



GAHC010210042015



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

MAC Appeal No. 33 of 2015

M/s New India Assurance Co. Ltd.

Having its registered office at New Assurance

Building 87, Mahatma Gandhi Road, Mumbai and one of the Regional Office at
G.S. Road, Bhangagarh,

Guwahati, Assam.

.....Appellant

-Versus-

1. Md Sahidur Rahman,
S/o Md Firdush Rahman,
Resident of Village-Rongpur,
R.O. Vill No. 1 Dolabari,
P.S.-Tezpur,
District- Sonitpur, Assam.

.....Respondent/Claimant

2. National Insurance Co. Ltd.
Tezpur Branch

.....Respondent/Insurer.



Advocates for the appellant : Mr K K Bhatta.
Advocate for the respondent : None appeared.

BEFORE
HON'BLE MRS. JUSTICE MALASRI NANDI

Date of hearing : 17.08.2022
Date of Judgment : 26.09.2022.

JUDGEMENT AND ORDER (CAV)

Heard Mr K K Bhatta, learned counsel appearing for the appellant. None has appeared for the respondents.

2. The Insurance Company as appellant has preferred this appeal challenging the Judgment and order dated 05.02.2014, passed by the Member, MACT, Sonitpur, Tezpur, in MAC Case No. 266 of 2006, awarding a sum of Rs. 3,02,000/- (Rupees Three Lacs Two Thousand) Only as compensation in favour of the claimant/ respondent.

3. The brief facts of the case is that on 19.05.2006, while the claimant was proceeding from Tezpur town towards his residence at Village No. 1 Dolabari, by riding his scooter, bearing No. AS-12/A 8396 through NH 37-A and when he tried to cross Morabhoroli bridge at about 7:00 pm, another vehicle bearing No. AS-12/C-2524, coming from the side of Nerywalam towards Tezpur, in a rash and negligent manner, knocked down the claimant, as a result of which, the claimant sustained grievous injuries on his person and his scooter has also been damaged. Immediately after the accident, he was taken to Kanaklata Civil Hospital, Tezpur and subsequently, he was shifted to Guwahati and admitted at Down Town hospital. According to the claimant, he had spent more than 70,000/- for his treatment. After the



accident, one case was registered vide Tezpur PS Case No. 303/2006 under Sections 279/338 IPC. At the relevant point of time, the alleged offending vehicle was insured with New India Assurance Company Limited.

4. The learned counsel for the Insurance Company has argued that the learned Tribunal erred in law for passing an exorbitant amount of compensation for the multiple soft tissue injury allegedly sustained by the claimant/respondent and the claimant/respondent was hospitalized only for one day. As such, the Tribunal was not justified to award on the head of loss of future earning on account of disability. It is also alleged that the claimant/respondent had not sustained any injury, for which he could become disable and there is no evidence before the Court that any further treatment was required for the respondent/claimant on the injuries sustained by him.

5. It is also the submission of learned counsel for the appellant that though the disability of the claimant was assessed as 40% but no doctor was examined to prove the extent of alleged disability and in that view of the matter, the impugned judgment and award is liable to be set aside.

6. Though learned counsel for the respondent/claimant earlier appeared but on the date of hearing, he did not appear to argue the matter. As the case is pending in this Court since 2015, the matter was heard accordingly in absence of the claimants'/respondents' side.

7. The factum of accident has not been challenged in this case. The learned counsel for the Insurance Company has only taken the plea that the injuries sustained by the victim was simple and as such, he was not entitled to get any Award on the head of loss of future earning on account of disability.



8. I have considered the submission of learned counsel for the appellant. I have also gone through the record of MAC Case No. 266 of 2006, along with the documents available in the record.

9. The claimant was examined as PW-1, who has reiterated the same thing whatever he had stated in his claim petition, regarding accident. According to him, he sustained grievous injuries on his right knee due to the alleged accident. He had undergone treatment at Kanaklata Civil Hospital at Tezpur and Down Town Hospital, Guwahati.

In his cross-examination, PW-1 replied that prior to the accident, he was dealing with the business of selling fish in the market and after the accident also, he was in the same profession.

10. Exhibit-2 is the medical certificate of Kanaklata Civil Hospital, which reveals that the claimant was admitted to Kanaklata Hospital on the date of accident, i.e., 19.05.2006 and discharged on the same day. He was referred to the GMCH Hospital at Guwahati. Exhibit-3-(a) is the discharge certificate of Down Town Hospital, which shows that the respondent, i.e., injured/claimant was admitted to Down Town Hospital on 20.05.2006 and he was discharged on the next date, i.e. on 21.05.2006. On examination of the victim, doctor found cut injury over right forehead across the eyebrow and cut injury on right inner arm with abrasion and another cut injury on right knee joint and abrasion on her left medial. It was diagnosed that the claimant/respondent had sustained multiple soft tissue injuries due to the alleged accident. From the medical documents available in the record, it reveals that the claimant/respondent had sustained simple injuries on his person. In discharge certificate, i.e, Ext-3-(a), it is nowhere stated that there was any fracture sustained by the victim due to the alleged



accident. It transpires that the victim had sustained simple injuries on his person.

11. It is noticed that the claimant had exhibited a document, i.e., disability certificate, vide Exhibit- 18, but the copy of the exhibited (Exhibit-18) document is not available in the record. The Judgment of the trial Court also mentioned that Exhibit-18, the disability certificate showed that the disability of the victim was assessed as 40%, which was issued by the District Welfare Officer, Sonitpur, Tezpur. But to prove the disability certificate, no any witness was examined. The doctor was also not examined to prove the injury or the disability of the victim, which was assessed as 40%. Under such circumstances, the claimant/respondent is not entitled to compensation on the head of loss of future earning on account of disability.

12. The Tribunal after verification of the medical documents and cash memos and vouchers, held that the claimant/ respondent had submitted the cash memo/ vouchers, amounting to Rs. 51,770.59, which is accordingly accepted. Though the Tribunal had awarded Rs. 20,000/- on the head of future medical and miscellaneous expenses, but no any medical document is available in the record to show that future medical treatment is required for the claimant. 13. It appears from the discharge certificate, vide Exhibit-3-(a) that the claimant respondent was admitted to Down Town hospital on 20.5.2006 and discharged on the next date, i.e., on 21.05.2006. It also appears that prior to the accident, the victim was selling fish in the market and as per his evidence it was also admitted that after the accident also he was dealing with the same profession. Under such backdrop, it can be said that the claimant is not entitled for any compensation on the head of loss of earning during treatment. However, Tribunal has awarded Rs. 1 lac for physical and mental pain, which is considered to be reasonable.



12. In view of above, the computation of compensation is reduced from Rs. 3,02,000/- to Rs, 1, 51,770.59/-.

13. In the result, the appeal is allowed, with the aforesaid modification. The New India Assurance Company Limited is directed to deposit the amount of compensation, i.e., Rs. 1,51,770.59/-(Rupees One Lac Fifty One Thousand Seven Hundred Seventy and Fifty Nine Paise) Only, in the savings account of the claimant Md Sahidur Rahman in any nationalized bank through NEFT. He is directed to furnish his bank details of any nationalized bank to the Insurance Company for necessary payment. The compensation so awarded shall carry an interest @ 6% per annum from the date of filing of the case till full and final realization. Any amount if paid earlier by the Insurance Company be adjusted accordingly. The Insurance Company is at liberty to recover any excess amount in due process of law.

14. The Statutory amount in deposit be refunded to the appellant/New India Assurance Company Ltd.

15. LCR be returned back.

JUDGE

Comparing Assistant