

(2023) 05 GAU CK 0032
In the Gauhati High Court
Case No : MACApp. No. 249 Of 2013

Abdul Motin

APPELLANT

Vs

Girish Bura Gohain And 2 Ors.

RESPONDENT

Date of Decision : 10-05-2023

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2023) 05 GAU CK 0032

Hon'ble Judges : Malasri Nandi, J

Bench : Single Bench

Advocate : J John

Final Decision : Partly Allowed

Judgement

1. Heard Mr. K.K. Bhatta, learned counsel for the respondents. None appears for the appellant/claimant.
2. The claimant as appellant has filed an appeal under Section 173 of M.V. Act, 1988 against the impugned judgment and order dated 26.03.2013 passed by the learned Member, MACT, Sivasagar in MAC Case No. 32/2011.
3. The appellant/claimant filed an application before the learned Member, MACT, Sivasagar, claiming amount of Rs.15,00,000/- as compensation due to his injuries sustained in motor vehicle accident which made him physically handicapped with 40% eye disability but the learned Member, MACT, Sivasagar without considering the 40% permanent disability of his eyes and without even going to question of future income, awarded a meager amount of Rs. 10,000/- as compensation. There is not even whisper about the eye disability in the award.
4. The facts giving rise to the present appeal is that on 27.02.2011 at about 10.30 p.m., the appellant/claimant along with his family members while traveling in a bus bearing Regd. No. AS-04-E-0702(bus), which met with an accident due to driving of the vehicle by the driver in a rash and negligent manner in front of Bir Lachit College, Sivasagar. The said vehicle met with another accident prior to

the present accident at Betbari Tiniali, Sivasagar on the same day. After the first accident at Betbari Tiniali, the driver of the vehicle did not stop the vehicle and drove with a high speed for which the second accident took place and as a result of which the appellant/claimant suffered grievous injuries on his eyes. The claimant/appellant visited numerous hospitals for his treatment spending thousands of rupees but as the impact of the accident was so high he had left with visibility disablement to the extent of 40%. Hence, this appeal.

5. The learned counsel for the appellant/claimant did not appear to argue the matter though the case was fixed for hearing on several dates. However, learned counsel for the insurance company, Mr. K.K. Bhatta has argued that though the claimant has alleged that due to the alleged accident, he sustained injuries on his eyes having 40% disability but no any medical document has been produced by the claimant during trial as such, the learned trial court has rightly passed the order awarding Rs.10,000/- as compensation.

6. I have gone through the case record and the documents available therein. As per claim petition, the accident occurred on 27.02.2011. On the same day, the claimant was admitted to Sivasagar Civil Hospital and discharged on 28.02.2011 vide Ext. 2, from which it cannot be ascertained which part of the body, the claimant sustained injuries. However, the claimant was advised to do ex-ray of left shoulder and chest and CT scan of brain. One xerox copy of the report of CT scan brain of the claimant is available in the record vide Ext.2(iv), which reveals that the claimant sustained comminuted and depressed fracture in left parietal bone. Ext. 2(v) is the discharge certificate which shows that the claimant was admitted to Assam Medical College Hospital, Disbrugarh on 28.02.2011 and discharged on 05.03.2011. On examination, doctor found head injury following road traffic accident. As per medical report available in the record, it reveals that the claimant sustained grievous injury on his head due to fracture on the parietal bone. The claimant also submitted some prescriptions of Sankaradeva Nethralaya dated 22.03.2011, wherein on examination of the claimant, doctor advised him to use spectacle with bifocal lens.

7. To prove 40% disability in his eyes, the claimant/appellant exhibited one document vide Ext.6 i.e. identity card for person with disability issued by Joint Director of Health Services, Sivasagar, from which it reveals that disability identity card was issued on 04.12.2012 and which was valid up to two years, nature of disability shows as eye and degree of disability 40%. But from Ext. 6, it cannot be ascertained when the claimant was examined by the Board of Doctors to assess the disability of the claimant. The person who issued Ext. 6 was not examined in the case. None of the doctors were examined who were present at the time of examination of the claimant and assessed the disability of the claimant as 40%.

8. In the case of Rajkumar -Vs- Ajay Kumar and Another reported in (2011) 1 SCC 343, it is clearly mentioned by the Hon'ble Apex Court that-

“Tribunal should also act with caution if it proposed to accept the expert evidence of the doctors who did not treat the injured, but who give ready to use disability certificates, without proper medical assessment. There are several instances of unscrupulous doctors, who without treating the injured, readily give liberal disability certificates, to help the claimants. But where the disability certificates are given by duly constituting Medical Boards, they may be accepted subject to evidence regarding the genuineness of such certificates. The Tribunal may invariably make it a point to require the evidence of the doctor, who treated the injured or who assessed the permanent disability. Mere production of disability certificate or discharge certificate will not be a 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 the claimant, is tendered for cross-examination with reference to the certificate.”

9. Reverting back to the present case, if we consider the aforesaid judgment of the Hon’ble Supreme Court, it can be said that the direction of the Hon’ble Supreme Court has not been followed in this case. The doctor who assessed the disability of the claimant/appellant was not examined in this case. Though, the claimant/appellant exhibited an identity card of disability vide Ext.6 but it is not proved in true sense of the assessment of the disability due to non-examination of the doctor who assessed the disability of the appellant/claimant. Apart from that no any disability certificate is produced or exhibited in the case. Hence, the learned trial Court has rightly opined that the claimant sustained some injuries due to the alleged accident but he has failed to prove the 40% disability vide Ext.6 as alleged in his claim petition.

10. As the claimant appellant had sustained grievous injuries on his head, he is entitled to Rs. 25,000/- for pain and suffering and another Rs. 25,000/- for loss of amenities. The claimant is also entitled for expenses of medical treatment amounting to Rs.4,723/-.

11. In the result, appeal is partly allowed. The Judgment and Award dated 26.03.2013, passed by the learned Member, MACT, Sivasagar, in MAC Case No. 32/2011, is modified to the extent indicated above. The New India Assurance Co-Ltd. is directed to deposit the amount of Rs. 54,723/-(Rupees Fifty Four Thousand Seven Hundred Twenty Three Only), in the savings account of the claimant/appellant, through NEFT. The claimant/appellant is directed to produce his bank details of any nationalized bank to the Insurance Company for necessary payment. The amount of Award shall carry an interest @ 6% per annum from the date of filing of the case till realization. Any amount paid earlier shall be adjusted accordingly.

12. Return the LCR.