

(2015) 01 GAU CK 0031
In the Gauhati High Court
Case No : M.A.C. App. No. 120 of 2013

Jago Nath Roy

APPELLANT

Vs

Bhagwandas Auto Finance Ltd. and Others

RESPONDENT

Date of Decision : 23-01-2015

Acts Referred:

Citation : (2015) 2 ACC 875 : (2015) 2 AnWR 422 : (2015) 2 GLD 390

Hon'ble Judges : Rumi Kumari Phukan, J

Bench : Single Bench

Advocate : A.R. Agarwala and P. Patowary, for the Appellant; R.C. Paul and S. Roy, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Rumi Kumari Phukan, J.—This appeal is directed against the judgment and award dated 20th June, 2012 passed by the learned Member, Motor Accident Claims Tribunal, Bhubri (hereinafter referred to as "the Tribunal", in brief) in MAC Case No. 488/2004 wherein the learned Tribunal has awarded an amount of Rs. 19,587.48 paise only to the appellant/claimant along with interest at the rate of 6% per annum from the date of filing of the claim petition till realization. The brief case of the appellant is that--

On 29th May, 2004 at about 2.30 p.m. while the claimant along with one Uttam Prodhani was standing by the side of NH 31 at Sonakhuli, one truck bearing Registration No. WB-25-A/4229 being driven by its driver in a rash and negligent manner knocked down both of them. As a result of which he sustained multiple grievous injuries. He was admitted in Dhubri Civil Hospital. The appellant incurred an amount of Rs. 50,000 in his treatment which has occasioned the filing of the claim petition being MAC Case No. 488/2004 before the Tribunal, Dhubri.

2. In the aforesaid claim petition, the appellant stated that he was 20 years of age at the time of the accident and he was a skilled labourer earning Rs. 4,000

per month. Hence, he filed the petition claiming Rs. 5,00,000 (Rupees five lacs) only as compensation.

The owner did not contest the case and only the Insurance Company filed written statement by contesting the case. In the written statement, the Insurance Company contended that the claim is not maintainable and the case is bad for non-joinder of necessary party and the amount claimed is excessive and prayed for dismissal of the case.

3. After hearing both the parties, the Tribunal passed the impugned judgment and order dated 20th June, 2012 and awarded Rs. 19,587.48 as compensation. Being highly aggrieved with the awarded amount, the appellant has approached this Court by way of filing this appeal and prayed for enhancement of compensation. The respondent resisted the case of appellant being vociferous.

4. Among other various grounds, the appellant has raised the grievances against the award on the ground that the Court has failed to take into consideration the evidence on record in proper perspective that the income of the appellant was Rs. 4,000 being a skilled labourer and also failed to consider the permanent disability certificate issued by Orthopaedic Surgeon and other medical documents and has wrongly concluded that this is a case of grievous injury not permanent disablement. It is also assailed that the Court has failed to appreciate the facts that the appellant was under treatment for more than five months and has ignored the fact that the claimant has become physically disabled to the extent of 40% and according to the appellant, his working disablement is 100% in respect of his occupation begin a skilled labourer. Similarly the Court has failed to provide adequate compensation on account of pecuniary damages and non-pecuniary damages in respect of claimant's suffering, loss of amenities, etc. and rate of interest awarded will also lower in side and it should be 9% per annum from date of filing claim petition till realization.

5. I have heard the learned Counsel for both sides on the grounds preferred in the appeal as well as the evidence on record and considered the case laws relied by the parties.

6. Refuting all the grounds of appeal, it has been contended by the learned Counsel for the respondents that there is no any evidence to show that the claimant/appellant was a skilled labourer nor any proof of his income, so, the Court below has rightly assessed his monthly income as Rs. 3,000. It has also been seriously urged that the claimant has failed to prove about the permanent disability and the Court below has rightly refused to accept the documents so filed by the claimant in support of his permanent disability. On this point, learned Counsel for the respondent has relied upon the following case laws:

(i) New India Assurance Co. Ltd. Vs. Sanjit Kumar and Another, (2001) ACJ 1690 : (2000) 2 GLT 567 : (2001) 1 LLJ 891 .

(ii) National Insurance Co. Ltd. Vs. Chandreswar Thakur and Others, (2001) 1

GLT 393 .

(iii) New India Assurance Insurance Co. Ltd. Vs. Lalrammawia and Another, (2010) 2 GLR 335 : (2009) 5 GLT 631 .

(iv) National Insurance Co. Ltd. Vs. Ismaeli (Smt.) and Another, (2011) ACJ 725 : (2009) 2 GLD 646 : (2010) 1 GLT 571 .

(v) Oriental Insurance Co. Ltd. Vs. Lalliansawmi and Another, (2010) 2 GLR 399 : (2010) 2 GLT 176 .

It has been pointed out that in all the above mentioned case laws, this Court has held that the Tribunal cannot assess the person's disability in absence of examination of the doctor, who happened to examine the injured. It has also been held that the appellant was deprived of cross-examination of the doctor as regards the percentage of disability of the injured claimant. The legal obligation for examining the Medical Officer for the purpose of ascertaining disability and loss of earning capacity is emphasized. Further, it has also been held that non-examination of the doctor as a witness, who gave the certificate of disability, would deprive the Insurance Company to test the veracity and/or the truthfulness of statement and the correctness of the document placed on record by the claimant.

7. On the basis of above legal propositions of law, it has been argued that the appellant is no any way entitled to get the compensation under the category of permanent disability nor his loss of earning can be assessed on the basis of single documents exhibited in the evidence by the claimant. No explanation has also been given for non-examination of the doctor who has issued the Exhibit-16. Against the claim of appellant for enhancement of rate of interest from 6% to 9% though the learned Counsel for the respondent raised no serious objection but it has been contended that in relevant circumstances, the claimant is not entitled for interest from the date of filing of the case because of the fact that the claimant slept over his case since 2004 and adduced evidence only in the year 2012. So, his claim itself is unjustified and that is why the Court has rightly granted compensation from the date of evidence.

8. To bolster his submission that the medical practitioner is not required to prove the injury and disablement, the learned Counsel for the claimant has relied upon the case laws reported in Supreme Court on accident claim, Crl Writ Petition No. 270/1988, Page 583, Parmanand Katara v. Union of India and Others, where the Hon''ble Supreme Court held that the medical practitioner should not be summoned unless his evidence is necessary. Basing upon the said case law, it has been contended that even without examining the medical practitioner the Court can accept the document so filed by the claimant about the percentage of disability. Learned Counsel has referred to another case law reported in Md. Shafiar Rahman Vs. United India Insurance Company Ltd. and Others, (2013) 1 GLD 413 , wherein it has been held that some destruction or permanent impairing of the parts of any member or the joint caused from injuries can be

treated as permanent disablement.

9. Further, in support of the contention that the Court should rely upon the documents like medical bill, etc. to assess the cost of treatment and the fact that the interest should be granted from the date of filing of claim petition and the fact that the proper and just compensation should be awarded by the Tribunal, the learned Counsel for the claimant has relied upon the following case laws:

(i) Anash Kumari v. Niranjana Lal Jagdish Prasad Jain and Ors., 2010 (2) T.A.C. 631 (S.C).

(ii) Smt. Parsanni v. Sri S.S. Singh and Another, 2012 (3) T.A.C. 397 (P&H).

(iii) Sri Laxman @ Laxman Mourya Vs. Divisional Manager, Ortl. Ins. Company Ltd. and Another, (2012) ACJ 191 : (2011) 13 JT 205 : (2012) 1 RCR(Civil) 509 : (2011) 12 SCALE 658 : (2012) 1 TAC 376 : (2012) 1 UJ 89 .

10. I have gone through the all above mentioned case laws relied upon by the parties and it is found true that the Court can grant compensation from the date of filing of petition usually and also can grant interest more than 6% in the light of the facts of the case and also the fact that the Tribunal should remain alive to the facts that the award should be always just and proper to meet the grievance of the claimant in pecuniary and non-pecuniary matter. However, the submission of the appellant is not convincing that the Court can assess percentage of disability and other pecuniary loss occurred to the injured only on the basis of a document issued by a medical practitioner. In the light of the case laws cited by the respondent it can be held that non-examination of the medical practitioner who happened to issue the medical certificate and prescription, etc. lead serious consequences because of the fact that the other side deprived of cross-examination the person who issued the same or about the authenticity of the document. In the instant case, the appellant led no any other supporting evidence regarding his permanent disablement and working disability in respect of his occupation to assess the pecuniary and non-pecuniary damages.

11. The case law relied upon by the appellant as regards the observation of the Supreme Court that the examination of the medical practitioner is not necessary to prove a document, it is to be noted that it is not a blanket ban to examine the medical practitioner in all the cases. It has been categorically held that the Court of law should not summon a medical professional to give evidence unless his evidence is necessary and even if he is summoned attempt should be made to see that the man in the profession should not be made to wait and waste time unnecessarily. So, obviously that observation was given upon consideration of some broader prospect so that such person should not be disturbed in each and every petty matter. But in the given case, the assessment of percentage of permanent disability is a serious aspect and the doctor has to explain to the satisfaction of the other party as well as the Court that on what basis he has arrived at such a conclusion. So, in my opinion, examination of medical practitioner is necessary in the given case and the appellant cannot be awarded

compensation on the ground of 40% disability as claimed.

12. However, it is also a fact that Court should not ignore all the medical documents and other connected documents to arrive at a just conclusion regarding compensation. But the learned Tribunal in this case has awarded compensation on very lower side on each and every accounts which has occasioned a failure of justice to poor litigant who was a labourer, earning his livelihood on daily basis. From his oral evidence as well as documents so filed like X-ray report, discharge certificate, his photographs and other medical documents, cash memos, it is apparent that claimant sustained comminuted fracture in bones in the left leg, which was grievous in nature and he might have confined for such fracture with bandage on the leg and consequently it has affected his livelihood also. He was admitted in the hospital on 29th May, 2004 at Dhubri Civil Hospital and discharged on 2nd June, 2004. So, there was pain and sufferings and loss of income on his part and he might have to be attended by another person in such period of confinement. Evidence of one eye-witness has supported the case of the claimant about grievous injuries so sustained by the claimant. Though this Court cannot assess the percentage of permanent disability but can certainly take note of the fact that claimant has sustained serious fracture injury which is grievous in nature.

13. After perusal of the award, it is found that on all the score the learned Tribunal has awarded very minimum compensation which has necessitated for enhancing the amount to redress the grievance in adequate manner. Regarding the date of entitlement of interest from the date of filing, neither party can furnish anything before this Court as to why the case remained in file since 2004 to 2012 to adduce evidence of two witnesses on the part of the claimant. So in the given circumstances, interest should be given from the date of adducing evidence as has been held by the Tribunal.

14. The following amount is calculated to be just and proper to be awarded to the claimant:

Thus, the claimant/appellant is entitled to enhanced compensation of Rs. 96,600 (Rupees ninety six thousand six hundred) only along with 9% interest from the date of evidence as has been mentioned impugned judgment and award dated 20th June, 2012. Accordingly, the respondent Insurance Company is directed to pay the amount as indicated above by deducting the amount already paid within two months from today before the Motor Accident Claims Tribunal, Dhubri.

The appeal is accordingly disposed of.