by an advocate. Such careless attitude of the insurer cannot be approved. It is apparent that no effective steps were taken by the insurer to defend its interest. It is also noted that the insurer, in the proceedings before the Learned Tribunal, did not make any prayer for leave to resist the claim on grounds other the statutory grounds and in the absence of such prayer, no such leave was granted to the insurer.

The law with regard to the option available to the insurer to file an appeal against a judgment and award of a Motor Accidents Claims Tribunal is well-settled.

13. In ***Bijoy Kumar Duggar Versus Bidyadhar Dutta*** reported in **(2006) 3 SCC 242**, the Hon'ble Apex Court held as follows:

"Under Section 173 of the Act, an insurer has a right to file an appeal before the High Court on limited grounds available under Section 149(2). The appeal being a product of the statute it is not open to an insurer to take any plea other than those provided under Section 149(2) of the Act. However, in a situation where there is collusion between the claimant and the insurer or the insured does not contest the claim and further, if the MACT does not implead the Insurance Company to contest the claim, in such a situation it is open to the insurer to seek permission of the MACT to contest the claim on the ground available to the insured or to a person against whom the claim has been made. If permission is granted and the insurer is allowed to contest the claim on merit, in that case it is open to the insurer to file an appeal against the Award of the MACT on merits".

14. It follows from the above discussion that unless a Tribunal allows, for reasons to be recorded, in writing, the insurer cannot contest the claim proceeding on merits or on any grounds other than the statutory defences

available to the insurer in terms of sub-section (2) of Section 149. The Apex Court in ***Shankarayya and Another Vs. United India Insurance Co. Ltd. and Another*** reported in ***1998 (3) SCC 140*** , wherein the Apex Court has observed and held as follows:-

"4. It clearly shows that the Insurance Company when impleaded as a party by the Court can be permitted to contest the proceedings on merits only if the conditions precedent mentioned in the section are found to be satisfied and for that purpose the Insurance Company has to obtain order in a writing from the Tribunal and which should be a reasoned order by the Tribunal. Unless that procedure is followed, the Insurance Company cannot have a wider defence on merits than what is available to it by way of statutory defence. It is true that the claimants themselves had joined Respondent 1, Insurance Company in the claim petition but that was done with a view to thrust the statutory liability on the Insurance Company on account of the contract of the insurance. That was not an order of the Court itself permitting the Insurance Company which was impleaded to avail of a larger defence on merits on being satisfied on the aforesaid two conditions mentioned in Section 170; Consequently, it must be held that on the facts of the present case, Respondent 1, Insurance Company was not entitled to file an appeal on merits of the claim which was awarded by the Tribunal."

15. Keeping in mind that an appeal is nothing, but an extension of suit, when an insurer has not been permitted by the Tribunal to contest the claim on merit in terms of Section 170, the limitations imposed on the insurer continue even when it prefers an appeal under Section 173 and merely on the ground that the award, rendered by the Tribunal, has not been contested by the person against whom the claim was made or that there is collusion between the claimant and the person against whom the claim is made, the insurer cannot prefer an appeal on merit or challenge the quantum of compensation. When the insurer had not sought permission under Section 170 or had not been granted permission to contest the claim on merit, the insurer cannot be allowed to prefer an appeal against the award and challenge the same on merit i.e., on grounds

other than those, which were available to the insurer under sub-section (2) of Section 149. (***New India Assurance Co.Ltd. Versus Phelishsa Bakai***, reported in **2006 (1) GLT 282**).

16. Though the insurer is not entitled to prefer this appeal on the grounds it has sought to take, nevertheless, during the course of the proceedings, this Court had to peruse the award made by the Tribunal. The perusal of the records of the learned Tribunal would go ahead to show that a specific petition was preferred by the claimant for constitution of a medical board for determination of the present permanent disability of the claimant and to submit a report. Accordingly, the learned Tribunal had directed for constitution of the board and the board had given its report vide certificate No. 381 dated 02.07.2022 which was exhibited as Exhibit P-9 in the proceedings before the Tribunal. A perusal of the certificate reveals that the claimant has been certified to be suffering from 65% permanent physical impairment/disability by 3 doctors of the District Hospital, Tuensang. It is further seen that the learned Tribunal in the impugned Order has discussed not only the contents of the certificate of disability which was given after assessment as per orders of the Tribunal itself but the learned Tribunal has also discussed that there was no dispute whatsoever of the opposite party with regard to the disablement certificate of the injured claimant. This Court, therefore, does not find that the Tribunal has committed any mistake in accepting the certificate of disability issued by a board of doctors convened under the orders of the Tribunal.

17. With regard to the reliance of the learned counsel for the appellants placing on *Raj Kumar Versus Ajay Kumar and Another (Supra)* it is noticed

that the requirement laid down by the said judgment has been substantially complied with by the learned Tribunal. This Court is however constrained to observe that the learned Tribunal did not make any attempt to find out as to whether the permanent disability arising from the injuries sustained in the road traffic accident led to any loss of earning capacity on the part of the claimant. The learned Tribunal failed to notice that it is not the percentage of disability which is important in assessing the compensation to be awarded rather the percentage of loss of earning capacity is what is necessary. In *Raj Kumar Versus Ajay Kumar and Another (Supra)* the Hon'ble Apex Court has held as under:

"13. We may now summarise the principles discussed above:

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors."

18. In view of the above, this Court finds that the learned Tribunal had committed an error in assessing the amount of compensation under the heading of loss of income. We have noticed that the injuries because of which the claimant suffered physical disability to the extent of 65% related to the compound fracture of the orbital roof with fracture of the

nasal bone. The claimant adduced evidence that he was a painter by profession and he stated that he could not climb for the painting job. Therefore it would be safe to presume that he would have lost 50% of his income due to the injuries sustained. Therefore, the percentage of loss of income under the 1st heading of decision to issue no 4 of the award passed by the Ld Tribunal is modified from "12,000 X 12 X 18 X 65% =Rs 16,84,800/-" to "12,000 X 12X18 X 50% = 12,96,000/-". The compensation and other benefits awarded by the Ld. Tribunal under the other heads in the said clause do not require any modifications.

19. In the result, the appeal preferred by the insurer being not sustainable in law, is dismissed. However, the relevant portion of the compensation to which the claimant would be entitled to is modified to the extent indicated in the preceding paragraph. The compensation awarded to the claimant shall now stand at 16,62,200/-, further the claimant shall be entitled to the interest @7.5% per annum to the awarded amount from the day of filing of the claim petition i.e. from 30.9.2019 until realization of the awarded amount from the opposite parties. The appellant is directed to pay the compensation to the claimant within a period of thirty days from today, adjusting any amount that has already been paid.

20. Send back the LCR along with the copy of this Order for records.

JUDGE

Comparing Assistant