
(2017) 12 GAU CK 0001
In the Gauhati High Court
Case No : 119 of 2010

Santi Mishra

APPELLANT

Vs

National Insurance Company Limited & others

RESPONDENT

Date of Decision : 01-12-2017

Acts Referred:

[Motor Vehicles Act, 1988](#), [Section 173](#),
[Section 173](#) - Appeals

Citation : (2017) 12 GAU CK 0001

Hon'ble Judges : Kalyan Rai Surana

Bench : SINGLE BENCH

Advocate : S. Dutta, M Choudury, S. Roy

Final Decision : Allowed

Judgement

1. Heard Mr. S. Dutta, the learned counsel for the appellant as well as Mrs. S. Roy, the learned counsel for the respondent No.1. None appears for the respondents No.2 & 3.

2. This appeal under Section 173 of the Motor Vehicles Act, 1988, is directed against the judgment and order dated 19.03.2009 passed by the learned Member, MACT, Cachar, Silchar in MAC Case No. 1234/2004. This appeal has been filed for enhancement of the award. The appellant/claimant is the mother of Ms. Shibani Mishra, the victim.

3. The brief facts of the case is that on 29.06.2004 at around 10:00 AM while the daughter of the appellant was proceeding towards her school at Barjalenga Duk Bunglow, a Maruti Van bearing Registration No. AS-24/3663 proceeding in the same direction hit the daughter of the appellant from behind. As a result of the accident, the daughter of the appellant suffered fractured in the pelvic bone and was hospitalized from 01.07.2004 to 08.07.2004 at Silchar Medical College Hospital (for short, "SMCH"). Claiming a sum of Rs.2,60,000/- under various heads, the claim petition was filed before the learned Member, MACT, Cachar,

Silchar.

4. The respondent No.1 (National Insurance Company Ltd.) had contested the claim by filing their written statement. Taking an usual plea, defence was taken that the injured was not a pedestrian and she was not knocked by the insured vehicle and that the medical certificate (Form -54) was procured by means of forgery and the burden of proof was left to the appellant/claimant.

5. In course of trial, no issues were framed by the learned Tribunal and the claimant examined herself as the sole witness. Appreciating the evidence on record, the learned Tribunal relied on the contents of the discharge certificate issued by the SMCH (Ext.1) which showed that the injured had suffered- "fracture pelvis with multiple soft tissue injury following RTA". The learned Tribunal has also relied on the police report (Ext.2) to arrive at a finding that the motor accident had taken place on 29.06.2004 at 10:00 AM due to the rash and negligent driving of the driver of the offending vehicle. As the appellant/claimant was found to have relied on 3 cash memos amounting to Rs.300/- , considering the nature of the injuries, pain and sufferance etc., the compensation was computed as under:

(1) Pain & Sufferance : Rs.7000/-

(2) Medical expenses : Rs. 300/-

(3) Diet & Nutrition : Rs.1500/-

(4) Conveyance : Rs.1000/-

Total : Rs.9,800/-

The aforesaid sum of Rs. 9,800/- was awarded along with 6% interest per annum from the date of filing of the claim petition till realisation.

6. The learned counsel for the appellant submits that it is not disputed that the daughter of the appellant, who was then aged about 14 years had suffered fracture of pelvic bone as certified in the discharge certificate issued by the SMCH (Ext.1). It is further submitted that although she was a student, the notional income of the injured was required to be taken into account so as to compute the compensation. It is further submitted that when the fracture of pelvic bone required 7 days of hospitalization, the learned Tribunal was required to provide just and fair compensation. It is further submitted that the learned Tribunal ought not to have limited medical expenses to Rs.300/- only and as the girl was approaching the age of majority, the serious accident of such nature, will cause a serious impediment in her future prospect of marriage and her normal life and therefore, the learned Tribunal had erred in both law and facts in giving a meagre compensation of Rs.9,800/-, which may be enhanced.

7. Per contra, the learned counsel for the respondent No.1 has submitted that in the present case in hand, the appellant had not exhibited any document showing that the injured did not recover completely and that she was still continuing to

suffer any disability as on the date of filing of the claim petition. It is further submitted that the appellant could only show that medical expenses only of Rs.300/- was incurred, as such, the learned Tribunal had awarded just and proper compensation to the claimant. It is submitted that absolutely no case is made out for enhancement of the award. By referring to the evidence of the appellant as PW.1, it is submitted that the stand of the appellant as PW.1 was that the injured victim had got permanent disability, but the discharge certificate issued by the SMCH (Ext.1) did not certify any such alleged permanent disability. It is further submitted that for the purpose of assessment of permanent disability, the same principles as prescribed in Workmen's Compensation Act, 1923, is required to be followed, which requires that the nature of disability and loss of earning capacity is to be assessed by registered Medical Practitioner. Hence, the learned counsel for the respondent No.1 prays for dismissal of the appeal.

8. Considering the arguments advanced by the learned counsel for the parties, this Court has perused the materials on record. It is seen that vide Ext.1, which is the discharge certificate issued by the SMCH, it is evident that the victim girl had suffered fracture in pelvic region in the accident. For a female, the fitness of pelvic region is of great significance for her normal life and motherhood. Again, seven days of hospitalization of the injured is prima facie evidence to show that the injury suffered by the victim was grievous in nature. Being a beneficial legislature, despite lack of proof by the appellant, this Court is of the opinion that the fracture of pelvic region area cannot be cured by applying any sort of plaster. Therefore, with the fracture in pelvic bone, the injured person had to remain bed-ridden for some time to enable the fracture to heal, notwithstanding that she was discharged from the hospital in seven days. However, in the absence of any document evidencing onset of any permanent disability suffered by the injured girl, this Court is inclined to hold that there was no evidence showing that the victim suffered permanent disability.

9. In view of the nature of injury suffered by the injured girl, this Court is inclined to hold that the claimant is entitled to have her claim enhanced on account of mental agony and pain and sufferings. Considering the fact that the appellant had claimed compensation under the head of pain and suffering for an amount of Rs.30,000/-, but the award to the extent of Rs.7,000/- was passed on this head, this Court is inclined to enhance compensation on account of mental agony + pain and sufferings by Rs. 20,000/- in addition to the award of Rs.9,800/- passed by the learned Tribunal. The award is now enhanced to a total compensation of Rs.29,800/- (Rupees Twenty Nine Thousand and Eight Hundred only). Needless to say that the enhanced award shall carry interest @ 6% per annum from the date of filing of the claim petition i.e. 14.09.2004, till realization.

10. The enhanced award shall be deposited before the jurisdictional Tribunal i.e. the learned District Judge, Cachar, Silchar, within a period of 1(one) month from today.

11. The appeal stands partly allowed to the extent of modification of the award as indicated above.

12. Send back the LCR forthwith.