(2018) 07 GAU CK 0018

In the Gauhati High Court

Case No : Mac Appeal No. 164 of 2010

Sri Gopal Kalita APPELLANT

Vs

Sri Sadananda Das RESPONDENT

Date of Decision : 11-07-2018

Acts Referred:

Citation : (2018) 07 GAU CK 0018

Hon'ble Judges : RUMI KUMARI PHUKAN, J

Bench : Single Bench

Advocate : J. Sarmah, S. K Goswami

Final Decision : Disposed Off

Judgement

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1. Heard the submission of learned counsel for appellant Mr. J. Sarmah and learned counsel for the Insurance Company Mr. S. K. Goswami.

2. By way of appeal, the appellant has challenged the award dated 23.2.2010 passed in MAC Case No. 119/1999 passed by the Motor Accident

Claims Tribunal, Kamrup, Guwahti. By recapitulating facts it can be narrated that on 7.7.1998 at about 6:30 P.M one Gopal Kalita was travelling in a

bus bearing No. 01/C-1115 (city bus) as passenger from Chandmari to Narengi, and on the way he met an accident near Ganesh Mandir due to

collision with another vehicle, resulting serious injury on his person. Said Gopal Kalita seated near right side of the city bus and when the city bus

passed through a turning point of Ganesh Mandir at that time Mini Truck bearing No. AMK-5681, coming from the opposite direction in high speed,

dash against said bus, and his hand came outside the window of the city bus while, making an attempt to hold the window, as a result of the accident his right hand was completely crushed and he has to undergo on amputation of his right arm. An application u/s 166 read with 140 of the Motor

Vehicle Act was preferred praying for compensation of the injury sustained by the claimant in the aforesaid Road Traffic Accident.

3. Notice was issued to owner of the insurer of both the vehicles that is the bus travelled by the appellant and the truck, who met the accident. During

the enquiry, the owners and drivers of the offending vehicle did not participate in the proceeding and the case proceeded ex-parte.

4. The Insurance Company in his written statement has denied all the material of the averments in the claim petition and pleaded that the claim set up

by the claimant is excessive and exorbitant and that Oriental company Ltd. will not liable to pay any compensation until and unless it is proved that the

driver of the offending vehicle had valid driving license at the time of occurrence and there is no violation of the condition of the insurance policy. On

the pleadings of the parties, necessary issues were framed and witnesses were examined. The Ld. Tribunal took the note of the evidence on record

that the claimant sustained severe injury on his person due to rash and negligent driving of the truck, and his right arm was amputated and he has to be

hospitalized due to the said accident and the accident occurred due to the collision of two vehicles. After examining all the materials on record, the Ld.

Tribunal has come to a finding as both the offending vehicles were insured with the Oriental Insurance Company Limited so the Ld. Tribunal directed

the Insurance Company to provide compensation in the following manner:

a. Loss of earning due to disability-1717 x 14 x 55% : Rs.1,58,650.00Â

b. Medical ExpensesÂ Â

Â : Rs.Â 21,000.00

c. Pain, shock and sufferingÂ : Rs.Â 30,000.00

d. Loss of amenities of life due to disabilityÂ Â Â Â Â Â Â Â Â Â Â Â Â Â Â Â :Rs.Â Â 50,000.00

e. Loss of earning for 2 months during treatmentÂ Â Â Â Â Â :Rs.Â Â 4,000.00

Â Â Â Â Â Â Â TotalÂ Â

Â :Rs.Â 2,63,650.00

Â Â Â Â Â Â Â Â Â Â Â The amount is rounded off to Rs 2,64,000/-

5. While discussing the issue No. 2 the claimant has stated to be of 40 years age and earning Rs 2745/- p.m. In support of the income of the claimant

has examined PW-2 and proved the salary certificate Ex-4. According to PW-2 as well as Ex-4 net monthly income of the claimant was Rs 1717/- (

i.e annual income of Rs 20604/-) as multiplicand for computing loss of earning due to the injury. With the above income and applying multiplier of 14,

total loss of earning due to disability of 55%, comes to Rs 1,58,650/- (55% of 20604 X 14). Thus considering all the facts and circumstances of the

case, and award which adheres to be just and reasonable compensation has been granted to the claimant.

Since both the offending vehicles were insured with Oriental Insurance Co. Ltd., it was directed to pay the entire amount of compensation.

6. Raising the grievance by the claimant that in view of the injury sustained by him for whole life and also he lost his one hand and the job, the amount

of compensation is lesser than the proportion of measury he suffered, the present appeal has been preferred. It is the contention of the appellant that

the Ld. Tribunal has failed to apply judicial mind while assessing the amount and a wrong multiplier and percentage of disability has been calculated

and also has not taken note of other non pecuniary damages in proper manner. Accordingly prayer has been made for enhancement of the aforesaid

amount in a proper manner by holding the proper multiplier and adequate amount under the head of non pecuniary damages. The learned counsel for

the appellant Mr. Sarmah has also relied upon the decision of the Honâ??ble Apex Court reported in 2017 (4) TAC 940 (SC) Ankur Kappor Vs.

Insurance Company and also 2017 (4) TAC 912 Guwahati Gregory Vanlalfinga Vs. Smti. Lalbiaktluangi and Another.

7. I have heard learned counsel for the Insurance Company Mr. Goswami, who has fairly submitted that the adequate multiplier is applied in view of

the age of the victim in between 36 to 40 as per the documents on record. Similarly, it is also admitted that the claimant is deprived of his one hand for

whole life and raised no serious objection as regard amount given in other account.Â

8. I have considered the deliberations of both the parties and also gone through the materials on record. The claimant in earlier part of his life, has lost

his capacity for earning livelihood by losing his right hand and also lost his job thereafter. Needless to say that amputation of right hand will make a

person, in-capacitated for the rest of life. In this instant case, the Ld Tribunal while assessing the injury has considered the medical report as regards

the disability of the 55 per cent as per the medical report and multiplier has been taken as 14 in view of the age of the victim as 40 years. On careful

scrutiny of the evidence on record would go to show that at the relevant point of time that the age of the claimant was 36 years to 40 years and in that

aspect the proper multiply will be 15 as per the Sarla Verma Case. On the next, as per the Schedule of the Workmen Compensation Act, Schedule I

Part II Column IV loss of a hand, percentage of loss of earning capacity is shown to be 60 per cent and the relevant point of time appellant was an

employee of Assam Asbestos Limited so matter of compensation can be awarded under the Workmen Compensation Act as well and same is now

counted for this case.Â

9. It is to be noted that the Ld. Tribunal has awarded lesser amount under the pain suffering and loss of amenities in comparison to the severe injury

sustained by the claimant. It is also noted that although the claimant was in hospital from two months and failed to produce all the relevant documents

before the Tribunal, so actually, no proper assessment of medical expenses were perhaps be made. However, in absence of proper documents,

medical expenses need not be interfered. Loss of earning has been assessed for 2 months, which has also found to be proper side. However, as per

the discussion and finding above, the matter is need to be interfered as regards the proportion of pain & suffering, loss of earning capacity and other

two heads of nonpecuniary damages. Accordingly following amount is calculated, which is found to be just and proper to be awarded of the

claimant/appellant.Â Again in view of the decision rendered by the Honâ??ble Apex Court in AIR 2017 SC 5157 Insurance Company Vs. Pranay

Sethi and Ors., the amount of 40Â per cent future prospect can be added to the income of the claimants (as per guideline)

a. Loss of EarningÂ Â (1717+1714 x 40/100) x 12 x 15 x 60% Â Â Â Â Â Â : Rs 2,59,480.00

b. Medical ExpensesÂ Â

Â : Rs.Â Â 21,000.00

c. Pain, shock and sufferingÂ Â
Â Â Â Â Â Â Â Â

Â : Rs. 1,50,000.00

d. Loss of amenities of life due to disabilityÂ Â Â Â Â Â Â Â Â Â Â Â Â Â Â Â Â Â Â
Â Â Â Â Â Â Â Â Â Â Â Â : Rs. 1,50,000.00

e. Loss of earning for 2 months during treatmentÂ Â Â Â Â Â Â Â Â Â Â Â Â Â Â Â
Â Â Â Â Â Â Â : Rs. Â Â Â Â Â Â 4,000.00

Â Â Â Â Â Â Â TotalÂ Â Â Â Â Â Â Â Â Â Â Â Â

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Â Â Â Â Â Â Â Â Â :Rs. 5,84,480.00/-

10. Award is enhanced as indicated above. As it has been submitted that the awarded amount has already deposited so now Insurance Company will

provide the remaining amount of the award to the claimant @ 6 per cent interest from the date of evidence that is 19.11.2005 (interest will not be

counted on the future prospect that is 40 per cent)

11. Oriental Insurance Company is accordingly directed to pay the balance amount before the Tribunal within 6 (six) weeks from today.

12. The petition stands disposed of accordingly. Return the LCR.

