
(2015) 03 GAU CK 0102
In the Gauhati High Court
Case No : MAC App. No. 45 of 2007

United India Insurance Co. Ltd.

APPELLANT

Vs

Abdul Matin and Others

RESPONDENT

Date of Decision : 23-03-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 163(A), 163A, 166, 170

Citation : (2015) 3 GLT 143

Hon'ble Judges : Prasanta Kumar Saikia, J

Bench : Single Bench

Advocate : K.P. Singh, K. Paul, S.K. Singh and R. Sundhi, for the Appellant; C. Goswami, M.K. Sharma and S. Chouhan, Advocates for the Respondent

Judgement

Prasanta Kumar Saikia, J—The appeal numbered as MAC Appeal No. 45/2007 was directed against the judgment dated 30.11.2004 passed by learned Motor Accident Claims Tribunal, Darrang, Mangaldoi in MAC Case No. 182 of 2013 whereby the learned Tribunal was pleased to grant Rs. 2,65,600/- only, as being the compensation to the claimant therein for his sustaining injuries in a motor accident which took place at Lailongpara on 04.03.2003. Questioning the judgment, aforesaid, the United India Insurance Company Ltd. Mangaldoi Branch (who was arraigned as respondent No. 3 in MAC Case No. 182 of 2003) has preferred the MAC Appeal No. 45 of 2007.

2. Same judgment has also been questioned by the claimant in MAC Case No. 182 of 2003 having filed cross appeal which was numbered as Cross Appeal No. 9 of 2014 alleging that the compensation, granted to the claimant was too meagre to say the least.

3. None appeared for the appellant although names of the learned counsel have been shown in the cause list.

4. On the perusal of the record, it is found that on the last occasion too, the appellant in the MAC Appeal No. 45 of 2007 remained unrepresented when the

matter was taken up for hearing. Being so, the appeal preferred by United India Insurance Company Ltd. is dismissed for non-prosecution.

5. However, the learned counsel for the appellant in this Cross Appeal (who was arraigned as respondent No. 1 in MAC Appeal No. 45/2007) is present. I have heard the learned counsel for the appellant in Cross Appeal No. 9 of 2014.

6. The facts necessary for disposal of the present proceeding, in brief, are that on 04.03.2003 at about 4.30 pm, the appellant in Cross Appeal No. 9 of 2014 (hereinafter referred to as cross objector) was driving a truck bearing registration No. AS 25-B/5295 and was coming from Bhairabkunda to Kharuphetia through the National Highway.

7. When the aforesaid vehicle reached a place called Lailongpara, the right side front wheel of the four wheeled vehicle got burst for which the driver lost control over the vehicle and as a result, it dashed against a tree. Because of such accident, the cross objector sustained grievous injury for which he had to remain bed-ridden over a long period of time.

8. Alleging as above, the cross objector filed a petition u/s. 166 of the Motor Vehicle Act (in short, "M.V. Act") against the opposite parties therein including the owner of the vehicle as well as United India Insurance Co. Ltd. with whom the vehicle aforesaid was insured during the time in question seeking compensation for the injury which he sustained in the accident aforementioned. Such a claim petition was registered as MAC Case No. 182/2003. The United India Insurance Co. Ltd. was arraigned as O.P. No. 3 in MAC Case No. 182/2003.

9. Notice of this proceeding was issued on the respondents and on receipt of the same, the respondent No. 1/Insurance Company entered appearance and contested same by filing written statement. In course of time, O.P. No. 3 in MAC Case No. 182/2003 filed an application u/s. 170 of the M.V. Act which was allowed enabling the United India Insurance Co. Ltd. to resist the aforesaid claim on all the grounds which are available to the owner of the vehicle since the owner of the vehicle did not contest the proceeding aforementioned.

10. During the course of enquiry, an application was filed by the claimant seeking conversion of aforesaid proceeding from a proceeding u/s. 166 to a proceeding u/s. 163(A) of the M.V. Act which was also allowed. As the trial proceeded, the claimant had filed another application seeking to amend the claim petition by deleting his name since he (claimant) was also arraigned as opposite party No. 2 in MAC Case No. 182/2003. He also requested the Court to allow him to withdraw the W.S. filed by him in the aforesaid proceeding as O.P. No. 2. Those prayers were also allowed.

11. In due course, the court had framed as many as 5 (five) issues and allowed the parties to adduce their evidence in support of their respective claim. In the course of enquiry, the claimant examined 5 (five) witnesses including the Doctor who treated him and thereafter, it concluded that the claimant is entitled to Rs.

2,65,600/- (Rupees Two lakhs Sixty Five Thousand Six Hundred) as being compensation since he could prove that due to such injury, he sustained permanent visual disability was assessed at 40%. The relevant part is reproduced below -

"PW. 5 Dr. Jitendra Kr. Saharia states that on 4.4.03 while he was on duty at Magaldai Civil Hospital, he examined Abdul Matin and found compound fracture of both bones of right leg and he referred him to GMCH after providing first aid, where he was treated till 8.4.03; and that after releasing from GMCH he again checked up the patient and found that he was retaining permanent disabilities due to fracture of the right leg and Ext. 19 is the certificate issued by him. From evidence of PW. 5, it is clear that in the said accident that claimant's right leg was broken down below the knee and he was treated at GMCH, but his right leg was not fully cured; and he is retaining functional deformity and difficulty due to deformity of right leg as a result of fracture. Thus, from the evidence of PW 5 and the medical report issued by him, one thing is clear that the right leg of the claimant was not fully cured and deformity remained in the right leg.

During recording of the evidence of the claimant and on subsequent dates while accused used to appear before me, I have found that the right leg of the claimant remain deformed and he used to walk on crutches and sometimes on walking stick, and his right eye was also seen completely damaged. From medical papers issued from GMCH, it is also seen that the right leg of the claimant was plastered at GMCH. In the discharged slip, it is also mentioned that both bones of right leg was fractured. Thus, it is clearly proved that after the accident, the right leg of the claimant became deformed making him permanently disabled by some percent. It appears from the evidence that presently the claimant could not walk properly and do work or to drive for income. Therefore, it is proved that the claimant lost his profession of driving after the accident and is retaining permanent disability by some percent due to deformity of right leg.

From Ext. 4, it is seen that Dr. Kalyani Das treated the claimant for the injury he sustained in his right eye and Dr. Kalayani Das also certifies that the claimant also suffered loss of 40% visual disability.

During recording the evidence, I also found that the right eye of the claimant become almost bright. Thus, it is proved that the right eye-sight of the claimant was impaired after sustaining injury by him in the said accident. Therefore, it is believable that the claimant is suffering from permanent visual disability by 40%

So, it is clearly proved that the claimant is retaining visual permanent disability by 40% and also orthopedic permanent disability by some percent, which is not clearly observed by the orthopedic surgeon. It is also proved that the claimant became unfit to do physical work like driving, working, carrying loads etc. Therefore, it shall be presumed that the claimant is retaining permanent disability in between 30% and 40% and now he is fit only for doing business like

shopkeeper only.

It is already proved that the claimant used to earn Rs. 3,000/- per month while he was driving the vehicle. Therefore, we are to take out 35% of it as monthly income. So, monthly loss of income is Rs. 1,050/-.

The claimant is a man of 35 years presently. So, to calculate the total loss of future income, we are to take multiplier given in the schedule of Section 163(A) of the M.V. Act. As his age is 35 years the multiplier would be "16". So, total loss of future income is Rs. 2,01,600/-.

From the evidence of the claimant, it is seen that he was under treatment for 3 months and was in bedridden condition. Therefore, he is entitled to get Rs. 3,000/- x 3 = 9,000/- as loss of income during treatment.

It is already proved that the claimant suffered from permanent orthopedic disability by 40% and he also suffered pain for about three months and also to suffer pain in future. So, for pain and suffering he is entitled to get at least Rs. 50,000/-.

From exhibited vouchers, ranging from Ext. 5 to 11, it is seen that the claimant spent Rs. 1,373/- in buying medicines, which he is entitled to get back. Secondly, the claimant was taken to GMCH for treatment and he also attended at GMCH for several occasions for check up, but he failed to adduce any evidence to prove the cost of transportation. So, in such situation, at least Rs. 3,000/- may be given to him in the head of expenditure incurred by him for his transportation cost during treatment. Thirdly, the claimant stayed at GMCH for about 22 days and attendant also help him staying at Guwahati. So, the claimant is entitled at least Rs. 5,000/- as miscellaneous cost during treatment. Therefore, the claimant is entitled to get Rs. 9373/- for his treatment. But as per law, in the provision of Section 163(A) of the MC Act, the claimant is entitled to get Rs. 5,000/- as expenditure during treatment.

(3) So, in view of above observation, I work out the compensation as below :--

Therefore, O.P. No. 3, being the insurer of the offending vehicle, is liable to pay Rs. 2,65,600/- (Rupees two lakhs sixty five thousand six hundred) only to the claimant as compensation along with an interest at the rate of 6% per annum from the date of filing of the petition till full payment."

12. The learned counsel for the claimant now submits that the learned Tribunal did not take into consideration that a driver who sustained 40% disability due to accident aforesaid became wholly unfit for any work whatsoever, more so, when such disability in regard to eye-sight of the claimant and, therefore, compensation which was assessed at Rs. 2,65,600/- (Rupees two lakhs sixty five thousand six hundred), on the basis of 40% disability is not correct and proper.

13. Assailing the award further, it has been contended that though the daily allowance of the claimant was to have taken into account in calculating the

compensation to be awarded to the claimant, same was not taken into account. It has also been contended that the interest rate granted on the compensation was too low to say the least.

14. The counsel for claimant/cross appellant further submits that in view of law laid down in (2003) 9 SCC 54 (Rajesh v. Ranveer Singh), the claimant is also entitled to future earnings at the rate so specified in Rajesh (supra).

15. I have considered the submission, advanced by the learned counsel for the appellant in this Cross Appeal in the light of materials on record.

16. The learned counsel for the appellant in Cross Appeal No. 09 of 2014 submits that there is evidence on record to show that the claimant was given daily allowance @ Rs. 60 (Rupees Sixty) in addition to his monthly allowance. But this allowance was not included in his salary for the purpose of computation of compensation which is not correct---argues learned counsel for cross-objector.

17. To buttress his contention that the daily allowance needs to be included in the salary for the purpose aforesaid, learned counsel for the claimant/cross objector has relied on the decisions of the Hon"ble Apex Court in the case of Md. Amir Uddin & Anr. v. United India Insurance Co. Ltd. & Anr. reported in (2011) 1 SCC 304 wherein it was held that daily allowance is part of the salary of an employee. The relevant part of the judgment is reproduced below :--

"7. We are unable to appreciate the view taken by High Court on both the counts. First, there is no evidence that daily allowance of Rs. 50/- was not paid to the deceased every day or even that he was not on work on every day of the month. On the contrary, there is evidence on record that apart from monthly salary of Rs. 2,500/- he was getting Rs. 50/- as daily allowance. We, therefore, hold that Tribunal was right in assessing monthly income of deceased at Rs. 4,000/-."

18. The learned counsel for the claimant submits that since the claimant was a driver who sustained 40% permanent disability, same rendered him totally unfit to perform his duty which he was doing before the accident in question. Therefore, claimant's functional disability ought to have been counted 100% which means that compensation was to be calculated on the basis of entire salary which the claimant used to earn before the incident in question and not on 40% of such salary. In support of such contention, the decision in Syed Sadiq etc. Vs. Divisional Manager, United India Ins. Company, (2014) 1 ACC 206 : AIR 2014 SC 1052 : (2014) AIRSCW 724 : (2014) 1 JT 569 : (2014) 1 RCR(Civil) 766 : (2014) 1 SCALE 377 : (2014) 2 SCC 735 has been relied on.

"6. This Court in the case of Mohan Soni v. Ram Avtar Tomar & Ors., has elaborately discussed upon the factors which determine the loss of income of the claimant more objectively. The relevant paragraph reads as under:

"11. In a more recent decision in Raj Kumar Vs. Ajay Kumar and Another, (2011) ACJ 1 : (2011) 2 RCR(Civil) 101 : (2010) 12 SCALE 265 : (2011) 1 SCC 343 :

(2011) 1 SCC(Cri) 1161 : (2011) 1 TAC 785 , this Court considered in great detail the correlation between the physical disability suffered in an accident and the loss of earning capacity resulting from it. In paragraphs 10, 11 and 13 of the judgment in Raj Kumar, this Court made the following observations:

10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, the percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding-loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation.

11. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that the percentage of loss of earning capacity as a result of the permanent disability is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation. (See for example, the decisions of this Court in Arvind Kumar Mishra Vs. New India Assurance Co. Ltd. and Another, (2011) 111 CLT 285 : (2010) 10 JT 254 : (2011) 161 PLR 740 : (2010) 10 SCALE 298 : (2010) 10 SCC 254 : (2010) AIRSCW 6085 : (2010) 6 Supreme 844 and Yadava Kumar Vs. The Divisional Manager, National Insurance Co. Ltd. and Another, (2010) 10 SCC 341 : (2010) 10 SCR 746).

13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or

restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood."

19. The learned counsel for the claimant further submits that the interest was granted @ 6% which is unsustainable in law since it has repeatedly been held that interest is to be granted @ 9%. In support of such contention, the decision of the Hon'ble Apex Court in the case of Sri Kumaresh Vs. The Divl. Manager National Insurance Company Ltd. and Another, (2011) ACJ 1975 : (2011) 6 JT 35 : (2011) 164 PLR 110 : (2011) 2 RCR(Civil) 913 : (2011) 12 SCC 488 : (2011) 4 TAC 28 has been relied on.

20. In Kumaresh (supra) the Tribunal awarded the claimant a compensation to the tune of Rs. 2,81,200/- with 6% interest per annum on the compensation. When the matter reached the Apex Court, the later while enhancing the compensation by another One lakh also ordered payment of interest on compensation at the rate of 9% per annum.

21. Coming to the contention of the claimant that daily allowance is to be included in the salary, it is found that there is no convincing evidence on record to show that the petitioner used to earn Rs. 60/- as allowance. Even if the claimant used to earn Rs. 60/- as daily allowance during the time under consideration and if such daily allowance is included in the salary of the claimant, his monthly salary will get increased to Rs. 4,800/- and in that event, he will not be entitled to get the benefit of Section 163A of the M.V. Act ----since under Schedule 1 attached to the MV Act, a proceeding there-under can be filed by a person whose yearly income is Rs. 40,000/- or less. In view of above, we find no infirmity in the Tribunal assessing the monthly income of the claimant at Rs. 3,000/-."

22. Coming to the allegation that 40% permanent injury rendered the cross-objector unfit for the, avocation he was engaged in, I have found that there is no convincing evidence on record to show that for sustaining 40% disability of the nature aforesaid, the claimant was rendered totally unfit for any occupation. In this context, it may be stated that the Doctor who attended the claimant opined that victim sustained injury on the right side and permanent disability arising out of such injury was assessed at 40%. Such revelation shows that the claimant can still gainfully engaged himself in some other avocations. Therefore, the contention that the accident in question rendered him totally unfit for any job, in my opinion, has no merit at all.

23. Even otherwise, the aforesaid prayer needs to be rejected. It may be noticed here that the claimant had filed a petition in question u/s. 163A of the MV Act, and as such, formula regarding computation of compensation, so structured in Schedule 1 of the Act, is to be followed. In that view of the matter too, in my opinion, the claimant is not entitled to claim compensation to be assessed at the rate of salary which he used to earn when the accident took place.

24. In view of our foregoing discussion, I have found no merit in the claim of the cross appellant/claimant that he needs to be given some amount to compensate the loss which he would have earned in future had he not met the accident aforesaid.

25. Coming to the contention that interest was not paid at an appropriate rate, I have found that interest was granted at a rate lower than normal rate at which interest was generally granted. In my view, interest ought to have been granted @ 9% per annum.

26. Being so, the interest needs to be calculated @ 9% on the compensation, so awarded and such interest is to be paid from the date of filing of the petition.

27. It needs to be stated here that the amount granted by the court below for pain and suffering seems to be slightly on lower side. In my considered view, same should be assessed not at Rs. 50,000/- but ought to have been assessed at Rs. 75,000/-.

28. Resultantly, I find no infirmity in the order under challenge save and except the rate of interest on the compensation as granted by the court below as well as the amount paid for pain and suffering.

29. In the result, the award stands modified in the following manner -

30. In view of above, while enhancing the award granted to the claimant as aforesaid, the respondent No. 3 is directed to pay interest on the revised compensation @ 9% per annum, and such interest is to be paid from the date of filing of the petition till the realization of the entire amount. In the result, MAC Appeal No. 45 of 2007 is dismissed whereas the Cross Appeal No. 9 of 2014 is partly allowed.