

(2022) 11 GAU CK 0028
Gauhati High Court
Case No: MACApp. No. 125 Of 2015

Pradeep Das

APPELLANT

Vs

ICICI Lombard
General Insurance Co.
Ltd. And 2 Ors

RESPONDENT

Date of Decision: Nov. 16, 2022

Acts Referred:

- Constitution Of India, 1950 - Article 227
- Motor Vehicle Act, 1988 - Section 166, 173

Hon'ble Judges: Mitali Thakuria, J

Bench: Single Bench

Advocate: U Das, K Borahr

Final Decision: Allowed

Judgement

1. Heard Mr. B. Chakraborty, learned counsel for the appellant. Also heard Mr. A. J. Saikia, learned counsel for the respondent No. 1.

2. This is an appeal under Section 173 of the Motor Vehicle Act, read with Article 227 of the Constitution of India against the judgment and order,

dated 07.03.2015, passed by the learned Member, Motor Accident Claims Tribunal No. 1, Kamrup, in MAC Case No. 2149/2007 (1283/2007).

3. It is to be mentioned here that the appellant, as claimant, filed a claim petition under Section 166 of the Motor Vehicle Act, 1988 before the learned

Member, Motor Accident Claims Tribunal No. 1, Kamrup at Guwahati, which was accordingly registered as MAC Case No. 2149/2007 (1283/2007),

seeking compensation to the tune of Rs. 2,70,000 (Rupees two lakhs seventy thousand only) for sustaining injury in an accident which took place near

Kalipur Branch of State Bank of India, at about 9:00 am, on 12.04.2007.

4. The brief facts, leading to filing of the present appeal, is that on 12.04.2007, at about 9:00 a.m., the claimant/appellant was travelling by the

offending vehicle, bearing Registration No. As-01/AA-3187 (Auto-van), and when the vehicle reached near Kalipur Branch of State Bank of India

met with an accident causing injury in his person and accordingly GDE entry was been made at Jalukbari P.S vide No. 365, dated 12.04.2007.

5. The O.P. No. 1, i.e. the insurer of the offending vehicle, and the O.P. No. 3, i.e. the driver of the offending vehicle, did not contest the case by

filing their written statement and hence, the case proceeded ex-parte against them. However, the O.P. No. 2, the owner of the offending vehicle,

contested the case by filing his written statement. The O.P. No. 2, in his written statement, took the plea that the offending vehicle was not driven in

rash and negligent manner by the O.P. No. 3 at a relevant time of accident and further it is stated that the offending vehicle is duly insured with the

O.P. No. 1, i.e. the ICICI Lombard General Insurance Company Limited. The claimant/appellant adduces evidence as CW-1 and to establish his

case, he also adduced evidence of two others witnesses, who were duly cross-examined by the O.P. No. 2. After recording the evidence and hearing

the arguments from both sides, the learned Member, Motor Accident Claims Tribunal No. 1, Kamrup, passed the impugned judgment and order, dated

07.03.2015, wherein the claimant/appellant was awarded which Rs. 16,000/- (Rupees sixteen thousand only) along with the interest at the rate of 6%

per annum from the date of filing of the claim petition till payment made by the O.P. No. 1/The Insurance Company.

6. On being highly aggrieved and dissatisfied with the impugned judgment and order dated 07.03.2015, passed by the learned Member MACT No. 1,

Kamrup at Guwahati, the present appeal has been preferred by the claimant/appellant on the ground that the learned Member, MACT, failed to

consider the fact that the appellant/claimant has spent a sum of Rs. 22,560.32 in medicine and the value of fish purchased by him, which was a

perishable in nature, are completely damaged in the accident and for which, it has to be included while assessing the award. Further, the learned

Member MACT, failed to give compensation for mental pain and agony, for loss of amenities and also for future prospect and disablement as well as for expenditure in special diet during his treatment. And only awarded the lump-sum compensation amounting to Rs. 16,000/- (Rupees sixteen thousand only) to the claimant/appellant for the injury he sustained in the accident and which itself is biased and contrary to the law and is liable to be modified by awarding suitable, just and proper compensation to the appellant.

7. In this context, the learned counsel appearing on behalf of the respondent/Insurance Company has submitted that as per medical report, there was

no fractured injury sustained by the appellant except soft tissue injuries. Moreso, there is no loss of amenities for the injury sustained by the

claimant/appellant nor there is any opinion of the medical board advising the appellant/claimant for taking rest. There is no such medical evidence that

due to injury sustained by the claimant he was prevented from doing his business or there is any loss of his future prospect. Moreso, the claimant

himself stated in his claim petition that he spent Rs. 15,000/- (Fifteen thousand only) towards his medical expenses and hence the learned Member

MACT did not committed any error or mistake while awarding lump-sum of Rs. 16,000/- (Rupees sixteen thousand only) towards compensation for

medical expenses for the injury sustained by the claimant/appellant and hence there is no necessity for interference of this Court on the judgment and

award passed by the learned Member MACT.

8. In this regard, the learned counsel for the appellant submitted that there may be expenditure of Rs. 15,000/- (Fifteen thousand only) at the time of

filing of the petition but he had to undergo subsequent treatment for the injury sustained by him and moreso, there was loss in his business as the

fishes, which was carried out by him for selling, were already damaged during his accident. He also stated in his evidence that he has lost an amount

of Rs. 5,405/- (Five thousand four hundred five only) which was carried out by him at the time of his accident.

9. The learned counsel for the appellant further submitted that he exhibited the details of fish purchased by the claimant on the relevant day of

accident from "Joy Sri Ram Matchya Bhandar". On perusal of the case record, it reveals that he exhibited the receipt of fish purchased as

exhibit-6, which reveals that he purchased fish amount of Rs. 5,405/- (Five thousand four five only) on the day of accident, but as per medical report

there is no other injury of any fracture except soft tissue injury on his leg and bones were also found to be intact at the time of his medical treatment.

At the same time, from his evidence, it also reveals that he was not admitted in the hospital and he was treated as outdoor patient, though he stated in

his evidence that he had to undergo treatment in his own house for a couple of days.

10. The learned counsel for the appellant/claimant also cited a decision of this Court, passed in MAC Appeal No. 12/2020 [Usha Mandal Vs.

Jitendranath Dutta & Ors.], wherein, in paragraph Nos. 5 & 6, it has been held as under:

"5. The learned counsel appearing for the claimant by relying on the decision of the Apex Court in Ashwani Kumar Mishra Vs. P.

Muniam Babu & Ors. reported in AIR 1999 SC 2260 submits that whenever the Tribunal or court is required to fix the amount of

compensation in cases of accident, it involves some guess work, some hypothetical consideration and some amount of sympathy linked with

the nature of the disability caused. Relying on the ratio laid down by the Apex Court in Ashwani Kumar Mishra (supra), the learned counsel

appearing for the appellant vehemently submitted that there should be some guess work and hypothetical considerations in fixing the

amount of income of the appellant's husband i.e. victim inasmuch as it is clear from the statement of CWs and PWs that with the income

of the appellant's husband i.e. victim, the big family consisting of five(5) sons, two (2) daughters and situation according to the learned

counsel appearing for the appellant, in the present facts of the case, the income of the victim should have been more than fifteen thousand

rupees per year fixed by the Claims Tribunal in the impugned judgment and order. This Court is of the considered view that the submissions

of the learned counsel appearing for the appellant have some force of law inasmuch as it would be practically impossible in the present

society to maintain the big family consisting of nine (9) members with the amount Rs. 15,000/- per year.

6. As decided by the Supreme Court in the Ashwani Kumar Mishra (supra), this Court is of the considered view there should be some

hypothetical considerations and guess work in calculating the income of the victim in the absence of the documentary evidence. Regarding

this point, reliance could also be made on the decisions of this Court (Division Bench) in the case of (1) State of Tripura & Anr. Vs. Gopi

Kanta Dey reported in 2000 (2) GLT 577, (2) Uttam Rabidas Vs. Siddikur Rahaman & Anr. reported in (2005) 3 GLR 28. The concise fact

of the case in Uttam Rabidas (supra) was that after the accident, the victim was unable to walk and also that even in the absence of

documentary evidence on record, the Tribunal cannot treated the monthly income of the claimant as Rs. 1,000/- month. In the present case

as stated above, the present case is not the case where there is absolutely no evidence regarding the income of the victim. As stated above,

the two (2) witnesses had stated clearly that income of the victim was Rs. 4,000/- to Rs. 5,000/- per month and there should be some guess

work and hypothetical consideration in calculating the income of the victim in the absence of the documentary evidence. Taking into overall

consideration of the fact discussed above, this Court is of the considered view that the income of the victim would be at least Rs. 2,500/- per

month inasmuch as it is clear from the record that with the income of the victim, the big family, consisting nine (9) members had been

maintained.â€

11. But here in the instant case there is no such injury sustained by the claimant which prevented him from doing his business. However, it cannot be

denied that during his period of treatment he was prevented from doing his business and hence while passing the award the learned Member MACT

could have considered this aspect.

12. So from the discussion made above and on perusal of the case record of MAC Case No. 2149/2007 (1283/2007), it reveals that the

claimant/appellant did not sustain any fractured injury or other grievous nature of injury causing any disablement to the claimant/appellant. Also, from

the medical vouchers/receipt etc, which is furnished by the appellant, it is seen that a lump-sum amount of Rs. 16,000/- (Rupees sixteen thousand only)

towards medical expenses is reasonable amount awarded by the learned Member, MACT.

13. However, it cannot be denied that during the entire period of treatment after the accident, the claimant/appellant had to suffer from pain and agony

and also it cannot be denied that there was some loss of income for the claimant/appellant. Moreso, from the exhibit-6, it appears that there was loss

of Rs. 5,405/- (Five thousand four hundred five only), the value of fish which was purchased by the claimant on the relevant date of incident.

14. In view of the above, I am of the opinion that the claimant/appellant also entitled an amount of Rs. 20,000/- (Rupees Twenty thousand only) for

physical pain and mental agony, and another amount of Rs. 20,000/- (Rupees twenty thousand only) towards loss of income and also an amount of Rs.

5,000/-(Rupees Five thousand only) towards special diet and other expenditure apart from which 16,000/- (Sixteen thousand only) awarded by the

learned Member, MACT, towards medical expenses. Thus, total compensation awards comes to Rs. 61,000/- (Rupees sixty one thousand only).

15. The respondent/Insurance Company shall satisfy the award of Rs. 61,000/- (Rupees sixty one thousand only) to the appellant by depositing the

same before the learned Member, Motor Accident Claims Tribunal No. 1, Kamrup, within 6(six) weeks from today along with the interest at the rate

of 6% per annum from date of the filing of the claim petition till realization.

16. With the above observation and modification, the appeal stands allowed and disposed of.

17. LCR be sent back.