
(2013) 01 GAU CK 0060
In the Gauhati High Court
Case No : MAC Appeal No. 44 of 2002

Sitesh Chandra Deb

APPELLANT

Vs

Ashim Chakraborty and Others

RESPONDENT

Date of Decision : 31-01-2013

Acts Referred:

Citation : (2013) 4 GLT 618

Hon'ble Judges : S.C. Das, J

Bench : Single Bench

Advocate : P. Roy Barman and Ms. D. Bhattacharjee, for the Appellant; P. Goutam, for the Respondent

Judgement

S.C. Das, J.—This appeal u/s 173 of the M.V. Act, 1988 is directed against the judgment and award dated 19.03.2002 passed by learned Member, Motor Accident Claim Tribunal, North Tripura, Dharmanagar in Case No. T.S. (MAC) 02 of 2001. Heard learned counsel, Mr. P. Roy Barman for the appellant and learned counsel, Mr. P. Goutam for the respondent No. 3, the United India Insurance Company Ltd. Respondent Nos. 1 and 2 have chosen to remain absent.

2. Fact of the case, in short, is that the appellant presented an application u/s 166 of the M.V. Act before the learned single Member, Motor Accident Claims Tribunal, Dharmanagar praying for awarding compensation for the injury sustained by him due to motor vehicle accident. It is inter alia stated by the claimant that he was travelling with a Commander Jeep vehicle bearing No. TR-02-2564 from Dharmanagar to Panisagar on 04.09.2000. At about 1200 hours, the vehicle met an accident at Deocherra on Dharmanagar-Panisagar road due to rash and negligent driving and the vehicle went off the road dashed with road side tree and as a result of the accident, the petitioner and other passengers sustained injuries. The petitioner sustained injury on different parts of his body and he was immediately shifted to Tilthai Hospital wherefrom he was referred to Dharmanagar Sub-Divisional Hospital where he undergone treatment as an indoor patient till 21.09.2000. He has also stated that he was aged 38

years at the time of accident and that he used to earn Rs. 2,000/- per month as a cultivator and also doing private tuition, Because of the accident, he lost his profession and therefore, he prayed for a compensation of Rs. 5,00,000/-. He has also stated that immediately after the accident, an F.I.R. was lodged with the O.C., Panisagar P.S., and Panisagar P.S. Case No. 62 of 2000 u/s 279/338 and 427 of I.P.C. was registered and police investigation was taken up. He was treated at Tilthai Hospital by Dr. Arghapratim Debnath and at Dharmanagar Sub-Divisional Hospital by Dr. Jayanta Nandi.

Respondent Nos. 1 and 2, the owner and the driver of the vehicle submitted a joint written statement denying the averments made in the claim petition and further stated that the vehicle was insured with United India Insurance Company (respondent No. 3) covering the risk on the date of accident having certificate No. 803/99 and Policy No. 130802/31/40/11/00784/99. They further stated that the vehicle was having with valid registration certificate, road permit, valid insurance policy, tax clearance certificate and the driver was also having with a valid driving licence.

Respondent No. 3, the United India Insurance Co. Ltd. also contested by filing written statement denying the averments made in the claim petition, but, did not deny the factum of insurance of the vehicle covering the risk on the date of accident.

3. In Para 8 of the written statement, the Insurance Company stated thus:-

8. That, it is stated that the alleged vehicle bearing No. TR-02-2546, Commander Jeep is insured with Agartala branch of O.P., No. 3 having insurance coverage on the alleged date & time of incident of accident vide certificate No. 803/99 & policy No. 130802/31/40/11/00784/99 valid up to 06.11.2000. The O.P. No. 3 seeks all defence available under the provisions of Sections 147 & 149 of M.V. Act, 1988 (as amended up-to-date).

4. The Tribunal considering the pleadings of the parties formulated following issues:-

A. Whether the petitioner sustained grievous injury on 04.09.2000 at 12 O'clock at Deocherra over Dharmanagar Panisagar Road because of a vehicular accident and if so, whether the said incident of accident had occurred for the rash and negligent driving of the driver of the offending vehicle bearing the No. TR-02-2564?

B. Who will pay the compensation?

C. Whether the Petitioner is entitled to have any relief and if so, up to what extent?

5. In course of enquiry, the petitioner examined himself as PW 1 and also examined two more witnesses namely, P.W. 2 Shri Sailendra Biswas and P.W. 3 Shri Pijush Kanti Deb. Further, in support of his case, the petitioner placed on

record certified copy of the F.I.R. of Panisagar P.S. Case No. 62 of 2000 registered u/s 279/338/427 of I.P.C. Discharge certificate of Dharmanagar Sub-Divisional Hospital (Exbt. 1), injury report collected in connection with the police case (Exbt. 2 series), motor vehicle examination report submitted by the Inspector of the motor vehicles (Exbt. 4), and the medical certificate issued by Dr. Jayanta Nandi of Dharmanagar Hospital (Exbt. 3 series).

Respondents adduced no oral or documentary evidence.

6. The Tribunal dismissed the claim petition holding that the appellant failed to prove the accident and accordingly, made no award.

7. Learned counsel, Mr. P. Roy Barman with emphasis has submitted that the appellant's statement has been supported by P.Ws 2 and 3 and also supported by documentary evidence i.e. F.I.R., the discharge certificate of Dharmanagar Hospital, Motor Vehicle Inspector's report etc. and so, the finding of the Tribunal that no accident occurred is not based on reason and therefore, liable to be interfered.

He has further submitted that the petitioner received severe injury due to the accident and was hospitalized for 16 days. The medical certificate issued by the doctor, who treated the petitioner in the hospital makes it clear that he suffered grievous injury for which the appellant is entitled to get compensation. It is also submitted that the petitioner is a simple cultivator residing in village and he has stated that his monthly income is Rs. 2,000/- from cultivation and private tuition and an appropriate compensation may be awarded to the petitioner.

8. While drawing attention to the claim petition and the evidence on record, learned counsel, Mr. Roy Barman has further submitted that neither in the claim petition nor in the evidence of the petitioner, the cost of treatment clearly brought out. But, it is to be presumed that the petitioner definitely spent substantial amount for treatment and it was a duty of the concerned learned counsel to bring it on record and under such circumstances, some guess work and some assumption and presumption regarding the cost involved in the treatment may be awarded by this Court to the claimant-appellant.

9. Learned counsel, Mr. Gautam, on the other hand has submitted that the evidence of petitioner is not supported by any other eye witness of the accident as has been observed by learned Tribunal and since the Tribunal has taken a stand based on the evidence on record, the High Court considering the appeal may not interfere in the finding of the Tribunal.

10. With his all fairness, learned counsel, Mr. Gautam has submitted that in the written statement of the Insurance Company, it has been admitted that the vehicle was having with insurance policy, but it is the duty of the insured to place on record all documents of the vehicle including certificate of the insurance as otherwise inflicting the responsibility on the insurance company, of making payment of the compensation may not be wise. Since the petitioner failed to

bring on record the cost of treatment, nothing can be awarded to the petitioner towards cost of treatment.

11. I have meticulously gone through the claim petition, written statements and the evidence on record. The accident alleged, occurred on 04.09.2000, at about 1200 hours. F.I.R. was lodged by an eye witness of the accident immediately thereafter, within one hour fifteen minutes. It is specifically stated in the F.I.R. that the vehicle went off the road dashed with a road side tree and some of the passengers received bleeding injury due to the accident and those passengers were lifted to Tilthai Hospital for treatment. The petitioner filed the claim case on 05.01.2001 presenting an application u/s 166 of the M.V. Act for granting compensation for the injury, sustained by him, due to the accident. He has stated that he was a passenger and travelling with the vehicle at the time of accident and he received multiple injuries due to the accident. In his deposition, he stated that he sustained broken injury in his waist and he was treated by Dr. Jayanta Nandi in the Dharmanagar Sub-Divisional Hospital.

12. P.W. 2 stated that he is a next door neighbour of the petitioner and he learnt that the petitioner sustained injury due to the accident and he has also found the vehicle lying in the road side while returning from Panisagar.

P.W. 3 stated that he shifted the victim to the hospital. Both PWs 2 and 3 seen the vehicle after the accident in the road side, but, did not see the actual accident. The injured while supported by P.Ws. 2 and 3 in respect of accident and further supported by the FIR, which was lodged immediately after the accident, I am at a loss as to what else is required to prove the accident. The finding of the learned Tribunal, in this respect, can in no way be appreciated specially in a case where a victim injured has approached a tribunal for compensation. The issue, as to whether an accident occurred because of rash and negligent driving is therefore established.

13. The petitioner stated that he sustained injury and he was first taken to Tilthai Hospital wherefrom he was referred to Sub-Divisional Hospital, Dharmanagar and was under treatment till 21.09.2000. Exbt. 1 is the Discharge Certificate of Dharmanagar Hospital which is in support of the petitioner's contention that he was under treatment from 04.09.2000 to 21.09.2000 for the injuries with a history of road traffic accident. Exbt. 2 series, the injury report of the police case collected from Tilthai Hospital also shows that the petitioner suffered blunt trauma, in left hip and incised looking lacerated wound measuring 1 inch approximate on left side of forehead. The injury report shows that he was taken to Tilthai hospital at 12.50 p.m., on 04.09.2000 itself and from that hospital, he was referred to Dharmanagar Sub-Divisional Hospital for better treatment. The injury report collected by police from Dharmanagar Hospital shows that the petitioner was admitted in the Hospital on 04.09.2000 and was discharged on 21.09.2000. Dr. Jayanta Nandi signed the medical report and observed that there were three injuries on the person of the petitioner and the injuries were grievous in nature. The medical certificate issued by Dr. Jayanta Nandi marked as Exbt. 3

series cannot be clearly read. Neither the medical officer examined nor it was clearly spelt out at the time of recording of evidence as to what the doctor has written in Exbt. 3 series. It can be easily presumed that the petitioner sustained some grievous injury for which he was hospitalized for 16 days. It is also clearly brought on record that the petitioner suffered injury due to the accident and he was hospitalized for 16 days and during the period of hospitalization, definitely, the petitioner lost his income and also sustained loss towards cost of treatment. In the absence of specific evidence, we have to make some sorts of guess work and some sorts of assumption and presumption for determination of just compensation. Since the petitioner was treated in a Government hospital, he might not incur the expenditure towards the doctor's fees and charges of hospital bed. But definitely incurred expenditure towards purchase of medicine, attendant, sick food and other incidental expenses. Considering the period of hospitalization and nature of injuries sustained by the petitioner, a lump sum compensation of Rs. 12,000/- is awarded, as compensation.

14. The petitioner was a cultivator and according to him, he used to earn Rs. 2,000/- per month. The injury and the period of treatment suggests that he could not pursue his normal works, at least, for 3 months and the loss of income for 3 months i.e. Rs. 6,000/-, is awarded as compensation. Towards non-pecuniary damages for the pain and sufferings etc., an amount of Rs. 15,000/- is awarded as compensation. In total, the petitioner is entitled to get Rs. 33,000/- (Rs. 12,000/- + Rs. 6,000/- + Rs. 15,000/-) as compensation.

15. The owner of the vehicle is responsible to make payment of the compensation. Since the insurance of the vehicle, on the alleged date of incident, is not disputed, I direct that the insurance company is to make compensation with 6% interest thereon from the date of the filing of the petition i.e. 05.01.2001 and the payment should be made within 60 days from today failing which, it shall carry interest @ 9% per annum.

16. The appeal accordingly, stands disposed of.

17. Send back the L.C.R. along with a copy of this judgment. Supply a copy of the Judgment to the learned counsel of both side for compliance.