
(2000) 06 GAU CK 0044
In the Gauhati High Court
Case No : C.R. No. 10 (K) of 1999

National Insurance Co. Ltd.	Vs	APPELLANT
Member, M.A.C.T. and Others		RESPONDENT

Date of Decision : 21-06-2000

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 142, 161, 163, 166

Citation : (2001) 1 GLT 394

Hon'ble Judges : M.L. Singhal, J

Bench : Single Bench

Advocate : B.N. Sarmah, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

M.L. Singhal, J.—Heard Mr. B.N. Sarmah, learned Counsel for the Petitioner. None appears from the side of the Respondents despite service.

2. The Petitioner's son Abhisek Sharma was travelling by Auto Rickshaw on 20.3.99 at about 3.30 P.M. and sustained injury in the right arm. The Petitioner filed claim petition u/s 166 and 140 of the Motor Vehicle Act (in short M.V. Act). In the said petition, by the impugned order dated 7.9.99 u/s 140 of M.V. Act, the learned Motor Accident Claims Tribunal has awarded Rs. 25,000/- (Rupees twenty five thousand) as no fault liability amount. The Insurance Company aggrieved by the said order has come individually before this Court.

3. Section 140 of the M.V. Act, provides for payment of no fault liability amounting to Rs. 25,000/- where the injured has sustained permanent disablement. Permanent disablement has been defined and illustrated u/s 142 of the M.V. Act. Under the said Section, a person is said to have suffered permanent disablement when he has suffered by reason of the accident, any injury or injuries involving:

(a) Permanent privation of the sight of either eye or the hearing of either ear, or privation of any member or joint; or

- (b) destruction or permanent impairing of the powers of any member or joint; or
- (c) permanent disfiguration of the head or face.

4. In the instant case, learned Counsel for the revisionist urged that it is incumbent on the Motor Accident Claims Tribunal first to ascertain and decide whether the injured has received permanent disablement. The Doctor's prescription brought on the record by the Petitioner himself merely shows that the Petitioner has received some fracture in his right arm, and the Petitioner was applied P.O.P for four weeks. So mere receipt of fracture cannot be said to be permanent disablement within the meaning of Section 142 of the M.V. Act. Evidence has also not been produced as yet in the case.

5. It has also been urged by the learned Counsel for the revisionist that, as reported by the Police (vide Police Report Annexure-B and C), the present case is a case of "hit and run" as an unknown Gypsy is said to have caused the incident. So the claim of the Petitioner does not fall u/s 140 and 166 of the M.V. Act, the claim petition is not maintainable before the M.A.C.T. The case will be covered by Sections 161 and 163 of the M.V. Act. It is open to the revisionist to raise this plea before the learned M.A.C.T. and the learned M.A.C.T. shall dispose of the case in this regard also.

6. The Revision petition is allowed. The impugned order dated 7.9.99 is hereby set aside.

7. The case is remanded to the learned Motor Accident Claims Tribunal with direction to decide the petition afresh in the light of the observation made above according to law.