

(2002) 07 GAU CK 0031
In the Gauhati High Court
Case No : MAC App. No. 19 of 2000

National Insurance Co. Ltd.	Vs	APPELLANT
Dr. (Mrs.) Dipika Choudhury and Others		RESPONDENT

Date of Decision : 16-07-2002

Acts Referred:

Motor Vehicles Act, 1988 — Section 168

Citation : (2003) 1 ACC 472 : (2004) ACJ 287 : (2002) 3 GLT 666

Hon'ble Judges : J.N. Sharma, J; Amitava Roy, J

Bench : Division Bench

Advocate : A.K. Phukan and M. Bhuyan, for the Appellant; P.C. Deka and S.K. Medhi, for the Respondent

Final Decision : Allowed

Judgement

J.N. Sarma, J.—This appeal has been filed by the Insurance Company against the award dated 29.12.1999 passed by the learned Member, MAC Tribunal, Kamrup at Guwahati. By the impugned award the Tribunal awarded a sum of Rs. 20,51,469 with interest @ 12 per cent with effect from 24.8.1998 on Rs. 20,36,469. There was a further direction to pay this amount within 30 days. Hence, this appeal by the Insurance Company on the ground that the award is fanciful and whimsical.

2. u/s 168 of the Motor Vehicles Act, 1988 the Tribunal may make an award determining the amount of compensation which appears to it "to be just". A compensation cannot be given by the Tribunal which is fanciful, arbitrary and based on conjectures and surmises. No doubt, in determining the amount of compensation there will be some amount of conjectures and surmises. After all a compensation cannot be determined by applying a computerized method. A human approach will have to be made and in making that human approach some error either this side or that side is possible, but that error must be within the bounds and it cannot make the method a fanciful one. It should be borne in mind that in N.K.V. Bros. (P) Ltd. Vs. M. Karumai Ammal and Others, the Supreme

Court pointed out that there is no need for the tribunal to adopt an attitude of undue parcimony in determining the compensation. The Tribunal should adopt a broad approach, but at the same time a caution was given that the award must not appear to be fanciful and whimsical.

3. We have heard Mr. A.K. Phukan learned Senior Advocate assisted by Mr. M. Bhuyan Tor the appellant and Mr. P.C. Deka, learned Senior advocate assisted by Mr. S.K. Medhi. learned Advocate for the claimant.

4. The brief facts are as follows :-

A claim petition being MAC case No. 321(K)/1998 was filed before the Tribunal at Guwahati claiming a compensation of Rs. 20,65,000. The claimant is a Doctor and she is the Assistant Professor of Anesthesiology in the Gauhati Medical College Hospital, Guwahati and even today she is serving in that capacity. The petitioner's, monthly income was given as Rs. 9200. The accident took place on 1.5.1997 at 11.20 AM . The injuries mentioned in the application for compensation are as follows :-

- (i) Avalsion injury of left elbow.
- (ii) Loss of part of the left brachial artery.
- (iii) Transaction of left median nerve.
- (iv) Rupture of the Biceps tendon With loss of a fragment of the muscle of the left hand.
- (v) Grabbing capacity of the left hand fingers have been lost.
- (vi) Left hand has been permanently disabled due to the Injury.
- (vii) Multiple abrasion all over the body.

The claimant had to be treated at Gauhati Medical College and in the Institute of Research and Rehabilitation of Hand and Department of Plastic Surgery, Government Stanley Hospital, Madras-1. The claim made by her is as follows:-

(A) Non-pecuniary damages:-

- (i) Pain and suffering-Rs. 50,000.00
- (ii) Loss of expectation in life - Rs. 50,000.00
- (iii) Discomfort and inconvenience - Rs. 50,000.00

(B) Pecuniary damages:-

- (i) Prospective loss of earning Rs.- 18,00,000.00 (Rs. 100.00 x 12 x 15)
- (ii) Medical expenses till filing of the case -
Rs. 65,000.00
- (iii) Future treatment -

Rs. 50,000.00 Rs. 20,65,000.00

5. A written statement was filed on behalf of the Insurance company and the case was contested. Following are the issues :

(viii) whether the claim-petition is maintainable ?

(ix) Whether the driver of the offending vehicle No.AXA-151 drove the same rashly and negligently on the date, time and place in question and as a result an accident took place in which Dr. (Mrs.) Dipika Choudhury sustained grievous injury in her person ?

(x) Whether the claimant is entitled to receive compensation and if so, from whom the same is recoverable ?

The following are the witnesses examined -

PW 1 is Dr. Dipika Choudhury (Claimant)

PW 2 is Sri Utpal Choudhury

PW 3 Dr. Siben Dutta.

Regarding her medical expenditure she filed the following documents which have been exhibited as Ext. 10. They are quoted below :

Sl.No. Particulars of cashmemo Date Amount

1. Railway ticket 1.10.97 4,296.00

2. do 1.10.97 4,296.00

3. do 5.12.97 4,296.00

4. do 1.10.97 140.00

5. do 1.10.97 20.00

6. do 1.10.97 60.00

7. Cash memos 10.11.97 38.85

8. do 25.11.97 22.00

9. do 13.11.97 18.00

10. do 17.11.97 18.00

11. do 14.11.97 20.85

12. do 7.11.97 70.00

13. do 8.10.97 20.00

14. do 8.11.97 40.00

15. do 8.10.97 20.00

16. Cash memos 8.10.97 60.00
 17. do 8.10.97 20.00
 18. do 8.10.97 50.00
 19. do 7.10.97 1,000.00
 20. do 30.10.97 50.00
 21. do 5.11.97 70.00
 22. do 22.11.97 70.00
 23. do 5.12.97 8,270.00
 24. do 4.10.97 267.30
 25. do 4.10.97 495.00
 26. do 3.10.97 600.00
 27. do 5.12.97 9,740.00
 28. Room rent from 3-10-97 to 5-12-97 for 64 days ? 400 per day at Madras 25,600.00
 29. Fooding at Madras for two persons @ 200 per day for 64 days 12,800.00
 30. Expenses in treatment at Guwahati ... 14,000.00
- Rs. 86,467.87

The railway tickets have been filed. Cash memos have been filed. But there is no document whatsoever to show the room rent from 4.10.1997 to 5.12.1997 for 64 days @ Rs. 400 per day at Madras . Though there is a claim for food at Madras for 2 persons @ Rs. 200 per day for 64 days for Rs. 12,800.00, there is no document in support of this claim also. She also claimed the amount of Rs. 14,000.00 for the treatment at Guwahati. From the cash memos which are available in the record, the total amount comes to Rs. 34,067.87. On these heads we, however allow a lump sum of Rs. 80,000.

6. Next, let us take up the claim one by one. The claim for Rs. 50,000 on account of pain and suffering. Some amount will be available for pain and suffering, but for that an amount of Rs. 50,000 has been claimed which will be at the higher side and it shall stand reduced to Rs. 25,000. There is absolutely no evidence whatsoever before the Tribunal regarding the loss of expectation in life. So, this claim shall fall through in its entirety. There cannot be two fold claim, one for pain and suffering and other for discomfort and inconvenience . So, the claim for discomfort and inconvenience for Rs. 50,000 shall fall through. The next claim is for prospective loss of earning and for that Rs. 18,00000.00 cannot be claimed. This claim shall fall through in its entirety in view of the fact that it is stated before us that the claimant is still working as Asstt. Professor of Anesthesiology

in Gauhati Medical College hospital and she has nothing to show that there is a prospective loss of earning. This lady doctor will require some treatment also in future and for that she is entitled to an amount of Rs. 50,000.00. So, the total awarded amount will be -

(i) Medical expenses etc. Rs. 80,000.00

(ii) For future treatment Rs. 50,000.00

(iii) For pain and suffering Rs. 25,000.00

Rs. 1,55,000.00

It is submitted by Mr. Phukan that already an amount of Rs. 1,59,000 has been paid. The amount of compensation is therefore, rounded up to the amount already paid. She also shall be entitled to interest @ 12% on Rs. 1,59,000 as given by the Tribunal. The appeal is allowed to the extent as indicated above. The award of the Tribunal shall accordingly stand modified. There would be no order as to costs.