
(1990) 04 GAU CK 0021
In the Gauhati High Court
Case No : M.A. (F) No. 14 of 1989

Rafiq Islam

APPELLANT

Vs

United India Insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 03-04-1990

Acts Referred:

Citation : (1992) ACJ 51

Hon'ble Judges : W.A. Shishak, J;S.K. Hom Choudhury, J

Bench : Division Bench

Advocate : S.C. Das, B.B. Narzary and P.C. Goswami, for the Appellant; S.S. Sharma, D.K. Bhatra and A. Mannan, for the Respondent

Final Decision : Allowed

Judgement

S.K. Homchoudhuri, J.—This appeal is directed against the award dated 16.12.1988 passed by the learned Member, Motor Accidents Claims Tribunal, Goalpara in MAC Case No. 39 of 1987 rejecting the claim of the appellant for compensation.

2. The appellant, Rafiq Islam, made a claim petition in the court of the learned Member, Motor Accidents Claims Tribunal claiming compensation of Rs. 1,40,000/- from the owner of truck No. AMG 245 and United India Insurance Co. Ltd. on the allegation that on 23.3.1987 at about 6 a.m. while the claimant was standing on the extreme right side of the road at Singri, the vehicle, namely, truck No. AMG 245, driven in a rash and negligent manner came in high speed and knocked him down causing serious injuries on his body for which he has become permanently disabled. The claimant after regaining his consciousness found that he was hospitalised for about 10 months and was discharged on 20.12.1987, but still he was not at all cured and he needed further treatment which would involve heavy expense. The claimant also stated that he used to earn about Rs. 1,000/- per month by doing business in betel leaves, etc. The claimant was aged about 18 at the time of accident. In support of his claim, the claimant-appellant examined himself and two other witnesses. The respondents

examined none.

3. In his evidence the claimant stated that while he was standing on the extreme side of the road, the truck suddenly came in a high speed and dashed against him and he became unconscious and on becoming conscious, he found himself in the Satribari Hospital, wherein he had been an indoor patient for about 10 months and he spent about Rs. 20,000/- towards his treatment in the Satribari Hospital. The claimant stated in his evidence that his leg still remained swollen and was causing pain and he could not place the leg on the ground. He could not sit and he could not walk without the help of crutches and that at night he could not sleep properly. In support of his claim the claimant proved various documents, including the medical report on discharge by Hospital.

4. A suggestion was made in the cross-examination that the claimant was knocked by the truck while he was trying to cross the road, which was categorically denied by the claimant as well as the witnesses.

5. The learned Tribunal without any supporting evidence on record but merely on the suggestions made in cross-examination held that the claimant was hit by the truck while he was trying to cross the road and that he should have been careful while crossing the road and so due to his own negligence the claimant was knocked down by the truck. On the basis of the findings, the learned Tribunal passed the impugned award and rejected the claim petition. It is apparent that the findings on the basis of which the learned Tribunal passed the impugned award are perverse inasmuch as mere suggestion in cross-examination which is categorically denied, in the absence of any supporting evidence, establishes nothing and no reliance can be placed on such suggestion. As such, the impugned award passed on mere conjecture and surmises cannot be sustained and is set aside.

6. The impugned award having been set aside, ordinarily we would have sent back the case to the learned Tribunal for disposal of the case in accordance with law. But in the instant case the accident took place in 1987 and about three years have passed. Mr. S.C. Das, learned Counsel for the appellant, submits that on appreciation of the evidence on record this Court may dispose of the claim petition.

7. On going through the evidence on record, we find that the evidence of the claimant that while he was standing on the extreme right side corner of the road, the truck driven in a rash and negligent manner and in high speed dashed against the claimant has not been shaken by cross-examination and his statements have been supported by the other witnesses, whose depositions have also not been shaken in cross-examination. On consideration of the evidence on record we are inclined to hold that the accident took place due to rash and negligent driving of the truck. The claimant is, therefore, entitled to compensation. The owner of the vehicle has been insured by the insurance company against third party risk. There is no dispute that the policy of insurance

was in force on the date of accident. As such, the liability to pay compensation is to be borne by the insurance company, namely, the respondent No. 1.

8. As to the quantum of compensation to which the claimant-appellant is entitled, claimant's statement on oath that he spent about Rs. 20,000/- for treatment in Satribari Hospital as indoor patient for 10 months and another sum of Rs. 8,000/- for treatment in Dhubri and elsewhere has neither been challenged nor rebutted. Mr. Sharma, learned Counsel for respondent No. 1, fairly submits that he cannot dispute the amount stated to be spent for treatment. As such, claim of Rs. 28,000/- so far spent on account of treatment is to be accepted.

9. The claimant was examined in court on 3.10.1988, i.e., after one year and seven months of the accident and the claimant on oath stated before the court that his leg still remained swollen and bent, he could not sit and place his leg on the ground, it was still paining, he could not walk without the help of crutches and also that he could not sleep properly. That evidence is neither challenged nor controverted. The statements are also supported by the discharge certificate of the Satribari Hospital, marked as Exh. 1, which shows that the claimant was not cured after his treatment for 10 months, he still remained bedridden and was unable to walk which establishes that the claimant has become permanently disabled and he is to carry on with permanent disablement throughout his life.

10. We have given our anxious consideration as to how much should be the adequate compensation to be paid to the claimant for his permanent disablement, which has rendered him permanently dependent on others. It is in evidence that the claimant was earning about Rs. 1,000/- per month. Taking into consideration the loss of his earning capacity permanently and subsistence throughout his normally expected span of life with permanent disablement, we hold that a sum of Rs. 85,000/- would be adequate amount of compensation. The claimant-appellant is entitled to the total compensation of Rs. 1,13,000/- with interest at the rate of 9 per cent per annum from the date of application to the date of payment. The respondent insurance company shall pay the amount of compensation within a period of two months from today.

11. The appeal is allowed. We make no order as to costs.