
(2008) 01 GAU CK 0016
In the Gauhati High Court

State of Arunachal Pradesh

APPELLANT

Vs

Manmohan Singh Bhomrah

RESPONDENT

Date of Decision : 29-01-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2009) 4 GLR 722 : (2008) 1 GLT 658

Hon'ble Judges : B.P. Katakey, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.P. Katakey, J.—This appeal by the owner of the offending vehicle is directed against the judgment and award dated 10.7.2003 passed by the learned Member, MACT, Sonitpur in MACT Case No. 79/99 awarding a sum of Rs. 1,75,000/- as compensation for the injuries sustained by the respondent-claimant in a motor accident arising out of the use of a motor vehicle.

2. An application u/s 166 of the MV Act 1988, in short the Act, was filed by the respondent as claimant praying for awarding compensation for the injuries sustained by him in a motor accident occurred on 8.2.99 at 3.30 P.M. out of the use of the motor vehicle bearing Registration No. AR-01/8729 belonging to the appellant, contending inter alia that while he was proceeding to his house on a motor bike bearing Registration No. AS-12/0947 from Tezpur town, all of a sudden the offending vehicle hit from behind and knocked him down and as a result of which he sustained injuries for which he was hospitalized initially in Kanaklata Civil Hospital, Tezpur and thereafter, in Baptist Christian Hospital and further contending that the vehicle was driven in a rash and negligent manner which resulted in the accident, on the basis of which MAC Case No. 79/99 was registered.

3. The appellant on receipt of the notices filed the written statement contending that the claim petition is not maintainable, as the owner of the motorcycle on

which the claimant riding was not made a party and that the claimant was driving the motorcycle without having a valid driving licence, which contributed to the accident. It has also been contended in the written statement that the claim of Rs. 15,35,000/- is exaggerated and he is not entitled to any compensation.

4. The claimant in order to substantiate his claim for compensation examined 5 witnesses, namely claimant himself as CW1; his son Sri Amarjit Singh Bhomrah as CW2; Sri Dipak Singh as CW3; Dr. Dhrubajyoti Dekka as CW4; Shri Romakanta Bharali, Officer-in-charge of Kacharaigaon Police Outpost as CW5 and Sri Tapash Kr. Chakravarty, Incharge of Traffic Branch, Tezpur Police Station as CW6. The appellant though crossexamined the witnesses produced by the claimant in support of the claim and contested the claim by filing written statement, did not adduce any evidence.

5. I have heard Mr. D. Choudhury, learned Counsel for the appellant as well as Mr. T.C. Khatri, learned senior counsel for the respondent.

6. Mr. D. Choudhury, learned Counsel for the appellant referring to the judgment under challenge as well as the deposition of the claimant's witnesses and also the documentary evidence adduced before the learned Tribunal has submitted that there being no evidence at all on record regarding the loss of income for the period for which the claimant was under treatment, the learned Tribunal was wrong in awarding a sum of Rs. 60,000/-, on the ground of deprivation from contract works. It has further been submitted that there being clear evidence of CW1 i.e. the claimant that he could produce the vouchers showing expenses incurred for treatment to the tune of Rs. 5,000/- and there being no evidence at all relating to the future treatment required by the claimant for the injuries sustained by him in the motor accident occurred, the learned Tribunal ought not to have awarded a sum of Rs. 60,000/-. It has also been submitted that an amount of Rs. 55,000/- awarded towards the pain, agony, discomfort, inconvenience of day-to-day life is also on the higher side and the claimant is entitled to the maximum amount of Rs. 25,000/- on that count. Therefore, Mr. Choudhury submits that as the learned Tribunal is required to pass an award of just compensation, in the instant case the claimant is entitled to a sum of Rs. 30,000/- only which will definitely carry the interest from the date of filing the claim petition till the date when the appellant deposited 50% of the awarded amount before the Registry pursuant to the interim direction issued by this Court. In support of his contention, Mr. Choudhury has placed reliance on two decisions of this Court in *State of Tripura and Anr. v. Gopi Kanta Dey* 2000(2) GLT 577 and *National Insurance Co. Ltd. v. Dipika Choudhury and Anr.* 2002 (3) GLT 666.

7. Mr. T.C. Khatri, learned senior counsel appearing on behalf of the respondent refuting the submission put forward by Mr. Choudhury and supporting the judgment and award passed by the learned Tribunal has submitted that the claimant in his deposition has in clear terms stated that apart from the amount of Rs. 5,000/- which the claimant spent and which is supported by the vouchers

produced before the learned Tribunal, a sum of Rs. 14,499/- was paid to the hospital for receiving treatment as indoor patient. That apart, the claimant has also stated that another operation is required for the purpose of removal of the screws and plates fixed by the doctor. Referring to the deposition of Dr. Dhrubajyoti Deka (CW4) it has further been submitted that the doctor has deposed about the requirement of having another operation for removal of the screws and plates and therefore, it cannot be said that the claimant is entitled to any amount towards future medical treatment. According to Shri Khatri, the amount of Rs. 60,000/- as awarded by the learned Tribunal towards the medical expenditure already incurred as well as expenses for future treatment cannot be categorized as not a just compensation. Referring to the award of Rs. 60,000/- towards the loss of income passed by the learned Tribunal Mr. Khatri has submitted that it is being in evidence that the claimant earned his livelihood out the partnership business and he was under treatment at least up-to the date when his deposition was recorded before the learned Tribunal and also it is being in evidence that future treatment is required, it leads to the conclusion that the claimant has suffered loss of income because of the injuries sustained arising out of the motor accident occurred on 8.2.99 and hence, the learned Tribunal taking into consideration the entire materials on record has rightly awarded a sum of Rs. 60,000/- towards the loss of income. It has further been submitted that keeping in view the nature of sufferings by the claimant and the period of treatment and the future treatment required, an amount of Rs. 55,000/- cannot be on the higher side as awarded against the pain, agony, discomfort, inconvenience of day-to-day life. Referring to the decision of the Apex Court in Nagappa Vs. Gurudayal Singh and Others, it is submitted that some guess work in ascertaining the just compensation to be awarded by the learned Tribunal is always permissible and there being the foundation in the evidence laid by the claimant before the learned Tribunal, the learned Tribunal has not committed any illegality in awarding Rs. 1,75,000/- for the injuries sustained by him.

8. There is no dispute to the proposition of law that the learned Tribunal in a claim petition filed by the claimant can pass an award taking into account the medical expenses incurred and to be incurred, as the learned Tribunal cannot pass the award on piecemeal basis and it has to pass the final award. The amount of compensation awardable, naturally would include the amount of compensation awardable for future medical treatment as observed by the Apex Court in Nagappa (supra). While ascertaining the just compensation awardable to the claimant relating to the loss of income as well as the future medical expenditure to be incurred by the claimant, some guess work is also permissible, provided there is foundation in the evidence laid by the claimant.

9. In the instant case, the claimant who has examined himself as CW1 in his deposition has stated in clear terms that he has paid a sum of Rs. 14,449/- to the hospital as indoor patient apart from the amount spent towards purchase of the medicines and other materials required for the treatment of his fractured right leg. The appellant though cross-examined the claimant has not challenged the

positive statement of the claimant relating to the payment of Rs. 14,449/- to the hospital as an indoor patient. That apart, the claimant by producing the vouchers could prove that he has spent a sum of Rs. 5,000/- till the date of recording his statement before the learned Tribunal. Therefore, the claimant has spent up-to the date when his statement before the learned Tribunal was recorded, a sum of Rs. 19,449/. which is rounded to Rs. 20,000/-. It is also in evidence of claimant (CW1) that he is still feeling pain on the right hip because of the injuries sustained by him in the motor accident occurred on 8.2.99. The doctor (CW4) supporting the version of CW1 has also stated that the claimant has complained about the pain on the right hip and another operation is required for the purpose of removal of screws and the plates which were fixed on the right femur of the claimant. Therefore, it is evident that the claimant has to spend some amount towards his future medical treatment i.e. for treatment of the pain as well as for the surgical operation to be performed on him for removal of the screws and plates. The question is what would be the just amount to be awarded for future medical treatment. Though neither the claimant nor the doctor have stated anything relating to the amount to be spent for the future medical treatment, going by the amount already spent for his treatment, it can safely be assumed that a further sum of Rs. 20,000/- would be required by the claimant for the purpose of future medical treatment which includes cost of another operation for removal of the screws and the plates, taking into account the present rate of inflation. The claimant is, therefore, entitled to a sum of Rs. 40,000/- towards medical expenses already incurred and to be incurred. The learned Tribunal without discussing anything has awarded a sum of Rs. 60,000/- as compensation towards the medical expenses incurred and to be incurred though the claimant on the basis of the evidences available on record is entitled to Rs. 40,000/- only on that count.

10. The learned Tribunal has also awarded a sum of Rs. 60,000/- towards the loss of income. It appears from the evidence on record, more particularly the evidence of CW1, the claimant himself that he has not stated anything relating to his loss of income. However, it appears from his deposition before the learned Tribunal that he was hospitalized on 8.2.99 i.e. the date of accident and was treated as indoor patient up-to 17.2.99 and even after his discharge, he was experiencing pain on right hip and could not make normal movement and the normal work, thereby affecting his partnership business. Though the claimant in his deposition did not state categorically about the quantum of loss of income he suffered because of the injuries sustained by him, from the period of treatment as well as the nature of injury sustained by him, i.e. the fracture of the right femur bone for which he has to be operated upon and plates are to be fixed, it can be safely held that the claimant has suffered some loss of income because of the injuries sustained by him, which can be assessed as Rs. 20,000/-taking into account his monthly income of Rs. 3,000/-. The learned Tribunal has awarded a sum of Rs. 60,000/- towards the loss of income which in my view is not the just compensation. The learned Tribunal has also awarded a sum of Rs. 55,000/- as

compensation for the pain, agony, discomfort, inconvenience of day-to-day life. The claimant in his deposition has stated that after the accident he is still experiencing inconvenience, discomfort, etc. to attend his contract work as one of the partners of Bhomrah Brothers and after the accident he cannot make normal movement and normal work and cannot sit properly and still feels pain in the fracture bone. Such positive statement of the claimant remains unchallenged, as the appellant during cross-examination did not challenge such statement of the claimant. That being the position and it is being in evidence of the doctor about the pain and suffering, the claimant is no doubt entitled to some amount towards the pain and suffering as well as discomfort to his life which in my view can be quantified at Rs. 25,000/-.

11. In view of the aforesaid position, in my view the claimant is entitled to a sum of Rs. 85,000/- (Rs. 40,000/- towards medical expenses incurred and to be incurred, Rs. 20,000/- towards loss of income and Rs. 25,000/- towards pain and suffering as well as discomfort to his life) as compensation for the injuries sustained by him in the motor accident occurred on 8.2.99 involving the of fending vehicle bearing Registration No. AR-01/8729 belonging to the appellant. The claimant is also entitled to interest @ 9% per annum as awarded by the learned Tribunal with effect from the date of filing the claim petition i.e. 6.5.99 till the date when the appellant has deposited a sum of Rs. 85,500/-before the Registry of this Court.

12. Registry is directed to release the amount deposited by the appellant, pursuant to the interim direction issued by this Court, to the claimant on being identified by the learned Counsel. The remaining amount, if any, after calculating the interest for the aforesaid period, shall be deposited by the appellant before the learned Tribunal within a period of 6 weeks from today. On such deposit, if any, the claimant shall be entitled to withdraw the said amount.

13. The judgment and award passed by the learned Tribunal is accordingly modified. The appeal stands allowed to the extent indicated above.