(2022) 01 GAU CK 0047

In the Gauhati High Court

Case No : MAC Appeal No. 40 Of 2015

Oriental Insurance Company Ltd. APPELLANT

Vs

Md. Wahidul Islam @ Ohidul Islam RESPONDENT

Date of Decision : 19-01-2022

Acts Referred:

Citation : (2022) 01 GAU CK 0047

Hon'ble Judges : Malasri Nandi, J

Bench : Single Bench

Advocate : A. Dutta, I. Hussain

Final Decision : Partly Allowed

Judgement

1. The Insurance Company has preferred this appeal challenging the award dated 04.09.2013 in MAC Case No. 417/2009 passed by learned Member,

MACT, Goalpara. The respondent No. 1 in this appeal is the claimant.

2. The brief facts of the case is that on 09.03.2009 at about 7:00 A.M. while the claimant/respondent No. 1 Wahidul Islam was going towards

Goalpara Civil Hospital on foot from Bapuji Nagar, he met with an accident due to rash and negligent driving by the driver of the vehicle bearing

Registration No. AS-18A/2814(Truck) in front of the office of DTO, Goalpara. Due to the alleged accident, he sustained grievous injuries on his

person. He was immediately taken to Goalpara Civil Hospital. Subsequently, he took treatment at Life Care Hospital and Research Co-operative

Society, Goalpara. As a result of the accident, the claimant suffered Communated fracture of right Tibia and both bones of left legs and multiple

injuries all over his bodies. The vehicle in question was insured with Oriental Insurance Company Ltd. at the relevant time of accident. Subsequently, the claimant attended the District Standing Medical Board and extent of damage sustained by him as a result of the accident was assessed by the

Board and it was assessed that he suffered about 60 % permanent disability.

3. After completion of trial, learned Tribunal has agreed with the assessment report of the Medical Board on disability of the claimant as 60% and also

income of the injured as Rs. 9,000 at the time of accident as vegetable vendor and calculated the award of compensation on different heads amounting

to Rs. 10,72,757/-(Rupees Ten Lakhs Seventy-Two Thousand and Seven Hundred Fifty-Seven) only in favour of the claimant/respondent No. 1.

4. Being highly aggrieved and dissatisfied with the judgment and order, the Insurance Company has preferred this appeal with a prayer to reduce the

amount of compensation.

5. Learned counsel for the appellant argued that there is no loss of future income as a result of injuries sustained by the claimant in the accident. He

was a vegetable vendor. For proving the loss of future earning capacity, the claimant should have produced the document to show that there was

reduction in his income after the occurrence of accident. If really the injuries that he suffered affected his earning capacity and thereby there was

reduction in his income in the years subsequent to accident, he should have produced medical documents of subsequent years. The burden was on the

claimant to prove loss of earning capacity. It is also submitted that the Tribunal should have drawn adverse inference. Learned counsel have also

pointed out that nature of injuries sustained by the claimant did not affect his earning capacity. The Tribunal should not have granted any amount

towards loss of future earning capacity.

6. Learned counsel for the appellant also contended that in absence of prove of income, the learned Tribunal committed a series error in law in

accepting Rs. 9000/- as income of the respondent No. 1/claimant while assessing future loss of income in the instant case. The learned Tribunal ought

to have followed the 2nd schedule which provides for notional income in such a situation such irregularities have vitiated the impugned judgment and

award and accordingly, the same is liable to be interfered. In support of his submission, learned counsel has placed reliance on the following case

laws:-

(2014) 2 SCC 735 (Syed Sadiq and Others v. Divisional Manager, United India

Insurance Company Ltd.)

(2011) 1 SCC 343 (Raj Kumar v. Ajay Kumar & Anr.)

7. Learned counsel for the appellant also submitted that the appeal should be allowed and quantum of compensation be reduced by awarding certain

amounts towards loss of amenities, medical expenses, pain and sufferings and attendantâ??s charges.

8. On the contrary, learned counsel for the respondent/claimant argued that the injuries sustained by the claimant did effect his working capacity.

There was loss of income. According to P.W. 2 disability factor was 60%. The judgment of the Tribunal is well reasoned. There was no ground to

interfere with and appeal should be dismissed.

9. In the case of Raj Kumar v. Ajay Kumar & Anr. (supra) following principles were laid down by the Honâ??ble S.C. for determining

compensation payable to road traffic accident victims:-

(a) The compensation payable to the claimant who is a victim of road traffic accident should, to the extent possible, fully and adequately restore the

claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as

money can do so, in a fair, reasonable and equitable manner.

(b) Compensation payable in injury cases is payable under two heads. They are pecuniary damages (special damages) and non-pecuniary damages.

Pecuniary damages have three such heads which are (i) expenses relating to treatment, hospitalization, medicines, transportation, nourishing food and

miscellaneous expenditure. (ii)(a) loss of earning which the injured would have made had he not being injured, comprising of loss of earning during the

period of treatment and (b) loss of future earning on account of permanent disability (iii) future medical expenses. Non pecuniary damages (General

damages) are (iv) damages for pain, suffering and trauma as a consequence of injuries, (v)loss of amenities or loss of prospects of marriage and

(vi)loss of expectation of life.

(C) In routine personal injury cases compensation is awarded only under heads (i) (ii) (a) and (iv). It is only in serious cases of injuries where there is

specific medical evidence corroborating the evidence of the claimant that compensation is granted under any of the heads ii(b), iii and vi relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (or loss of prospectus of marriage) and loss of

expectation of life.

10. In the instant case, the respondent No. 1/claimant, after the accident, was first shifted to Goalpara Civil Hospital for his treatment and

subsequently he was referred to Gauhati Medical College and Hospital for better treatment but he was treated at Goalpara Life Hospital and

Research Co-operative Society, Goalpara as a indoor patient. In support of his treatment the claimant has Exhibited one document vide Exhibit 3

which shows that the respondent was treated at Goalpara Civil Hospital. He was admitted to Goalpara Civil Hospital on the date of accident i.e. on

09.03.2009 and discharged on the next date on 10.03.2009. On examination doctor found fracture of right Tibia and both bones of left legs and he was

referred to Gauhati Medical College and Hospital for needful. Exhibit 5 is the discharge certificate of the claimant/respondent No. 1 which shows that

the claimant/respondent No. 1 was admitted to Life Care Hospital and Research Co-operative Society, Goalpara on 11.03.2009 and discharged on

12.03.2009. On examination doctor found Comminuted fracture both bones left legs and he was treated, operation was done on 11.03.2009

11. Doctor Sahidur Rahman was examined as D.W.2 to prove the report of Medical Board who examined the claimant to assess his disability. He

deposed in his evidence that he was one of the members of Goalpara Standing Medical Board and on 07.01.2010, he along with other members of the

Board, examined the claimant Wahidul Islam and on examination they had assessed 60% disability on his person.

12. The report of Medical Board vide Exhibit 27 is available in the record from which it reveals that meeting of District Medical Board, Goalpara held

on 07.01.2010 at the office of Joint Director Health Services, Goalpara wherein they examined Wahidul Islam, 20 years son of Late Sattar Ali resident

of Milannagar, Shantipur, Goalpara Assam and found the following-

â??Mr. Wahidul Islam sustained injuries like comminuted fracture shaft of left Tibia & Fibula. Comminuted fracture shaft of right Tibia following

RTA on 09.03.2009. At present his both legs are deformed, weak with restricted movement of knee and ankle joint. The Board comes to the

conclusion that the person becomes permanently disabled amounting to 60 %.â??

13. The learned Tribunal Goalpara has calculated the amount of compensation on the basis of 60 % disability as assessed by the Standing Medical

Board of Goalpara. It is difficult to ascertain in exact terms as to how much the disability in right and left lower limbs has affected the whole body of

the claimant. According to the injured/claimant, he was the vegetable vendor prior to the accident and he was earning Rs. 9,000/- per month.

However, no proof regarding the occupation and income of the injured has been produced though it was stated that he was vegetable vendor.

14. As per the judgment cited by the learned counsel for the appellant in Syed Sadiq and Others (supra) the compensation of the vegetable vendor

was determined as Rs. 6,500/- per month. It was held in the said case that the said employee labour in unorganized sector i.e. the claimant vegetable

vendor sustaining disability cannot be expected to produce documents of his monthly income. Considering present state of economy in agricultural

products reasonably capable of earning of Rs. 6,500/- per month and compensation was awarded accordingly. On the basis of the judgment of

Honâ??ble Supreme Court regarding income of the vegetable vendor, in the case in hand also, the income of the injured be considered as Rs. 6,500/-

per month. .

15. As per the disability certificate the age of the injured was 20 years at the relevant time of accident. Though the claimant has stated that he could

not work and attend his duties due to the injury resulting from the accident, however no such documentary evidence is available in record. But as he

suffered grievous injuries i.e. fracture of both bones of his legs, he must have confined to bed for some time. Therefore, he is entitled to the loss of

income.

16. Keeping in view the nature of injuries suffered by the claimant and the fact that he was under constant treatment, he would definitely needed an

attendant to look after him and the claimant is therefore entitled to attendant charges. The claimant has not filed any record to show that he had

received help of special attendant. However, some family members must have been attending with him.

17. In the case of Delhi Transport Corporation and Anr. v. Lalita reported in AIR 1981 Delhi 558 it was held that a victim cannot be deprived of

compensation towards gratuitous services referred by some of the family members for the benefit of the tortfeasor. Looking to the nature of injuries

of the injured, it is deemed fit that a lumpsum of Rs. 30,000/- be awarded as compensation towards attendant charges. The claimant has not shown

anything for spending money on special diet and conveyance, but he must have gone for follow up check-ups and must have been given special diet

for speedy recovery. Thus Rs. 10,000/-is awarded for special diets and another Rs. 10,000/- towards conveyance charges.

18. Considering the age and occupation of the claimant, I am of the opinion that 40 % of the disability can be considered in relation to whole body for

the charges of future loss of income. As per disability certificate the age of the injured was 20 years. So the multiplier would be 18.

Loss of income due to disability comes to 6,500X12=78,000/- X40% =31,200/- X 18=5, 61,600/-(Rupees Five Lakhs Sixty-one Thousand and Six

Hundred) only.

Attendant charges =30,000/-

Special diet=10,000/-

Conveyance charges=10,000/-

19. As per the judgment of Tribunal the amount of 10,957/- given on the basis of medical bills and vouchers and on the head pain and sufferings Rs.

10,000/- and future treatment Rs.10, 000/- and cost of litigation Rs.5, 000/- are upheld. Hence, total amount comes to Rs. 6, 47,557/-(Rupees Six

Lakhs Forty-Seven Thousand and Five Hundred Fifty-Seven) only.

20. In the result appeal is partly allowed with aforesaid modification awarding of Rs. 6, 47,557/-(Rupees Six Lakhs Forty-Seven Thousand and Five

Hundred Fifty-Seven) only as compensation to the claimant. The compensation so awarded will carry an interest @ 6% per annum from the date of

filing of the case till full and final realization.

21. The Oriental Insurance Company is directed to pay the aforesaid amount to the Savings Account of the claimant/respondent No. 1 through NEFT

within two months from the date of receipt of this order. The claimant/ respondent No. 1 is directed to furnish her bank details of any nationalized

bank to the Insurance Company for necessary payment.

21. Any amount of compensation if paid earlier be adjusted accordingly.

22. Statutory amount in deposit be returned accordingly.

23. LCR be returned.

