

GAHC010120922017



undefined

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : MACApp./37/2017

SRI HARIDHAR TALUKDAR
S/O LATE RAJEN TALUKDAR, R/O KAHILIPARA, P.S. DISPUR, P.O.
WAREHOUSE, GUWAHATI-19, DIST. KAMRUP M, ASSAM.

VERSUS

SRI BHUPEN HAZARIKA
S/O LT. CHENIRAM HAZARIKA, VILL. NAPAMORA GAON, P.S. TEOK, DIST.
JORHAT, ASSAM.

Advocate for the Petitioner : MR. SIDHANT DUTTA, MR.C SHARMA,MR.M DAS,MR.S DUTTA,MS.N MODI

Advocate for the Respondent : MS. S T BOKTH (R-1), MR. S K TALUKDAR (R-1)

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 24.02.2026

- 1.** Heard Mr. S. Dutta, learned counsel for the appellant. Also heard Mr. S. K. Talukdar, learned counsel for the respondent No.1/claimant.
- 2.** This appeal, under Section 173 of the Motor Vehicle Act, 1988, has been preferred by the appellant, Sri. Haridhar Talukdar, impugning the judgment and award dated 24.10.2016, passed by the Motor Accident Claims Tribunal No.3, Kamrup (Metro), in MAC case No.1136/2006, whereby the present appellant was

directed to pay a compensation amount of Rs.2,00,000/-, along with an interest @ 6% per annum from the date of filing of the additional evidence on affidavit, i.e., 15.02.2014, till the payment of the same to the claimant.

3. The facts relevant for the consideration of the instant appeal, in brief, are that on 29.07.2006, the claimant, Sri. Bhupen Hazarika, was proceeding from Jatia towards Ganeshguri in his motorcycle. At about 8.15 PM, near Ganeshmandir, Dispur, a scooter bearing registration number AS-25-B-1498, being driven in a rash and negligent manner, hit his motorcycle, as a result of which, he sustained injuries on his head, chest, face, and other parts of the bodies. He was immediately taken to Guwahati Medical College Hospital for treatment, and thereafter, he was shifted to GNRC for better treatment. Thereafter, the respondent No.1/claimant, approached the Motor Accident Claims Tribunal No.3, Kamrup (Metro) at Guwahati, by filing a claim application seeking compensation for the injuries sustained by him in the vehicular accident.

4. The opposite parties, including the insurance company contested the claim of the respondent No.1 by filing a written statement. On the basis of the pleadings of the parties, the Motor Accident Claims Tribunal framed following issues:

- I. Whether the alleged accident on 29.07.2006 near Ganesh Mandir, Dispur caused due to rash and negligent driving of the driver(s) of vehicle No.As-25-B-1498 (Scooter)?*
- II. Whether Sri. Bhupen Hazarika was injured as a result of the said motor accident?*
- III. Whether the claimant(s) is entitled to get any compensation for*

the injury caused to Sri. Bhupen Hazarika in the said accident, if yes, what will be the just and reasonable amount of compensation?

IV. Who amongst the opposite parties is liable to pay the compensation to the claimant?

5. During the enquiry, in support of the claim petition, the claimant, Sri. Bhupen Hazarika, examined himself as PW-1 and 5 other witnesses and also exhibited several documents. The opposite party No.1 and 2 had examined 2 witnesses DW-1 and DW-2. The evidence on affidavit submitted by opposite party No.3 (Insurance Company) was expunged as the said witness did not turn up to face the cross-examination.

6. Ultimately, by the impugned judgment and award, the Motor Accident Claims Tribunal held that the present appellant liable to pay the compensation amount to the respondent/claimant in the manner as described in the forgoing paragraphs. It was held by the tribunal that the policy in question in respect of the offending scooter was not valid at the time of accident, and therefore, the Insurance Company was not liable to indemnify the owner. Accordingly, the appellant was held liable to pay the compensation to the claimants. Though, in the memo of Appeal, the present appellant has taken several grounds for impugning the judgment and award passed by the Motor Accident Claims Tribunal. However, during hearing, the learned counsel for the appellant has mainly pressed three grounds, as discussed herein below.

7. Mr. S. Dutta, learned counsel for the appellant, has submitted that the Motor Accident Claims Tribunal had erred in attributing the negligence to the present appellant, as a result of which the accident occurred, by ignoring the evidence adduced by DW-1 and DW-2. He submits that DW-1 and DW-2 have categorically stated in their deposition that the accident in question had

occurred due to the negligence of the driver of the motorcycle, i.e., the claimant, however, the said testimony was not taken into consideration by the Motor Accident Claims Tribunal. Hence, he submits that the Motor Accident Claims Tribunal had erred in arriving at the conclusion regarding the negligence due to which the accident occurred.

8. He further submits that the Motor Accident Claims Tribunal has also erred in assessing the monthly income of the claimant at Rs.10,000/-, without there being any evidence to that effect on record. He further submits that though the evidence on record suggests that the claimant was admitted in the hospital after the accident only for a period of 17 days, however, while assessing the loss of income, the Tribunal came to the conclusion that the claimant suffered loss of income for 5 (five) months without there being any evidence to that effect on record. He, therefore, submits that the tribunal was wrong in directing the appellant to pay the compensation to the claimant. Hence, he submits that the impugned judgment and award is liable to be set aside.

9. On the other hand, Mr. S. K. Talukdar, the learned counsel for respondent No.1 has submitted that the Tribunal has correctly assessed the evidence on record and thereafter, directed the appellant to pay a sum of Rs.2,00,000/-. He submits that there is no infirmity in the impugned judgment and award passed by the Tribunal.

10. He submits that the testimony of the present appellant, as PW-1, before the Tribunal, regarding the negligence of the appellant in driving the scooter in rash and negligent manner, which caused the accident, has been corroborated by the testimony of other eye witnesses, namely, PW-2 and PW-3. He submits that the PW-3, who is an independent eyewitness, has categorically deposed that the accident had occurred due to rash and negligent driving of the scooter

driver (present appellant), who had seen the motorcycle driven by the claimant on his own side of the road. He submits that said evidence clearly indicates that the respondent No.1 was driving his motorcycle on his side of the road, whereas the appellant was coming on the wrong side of the road.

11. He submits that this evidence by the PW-1, which is corroborated by the testimony of PW-2 and 3, has been taken into consideration by the Tribunal. He further submits that the testimony of DW-1 and DW-2 has been rightly rejected by the Tribunal, as there are inherent inconsistency regarding the narration of the incident during the accident by both the witnesses. He submits that whereas the DW-1 has mentioned about involvement of a tracker vehicle also in his testimony, however, the DW-2's testimony is silent about any tracker vehicle, and the said fact is taken into consideration and the Motor Accident Claims Tribunal, which, according to him, has rightly found the testimony of claimant's witness as more trustworthy.

12. He submits that in a Motor Accident claim case, the standard of proof to be adopted is on the basis of preponderance of probability and the tribunal, rightly, by applying the said standard, found the testimony of the claimant's witness as trustworthy. He further submits that as regards the third point raised by learned counsel for the appellant regarding the assessment of monthly income of the claimant, as well as loss of earning for 5 (five) months, the testimony of PW-6, who was the employer of the claimant, has been considered by the Tribunal. He submits that the PW-6 has also exhibited the income certificate of the respondent No.1 as exhibit No.6, which clearly indicates that the earning of the claimant was Rs.10,000/- per month at the time of the accident. He also submits that the PW-6 has also deposed before the Tribunal that due to sustaining severe head injuries by the claimant, he had to be absent

from duties from 31.07.2006 to 31.12.2006 and during such an absence, he was not paid any salary by the employer.

13. He submits that same testimony of the employer (PW-6) has remained uncontroverted during his cross-examination. The learned counsel for the respondent, therefore, submits that the tribunal had not erred in coming to the conclusion of negligence on the part of the appellant, as well as the assessment of the monthly salary and, and loss of earning by the claimant, as same is based on the evidence on record, as such, he has prayed for dismissing this Appeal.

14. I have considered the submissions made by learned counsel for both sides and I have gone through the materials available, including records of MAC Case No.1136/2006, which was requisitioned in connection with the incident.

15. After going through the memo of Appeal and after considering the submissions made by learned counsel for both sides, the points to be determined in this Appeal are as follows:

i. *Whether the tribunal, the Motor Accident Claims Tribunal, had erred in attributing negligence, which resulted in the accident involved in this case, to the appellant, without considering the testimony of DW-1 and DW-2?*

ii. *Whether the Tribunal had erred in assessing the monthly income of the injured at Rs.10,000/- per month, without there being any evidence on record in respect of the same?*

iii *Whether the Tribunal was wrong in assessing loss of income of the claimant for 5 (five) months, whereas the evidence on record indicates that he was admitted in hospital only for 17 days?*

16. As regards the first point for determination is concerned, on perusal of the evidence on record, it appears that the DW-1, i.e., the present appellant, while

deposing before the Motor Accident Claims Tribunal had deposed that at the time of accident, the present appellant took side in the backside of a tracker vehicle, but could not control himself and it was the claimant who hit him with his motorcycle. However, the testimony of PW-2, who also claims to be an eyewitness, does not make any mention about the tracker. It appears that the testimony of PW-1, PW-2 and PW-3 are consistent as regards the narration of the incident of accident in this case. They have categorically stated in their deposition that accident occurred due to rash and negligent driving of the scooter and not the motorcycle, which was being driven on its correct side of the road. As such, this court is of considered opinion that the Tribunal, after considering the deposition of claimant's witness, as well as the witnesses for opposite parties, rightly relied on the testimony of claimant's witnesses, as against the testimony of opposite party's which has inherent contradictions, therefore, the Tribunal did not erred on relying upon the claimant's witnesses on the basis of the preponderance of probabilities.

17. This Court, therefore, does not find any infirmity in the finding arrived at by the tribunal in attributing the negligence for the accident to the present appellant. As regards the other two points for determination is concerned, though the testimony of PW-6, who is the employer of the respondent No.1, clearly indicates that the respondent No.1 used to earn Rs.10,000/- per month, which has also stated in the exhibit No.6. It also appears that from 31.07.2006, to 31.12.2006, the respondent No.1 did not attend his duties due to major injuries and during this time, he was on leave without salary. Therefore, this Court is of considered opinion that the tribunal has not erred in coming to the conclusion in assessing the monthly income of the claimant at Rs.10,000/- and also assessing the loss of income for 5 (five) months, during which period he

was unable to attend the duties because of injuries sustained by him.

18. This Court, therefore, finds no infirmity and illegality in the impugned judgment of the Motor Accident Claims Tribunal, which has been challenged in this Appeal.

19. In view of the discussions made and reasons stated in the forgoing paragraphs, this Court finds no merit in the instant Appeal. Accordingly, the appeal is dismissed.

20. The statutory amount deposited may be returned back to the appellant.

JUDGE

Comparing Assistant