
(2022) 03 GAU CK 0031
In the Gauhati High Court
Case No : MACApp. No. 171 Of 2011

Md. Akhtarul Islam Laskar

APPELLANT

Vs

M/S National Food Products And 5 Ors

RESPONDENT

Date of Decision : 16-03-2022

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2022) 03 GAU CK 0031

Hon'ble Judges : Malasri Nandi, J

Bench : Single Bench

Advocate : M.H. Rajbarbhuiyan

Final Decision : Partly Allowed

Judgement

1. Heard Mr. M.H. Rajbarbhuiyan, learned counsel appearing for the appellant and none appears for the respondent side.

2. The claimant as appellant has preferred this appeal against the judgment and order dated 01.08.2009 passed by the learned Additional District Judge, (FTC) Cachar at Silchar, in MAC Case No. 1388/2003.

3. The brief facts of the case is that on 14.08.2003 at about 4.30 P.M. the appellant along with his brother and sister were going by their own taxi bearing registration no. AS-11/6834 and when they reached at Tarapur near DLF power plant under Lakhipur police station (Baskandi out-post), suddenly, one 407 Mini Truck bearing registration no. AS-11-B/0077, which was coming from Silchar side in a rash and negligent manner knocked down the taxi, in which the appellant was travelling. As a result, the appellant along with his brother and sister sustained grievous injuries on their person. The appellant sustained injuries on his head and forehead. Immediately, he was shifted to Silchar Medical College for his treatment. After the accident, one G.D.E was recorded vide No. 252 dated 14.08.2003. At the time of the accident, the alleged offending vehicle was duly insured with National Insurance Company Limited.

4. Though, it is not mentioned in the claim petition of MAC Case No. 1388/2003, the appellant as claimant filed the case on which provision of law under Motor Vehicles Act but as it appears that the accident occurred due to rash and negligent driving by the driver of the Mini truck bearing no. AS-11-B/0077, it can be said that the appellant as claimant had filed the claim petition vide MAC Case No. 1388/2003 under Section 166 M.V. Act. The appellant as claimant examined himself as PW-1 and no other witness was examined. After completion of trial, the learned Tribunal has awarded compensation in favour of the claimant amounting to Rs. 8,077/-(Rupees Eight Thousand Seventy Seven) only.

5. Being highly aggrieved and dissatisfied with the said award, the appellant has preferred this appeal for enhancement of the said award.

6. Learned counsel for the appellant argued that the claimant sustained grievous injuries on his person due to the alleged accident. But the doctor's report has not been relied upon by the learned Tribunal without showing any plausible explanation but explicitly held that the injuries sustained by the appellant was simple in nature and awarded such a low compensation, which is not acceptable at all.

7. The claimant was examined in MAC Case No. 1388/2003 as PW-1, who has reiterated the same thing whatever stated in her claim petition that on the date of occurrence while he was travelling in their own taxi bearing no. AS-11/6834, he met with an accident when their vehicle reached at Ujan Tarapur near DLF Power Plant due to rash and negligent driving by another vehicle bearing registration no. AS-11B-0077 for which the claimant had sustained grievous injuries on his person. He was shifted to Silchar Medical College and Hospital. The claimant also stated that he had incurred many other incidental expenses like fooding, lodging, journey etc.

8. It appears from the record of MAC Case No. 1388/2003 that some documents like FIR (first information report), MVI report and charge-sheet was submitted against the driver of the truck AS-11B/0077, though the documents were not exhibited. It reveals that in connection with the accident on 14.08.2003, in which the claimant had sustained injuries, though the G.D. entry was recorded vide Banskandi out-post GDE No. 252 dated 14.08.2003, subsequently, one case was registered vide Lakhipur P.S. Case No. 74/2005 u/s 279/337/338/427 IPC. Subsequently, charge-sheet was also submitted against the driver of the offending vehicle bearing no. AS-11B-0077. As the Insurance Company did not agitate the matter regarding involvement of the vehicle no. AS-11-B-0077 causing injury to the appellant, so the facts to be discussed in this appeal regarding injury sustained by the appellant in connection with the said accident.

9. I have gone through the judgment passed by the learned Additional District Judge, (FTC) Cachar at Silchar and also documents available in the record. In the judgment in para-6, it was held by the learned Tribunal which is reproduced as follows:-

"Medico-legal injury report issued by SMCH shows that the claimant sustained injuries on his person. The doctor opined that nature of injuries as follows:- "Clinically grievous," Simple." But the PW-1 in his cross-examination categorically disclosed that he has not sustained fracture. Therefore, the evidence of PW-1 will prevail over the medico-legal injury report issued by the SMCH. Since, the PW-1 is the sufferer in the accident he is the best person to know what injury he sustained. Therefore, it can safely be held that the claimant sustained injury of simple nature."

10. The injury report of the victim was exhibited in MAC Case No. 1388/03 as exhibit-23, which reveals that on the date of accident i.e. on 14.08.2003, the appellant was examined by the doctor of Silchar Medical College and Hospital on police requisition and on examination doctor found following injuries:-

1. Pain and tenderness over the chest and right shoulder region clinically dislocation of right shoulder joint. Patient was advised to do x-ray of right shoulder but not done.

2. Tenderness of swelling over the back lumbar spinal region.

Doctor opined that injury no. 1 was clinically grievous and injury no. 2 was simple.

In MAC Case No. 1388/2003 only one witness was examined i.e. PW-1 (claimant) and in his cross-examination, P.W.1 replied that he did not sustain fracture injuries. It also appears from the medical report of the victim (Ext. 23) that the doctor clinically noticed dislocation of right shoulder of the appellant and he was advised to do X-ray to confirm fracture but no X-ray was done as such it cannot be said that the appellant received any fractured injury on his person. As no X-ray report is available regarding any kind of dislocation, it presumes that the appellant/claimant sustained simple injury due to the alleged accident.

11. As per the claim petition, the claimant/appellant is a businessman and his monthly income was Rs. 7,000/-. Due to the alleged accident and the injuries sustained by him, there was huge loss in his income and due to the injuries he suffered mental agony and he had to take treatment for a long time under the doctor of Silchar Medical College and Hospital for which he had to incur huge expenses.

12. To prove his claim, the claimant submitted some medical documents for his treatment at Silchar Medical College and Hospital, from which it cannot be ascertained that the appellant had undergone treatment in the hospital as indoor patient.

13. Under such backdrop, it is to be presumed that as the appellant/claimant sustained simple injury due to the alleged accident, he was not treated in any hospital as indoor patient and as such, there was no loss of income.

14. As far as income of the appellant is concerned, it stated by the appellant in

the claim petition that he is a businessman but from claim petition it cannot be ascertained what type of business he was doing prior to the accident. While deposed before the Court, the claimant stated that he was running a (PCO) at Kasipur Eidga complex and his monthly income was Rs. 7,000/-. However, no documentary proof regarding the income and occupation of the appellant has been filed. In the absence of any documentary proof regarding the income of the injured, the Court has to make some guess work regarding the probable income of the injured considering his educational qualification. But no document is available in the record regarding educational qualification of the appellant/claimant. As it is observed that claimant/appellant sustained simple injury and he was not hospitalised and without having any X-ray plate or fracture report, it can be concluded that there was no loss of income on the part of the claimant/appellant. For the sake of argument, if the claimant/appellant was doing business of PCO at the relevant time of the accident and if there was any dislocation of his right shoulder even then, he could continue his business by sitting in the PCO.

15. In the case of Ritu Vs. Regional Manager, Uttaranchal State Road transport Corporation and Ors, reported in 2014 ACJ 1133, it was held that

“The law with respect to the grant of compensation in injury cases is well settled. The injured is entitled to pecuniary as well as non-pecuniary damages. The pecuniary damages, also known as special damages, are generally designed to make good the pecuniary loss which is capable of being calculated in terms of money whereas non-pecuniary damages are incapable of being assessed by arithmetical calculations. The pecuniary or special damages generally include the expenses incurred by the claimants on his treatment, special diet, conveyance, cost of nursing/attending, loss of income, loss of earning capacity and other material loss, which may require any special treatment or aid to the injured for aid to the injured for the rest of his life. The general damages or the non pecuniary loss include the compensation for mental or physical shock, pain, suffering, loss of amenities of life, disfiguration, the loss of marriage prospects, loss of expected or earning of life, inconvenience, hardship, disappointment, frustration, mental stress, dejection and unhappiness in future life etc.”

16. In the case in hand, it reveals that due to the alleged accident claimant sustained simple injury on his person. On the head of pain and suffering Rs. 10,000/- (Rupees Ten Thousand) be awarded. Though the claimant alleged that due to the alleged accident, he sustained severe injuries on his person for which he was unable to work for long time but there was no document available in the record to hold that the claimant sustained such grievous injuries and he was not in a position to do his work and suffered loss of income. As such, the claimant/appellant is not entitled to get any such compensation on the head of loss of amenities of life. However, he is entitled to get the amount spent for his treatment. As per medical documents available on record, claimant submitted vouchers/cash memos amounting to Rs. 1,577/- (Rupees One Thousand Five Hundred Seventy Seven) only and on the head of diet and nutrition Rs. 10,000/-

(Rupees Ten Thousand) and Conveyance Rs. 15,000/- be awarded. The claimant/appellant therefore is entitled to get Rs. 36,577/- (Rupees Thirty Six Thousand Five Hundred Seventy Seven) only.

17. The appeal is partly allowed with aforesaid modification.

18. The National Insurance Company is directed to pay the said amount to the claimant at the rate of 6% per annum from the date of filing of the case till full and final realization within 60 (sixty) days from the date of receipt of this order. Any amount if paid earlier be adjusted accordingly.

19. LCR be returned back.