
(2005) 01 GAU CK 0006
In the Gauhati High Court

Gopinath Ghosh

APPELLANT

Vs

Jasuda Debnath and Others

RESPONDENT

Date of Decision : 28-01-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 166, 173

Citation : (2007) 1 GLR 799 : (2005) GLT 278 Supp

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Judgement

I.A. Ansari, J.—This appeal u/s 173 of the Motor Vehicles Act (hereinafter referred to as the "M.V. Act") has arisen out of the judgment and award, dated 24.11.1998, passed, in T.S. (MAC) No. 264/94, by the learned Member, Motor Accident Claims Tribunal, West Tripura, Agartala.

2. The case of the claimant, as unfolded before the learned Tribunal, may, in brief, be stated as follows:

On 26.9.1994, when the claimant was travelling by vehicle bearing registration No. TR-01-2505, which was being driven at high speed, the same collided against another vehicle bearing registration No. TRS-668, which was coming driven at high speed from the opposite direction. As a result of the collision, the claimant sustained injuries on his head and other parts of his body, he was shifted to G.B. Hospital and remained under treatment there till 30.10.1994. Even after discharge from the G.B. Hospital, the claimant has remained under treatment, at Kolkata as well as at Agartala, for injuries sustained by him, the injuries so sustained by the claimant included fracture of one of his arms and damage to his teeth. The claimant accordingly applied u/s 166 of the M.V. Act seeking compensation of a sum of Rs. 7,95,000.

3. The registered owners of the 2(two) vehicles aforementioned as well as the insurer thereof contested the claim for compensation by filing their written statements, wherein the factum of the accident was not disputed nor was it

disputed that the vehicles stood insured with the insurers as mentioned by the claimant in his claim application.

4. The learned Tribunal framed the following 3(three) issues for determination:

(1) Has the claimant Sri Gopi Nath Ghosh sustained injury on 26.9.1994 at about 10.30 a.m. to 11 a.m. near Bishalgarh Hospital, Office Tilla, under Bishalgarh RS. due to vehicular accident arising out of rash and negligent driving of TRS 668 (BUS) ?

(2) Is the claimant entitled to compensation as prayed for and if so, what is the quantum and who has to pay the same ?

(3) To what other relief(s) are the petitioner entitled ?

5. During the course of the proceeding, the claimant adduced evidence by examining himself as a witness. No evidence was adduced by the opposite parties.

6. The learned Tribunal answered the issues in favour of the claimant and held that the claimant was entitled to receive a sum of Rs. 20,000 (Rupees twenty thousand) only as compensation, which was directed to be shared in equal proportion by the insurers aforementioned, making the same payable within a period of one month with interest at the rate of 12% per annum from the date of institution of the claim proceeding, failing which the insurers were directed to pay interest at the rate of 20% per annum on the unpaid amount till payment thereof. Challenging that the quantum of compensation awarded to him is too low, the claimant has preferred this appeal.

7. I have heard Mr. D.R. Choudhury, learned Counsel for the appellant. I have also heard Mr. P. Gautam, learned Counsel for the opposite party Nos. 5 and 6, namely, National Insurance Co. Ltd. and United India Insurance Co. Ltd. and Mr. S.M. Ali, learned Counsel appearing on behalf of the opposite party No. 3, i.e., owner of the vehicle No. TRS-668. None has appeared on behalf of the opposite party No. 1, i.e., owner of the vehicle No. TR-01-2505.

8. While considering the present appeal, it is pertinent to note that the findings of the learned Tribunal that the said accident took place, on 26.9.1994, due to rash and negligent driving of the two vehicles aforementioned, that the claimant sustained multiple injuries and/or that he was entitled to receive compensation for his bodily pain and sufferings and also for the expenses incurred by him for his treatment are not in dispute. It is also pertinent to note that the learned Tribunal has observed that the claimant has prayed for a sum of Rs. 15,000 (Rupees fifteen thousand) only as expenses of his treatment and based on this prayer, the learned Tribunal has awarded Rs. 15,000 as the amount, which the petitioner incurred for his treatment. Though the petitioner claimed an amount of Rs. 1,00,000 as compensation for his bodily pain and suffering, the learned Tribunal has observed to the effect that according to the schedule framed u/s 163A of the M.V. Act, the maximum amount of compensation that can be

awarded under the Schedule to Section 163A of the M.V. Act for bodily pain and suffering caused by grievous hurt is Rs. 5,000 and, hence, the petitioner is not entitled to receive more than Rs. 5,000 as compensation for his bodily pain and suffering. It is on this basis that the learned Tribunal awarded Rs. 5,000 as compensation for the bodily pain and suffering of the petitioner and this finding cannot be interfered with.

9. While considering the present appeal, it needs to be pointed out that the claimant has asserted, in his claim application, that 6(six) students used to attend his tuition classes, but after the accident, he has stopped the same, because the doctor has advised him not to undertake much brain-work and to avoid stress to his eyes. The claimant, however, produced no evidence in this regard and he, nowhere, claimed in his evidence that he has sustained any loss of income due to the said accident. Similarly, the claimant had alleged that he had suffered loss of status and prestige and income to the tune of Rs. 2,00,000, but he gave no evidence in this regard and the learned Tribunal accordingly observed that on account of the said accident, the petitioner did not suffer from loss of status and prestige and/or income. These findings could not be assailed in the present appeal.

10. What has, however, been agitated is that though there was documentary evidence on record to show that four teeth in the lower jaw of the claimant had been affected by the said accident and claimant had been advised to remove the same and the fact that the claimant sustained multiple injuries on other parts of his body including a fracture of one of his arms, yet the learned Tribunal granted a paltry sum of Rs. 5,000 as compensation on the ground that the schedule framed u/s 163A does not empower the Tribunal to grant more than Rs. 5,000 as compensation for pain and suffering arising out of grievous injuries.

11. While considering the above aspect of the matter, it needs to be pointed out that though normally, the second schedule framed u/s 163A can be resorted to, when an application for compensation is made u/s 163A, yet even when a claim is made u/s 166 of the M.V. Act, the Tribunal may take the schedule framed u/s 163A as a guideline, but the Tribunal is not wholly bound by the same, for, while Section 166 makes a person entitled to compensation only when he succeeds in proving that the accident took place due to rash and negligent driving of the vehicle involved in the accident, a claimant need not prove that the accident had taken place due to any fault on the part of the driver of the offending vehicle if the application has been made u/s 163A. This apart, while u/s 163A, a claimant is entitled to be compensated for the medical expenses, which he has incurred, but he cannot be directed to be paid medical expenses for a sum exceeding Rs. 15,000 even if the actual expenses incurred by the claimant for his treatment is more than Rs. 15,000. There is, however, no such limitation, when an application for compensation is made u/s 166 and the Tribunal can direct that the claimant be paid the amount, which he has actually incurred for his treatment even if the expenses, so incurred, exceed the limit of Rs. 15,000 fixed by the said schedule.

Similarly, for the pain and suffering arising out of grievous injuries sustained by a person, he cannot be granted compensation for more than Rs. 5,000 if his application for compensation is u/s 163A but when the application is made u/s 166, no such statutory limit, as perceived by the schedule framed u/s 163A, applies. Viewed from this angle, it is clear that for the pain and suffering, which the claimant has undergone as a result of the grievous injuries sustained by him, he could have been granted more than Rs. 5,000 as compensation if the evidence on record so justified, for, the claimant's application for compensation was u/s 166 and not u/s 163A of the M.V. Act.

12. Bearing in mind the principles of law indicated hereinabove, when I turn to the facts of the present case, I find that the claimant has convincingly proved that he had suffered multiple injuries as a result of the said accident, the injuries included fracture of one of his arms and also injury to his teeth. The claimant has also adduced, I find, convincing evidence showing that he continued to remain under treatment of the doctors both in Tripura as well as in Kolkata and has been advised to remove his teeth. For the pain and suffering, which the claimant has been undergoing, he was, thus, entitled to compensation of not less than Rs. 25,000 (Rupees fifteen thousand).

13. Situated, thus, I am of the view that the claimant was entitled to be paid, in all, Rs. 30,000 (Rupees thirty thousand) only as compensation.

14. In the result and for the foregoing reasons, the claimant is awarded, in all, Rs. 30,000 (Rupees thirty thousand) only as compensation.

15. The enhanced compensation amount of Rs. 10,000 (Rupees ten thousand) only shall be paid within a period of 1(one) month from today and shall carry interest at the rate of 6% per annum on the enhanced amount from the date of institution of the claim proceeding until payment thereof. The claimant shall also be paid Rs. 500 (Rupees five hundred) only as cost of this proceeding.

16. With the modifications in the impugned award so made, the appeal stands disposed of.

17. Send back the L.C. Rs.