# United India Insurance Co. Ltd. Vs B.L. Rochhunga and Another

**Court:** Gauhati High Court (Aizawl Bench)

**Date of Decision:** April 29, 2008

**Acts Referred:** Motor Vehicles Act, 1988 â€" Section 140, 163A, 166

**Citation:** (2009) ACJ 2139 : (2008) 3 GLT 931

**Hon'ble Judges:** P.K. Musahary, J

**Bench:** Single Bench

**Final Decision:** Dismissed

## Judgement

P.K. Musahary, J.
This appeal is directed against the judgment and award dated 23.7.2004 passed by the Member, MACT, Aizawl in

MAC Case No. 119/2002 awarding a sum of Rs. 11,38,409/- as compensation to the claimant with simple interest @ 9% p.a. from the date of

filing the claim petition till realization from the opposite party No. 2, M/s. United India Insurance Co. Ltd. There was a further direction to deposit

the said amount in cash or by way of account payee demand draft or cheque in favour of the claimant to the Member, MACT, Mizoram for

disbursement to the claimant within one month from 23.7.2004 i.e. the date of award. The opposite party, Insurance Company was granted liberty

to deduct any interim award, if already satisfied. Being dissatisfied with and aggrieved by the impugned judgment and award, the Insurance

Company has preferred this appeal.

2. The facts giving rise to the filing of the present appeal are that the claimant, B.L. Rochhunga, aged about 27 years, s/o Lalzova, resident of

Aizawl, Mizoram suffered from paralysis below neck resulting to 100% permanent disablement due to motor vehicle accident that took place on

16.12.2000 near Aibawk Village involving a Jeep bearing registration No. ML-04-2230 which belongs to his father Lalzova, opposite party No. 1

and driven by one John Lalramnghaka, who had a valid driving licence upto 30.4.2003. Shri B.L. Rochhunga was admitted to Civil Hospital,

Aizawl on 16.12.2000 and he was under treatment till the filing of claim petition u/s 163A of the Motor Vehicles Act, 1988 on 10.12.2002. The

claimant is working as a Store Keeper in the Directorate of Food and Civil Supplies Department under the Government of Mizoram and he was

earning Rs. 6,873/- per month and claims the maximum amount of compensation under the relevant laws for 100% permanent disablement

suffered by him in the motor vehicle accident.

3. The opposite party No. 1 who is none but the claimant''s father filed no written statement. The appellant opposite party No. 2 M/s. United India

Insurance Company Ltd. filed written statement questioning the maintainability of the claim petition and denying its liability. It is stated in the written

statement that the claim was highly exaggerated and baseless as the claimant did not suffer any loss of income as he had been receiving his monthly

salary from the Government Department concerned and the police report dated 7.11.2002 submitted after a lapse of long about 2 years which

does not show the cause of accident was highly doubtful. The appellant/opposite party/Insurance Company also denied that the claimant suffered

from any grievous injury resulting into permanent disablement inasmuch as the medical certificate enclosed with the claim petition was fabricated

and unreliable. Besides, the accident vehicle, as stated in the written statement was being used as a maxicab and it was hired by the claimant and

other passengers in violation of the terms and conditions of the insurance policy of the accident vehicle and the appellant Insurance Company''s

liability is subject to the scope of the insurance policy issued in favour of the owner of the vehicle, validity of the insurance policy and vehicular

documents such as registration certificate, fitness certificate, permit and driving licence of the driver at the time of accident and the claim is vague

and incomplete in its material particulars as it does not include the aforesaid necessary documents.

4. The learned Tribunal framed only two issues namely:

(1) Whether the claim petition is maintainable or not.

(2) Whether the claimant is entitled to get compensation and if so, who is liable to pay the same and to what extent.

5. Heard Mr. A.R. Malhotra, learned Counsel for the appellant and also Mrs. Helen Dawngliani for the respondent No. 1.

6. The first and main submission of Mr. Malhotra, learned Counsel for the appellant is that the claimant failed to adduce any medical certificate

supporting his case that he suffered 100% permanent disablement and in absence of such medical evidence the impugned award passed by the

learned Tribunal is bad in law and liable to be set aside. On perusal of the records, it is found that the claimant was admitted in the Civil Hospital,

Aizawl on 16.12.2000 i.e. on the date of accident itself. The claimant was examined by the medical board consisting of one Chairman and two

Member Doctors and it found him suffering from Traumatic Quadruparesis and it recommended for necessary investigation and treatment at INS,

Guwahati. This may be seen in ""Board''s Recommendation dated 27.12.2000"" which was exhibited and marked as Exh. C-12. He was discharged

from the Civil Hospital, Aizawl on 28.12.2000 with advice for treatment in INS, Guwahati as he was diagnosed to have been suffering from

Quadriplegia, which in medical term means a person who is permanently unable to use his arms and legs. This diagnosis is recorded in the

discharge card, Exh. C-9. As per advice of the Civil Hospital, the claimant was admitted in the GNRC Ltd. Guwahati on 29.12.2000 and in final

diagnosis he was found to have been suffering from Grade-II Spondylolisthesis C6-7. In the said Hospital he was subjected to physiotherapy and

regular dressing of bed sore. Surgery was contemplated but he was not found fit for surgery and he was discharged on 7.3.2001. This report is

available in the case summary and discharge report Exh. C-14 and from the same it is found that the claimant was in a very bad physical condition

and he was returned without further treatment. Thereafter, he was again admitted in the Civil Hospital at Aizawl on 13.4.2002, where he was

diagnosed to have been suffering from complete paraplegia; a disease of loss of control and feeling in the legs and lower body. He was discharged

from Civil Hospital on 7.5.2002, which maybe seen in Exh. C-9(1). His condition was not improved and as such he was again admitted in the Civil

Hospital at Aizawl on 25.6.2002 for treatment of the same disease and he was discharged on 27.6.2002 as may be seen from Exh. C-9(2). The

medical certificate dated 13.11.2002 (Exh. C-17) was obtained from Dr. Thangchungnung, bone and joint specialist Civil Hospital, Aizawl.

According to this certificate, the claimant is suffering from cervical spine injury C6-7 and he was not improving although he was treated at Civil

Hospital and GNRC, Guwahati. It was certified that the claimant was suffering from 100% disablement with all the limbs below the neck

paralyzed. This certificate is supported by the Hospital documents Exh. C-9, Exh. C-9(1), Exh. C-9(2) and Exh. C-12 mentioned above and there

is nothing to doubt about its genuineness or authenticity. In fact during trial the appellant/opposite party did not raise any question on the

genuineness of this certificate.

7. The claimant''s brother Sangluaia was examined as a witness on his behalf. In cross-examination, the appellant/opposite party put no suggestion

to him that the medical certificate Exh. C-17 and other Hospital documents namely, Exh. C-9, Exh. C-9(1), Exh. C-9(2) and Exh. C-12 were

fabricated or manufactured for the purpose of establishing a case of 100% permanent disablement and getting an award from the Tribunal for

compensation on account of 100% permanent disablement. Besides, it was categorically deposed by the claimant''s witness, Sangluaia that after

the accident his brother could not join his service again but he was still paid salary by the Government of Mizoram on sympathetic ground and he

would not know how long he would be paid without being able to work. No suggestion was puttothis witness that his broiher/claimant did not join

duties although he was in fit physical state. This piece of evidence could not be shattered in the cross-examination or disproved by the

appellant/opposite party by adducing any evidence. It would not otherwise also be reasonable to think that a regular Government employee would

take a risk of losing his job by remaining absent from duties for a long period of time on false pretext of 100% permanent disablement. Another

aspect to be noticed is that the claimant could not come himself to give evidence to prove his own case before the Tribunal. Normally, a claimant

would not like to remain absent from the proceeding for fear of losing his case after all he is the sufferer and he would be compensated for the

damage. In this case, it is found that there are sufficient proof testifying the fact that the claimant remained bed ridden due to complete paralysis of

all the limbs below the neck. Situated thus, the submission of learned Counsel for the appellant is found unsound and unworthy of being accepted.

8. In this regard, Mr. Malhotra, learned Counsel for the appellant submits that the learned Tribunal committed error in relying upon the medical

certificate issued by the Doctor who was not examined to testify the veracity of 100% permanent disablement of the claimant. In support of his

submission he relied upon the ruling of the Apex Court in the case of A.P. SRTC v. P. Thirupal Reddy, reported in (2005) 12 SCC 189. That was

a case where two Doctors issued separate medical certificates-one certifying 45% and the other 15% physical disability of the claimant. One

Doctor was examined and the other Doctor was not examined and the Tribunal relied on the medical certificate issued by the Doctor who was

examined during the trial and gave the award on the basis of the said medical certificate and evidence of the said Doctor. The other Doctor who

certified higher percentage of physical disablement and who was not examined was ignored by the Tribunal. On appeal, the High Court of Andhra

Pradesh relied on the medical certificate issued by the Doctor who certified higher percentage of disablement but not examined and enhanced the

amount of compensation. On appeal filed before the Apex Court, the decision of the High Court was set aside and the award given by the Tribunal

was restored. In the instant case, no Doctor was examined. Since only one Doctor of the Government Civil Hospital issued the medical certificate

for 100% permanent disablement in favour of the claimant supported by other documents for treatment in other Hospital, the learned Tribunal had

to rely on the said medical certificate although the Doctor concerned was not examined during the trial. In my considered opinion, the aforesaid

case cited by the learned Counsel for the appellant has no relevance and application to the present case.

9. Mr. Malhotra, learned Counsel for the appellant would next submit that the learned Tribunal wrongly entertained the claim petition u/s 163A of

the MV Act, 1988 inasmuch as the annual income of the claimant comes to Rs. 82,476/- calculated from his monthly salary of Rs. 6,873/- and no

relief can be granted to people whose income is more than 40,000/- in terms of Section 163A of the MV Act read with the 2nd Schedule

appended thereto. Mr. Malhotra, learned Counsel for the appellant would refer to last pay certificate submitted by the claimant showing his

monthly income as Rs. 6,873/- which is marked as Exh. C-18. According to Mr. Malhotra, the claim petition is misconceived as it should have

been made under a different appropriate provision of the MV Act and not u/s 163A. I have gone through the written statement filed by the

appellant and find no such pleading is made therein, nor any submission made before the learned Tribunal at the time of hearing. This submission

has been made for the first time at the time of hearing of this appeal. There may not be a bar to raise a totally new issue at the appellate stage

provided it involves a question of law. On being satisfied that it is an important question of law, Mr. Malhotra has been allowed to argue on this

point. In support of his submission, he has placed a decision of the Apex Court rendered by 3-Judge Bench in the case of Deepal Girishbhai Soni

and Others Vs. United India Insurance Co. Ltd., Baroda, . In that case, the Apex Court discussed the various claim of compensation under

Sections 163A, 140 and 166 of the MV Act. As regards the provision u/s 163A, it was held as follows:

42. Section 163A was, thus, enacted for grant of immediate relief to a section of the people whose annual income is not more than Rs. 40,000/-

having regard to the fact that in terms of Section 163A of the Act read with the Second Schedule appended thereto, compensation is to be paid on

a structured formula not only having regard to the age of the victim and his income but also the other factors relevant thereof. An award made

thereunder, therefore, shall be in full and final settlement of the claim as would appear from the different columns contained in the Second Schedule

appended to the Act. The same is not interim in nature. The note appended to column 1 which deals with fatal accidents makes the position

furthermore clear stating that from the total amount of compensation one-third thereof is to be reduced in consideration of the expenses which the

victim would have incurred towards maintaining himself had he been alive. This together with the other heads of compensation as contained in

columns 2 to 6 thereof leaves no manner of doubt that Parliament intended to lay a comprehensive scheme for the purpose of grant of adequate

compensation to a section of victims who would require the amount of compensation without fighting any protracted litigation for proving that the

accident occurred owing to negligence on the part of the driver of the motor vehicle or any other fault arising out of use of a motor vehicle.

10. But in the conclusion, the Apex Court has held that the annual income of Rs. 40,000/- should not be treated as a cap for invoking provision of

Section 163A. It would be appropriate to quote para 67 of the said judgment below:

67. We, therefore, are of the opinion that Kodala has correctly been decided. However, we do not agree with the findings in Kodala that if a

person invokes provisions of Section 163A, the annual income of Rs. 40,000/- per annum shall be treated as a cap. In our opinion, the proceeding

u/s 163A being a social security provision, providing for a distinct scheme, only those whose annual income is up to Rs. 40,000/- can take the

benefit thereof. AH other claims are required to be determined in terms of Chapter-XII of the Act.

11. The legal position stood thus, the above submissions of the appellant''s counsel becomes untenable and it can safely be held that no error of

law was committed by the learned Tribunal in entertaining the claim petition and awarding compensation u/s 163A of the MV Act although

claimant''s annual income is more than Rs. 40,000/-.

12. Further submission of the learned Counsel for the appellant is that the accident vehicle was used by the opposite party No. 1 as a maxicab and

the same vehicle was hired by the claimant and other passengers in violation of the terms and conditions of the insurance policy and hence the

Appellant Insurance Company has no liability towards the claimant. In this regard, he has relied on the deposition of claimant''s brother witness Mr.

Sanghiaia which is quoted below:

...The accident vehicle belong to my father Lalzova. As the Christmas was approaching my father had sent the vehicle to pick up my brother who

is posted as Store Keeper under the Directorate of Food and Civil Supply at Darlung Village but unfortunately met with an accident while

proceeding from Darlung towards Aizawl. Since I was not in the accident vehicle I cannot state the cause of accident....

But the appellant would rely on the statement made by the aforesaid witness in cross-examination which may also be quoted below:

...It is a fact that the accident vehicle is sometime hired out to people by my father. The rate depends on the distance to be traveled....

There is however, no evidence to the effect that the accident vehicle has been hired out regularly. The evidence is that the accident vehicle is hired

out ""sometimes"". There is no evidence to the effect that the accident vehicle was hired out on the date of accident by its owner, respondent No. 2

to his claimant son. No evidence was adduced by the appellant opposite party No. 1 to prove its case that there were other passengers apart from

the claimant in the accident vehicle and they hired the said vehicle. The evidence of the claimant''s witness is that the owner of the accident vehicle

was sent to pick his claimant son from his work place just before Christmas. Is it believable that a father would hire out a vehicle to pick his own

son from work place? This would lead to invariable conclusion that the accident vehicle was not hired out to his claimant son or other passengers

on the date of accident and it would not absolve the Appellant Insurance Company from the liability of compensation to the claimant.

13. On the question of compensation on account of loss of prospective earning, Mr. Malhotra submits that the claimant is not entitled to such

compensation as he is still paid monthly salary by his employer State and no loss of prospective earning has been caused to him. In this connection,

he refers to a decision given by a Division Bench of this Court in the case of National Insurance Co. Ltd. v. Dipika Choudhury and Ors. reported

in (2002) 3 GLT 666, which according to learned Counsel for the appellant is binding on this Court. I have gone through the said judgment and

found that the facts and circumstances of the said case are not similar to the present case. In the cited case, the claimant Dipika Choudhury was

working as Assistant Professor of Anaesthesiology in the Guwahati Medical College and she suffered permanent partial disablement with injuries

like avalsion injury of left elbow, loss of part of the brachial artery, transaction on left median nerve, rapture of Biceps Tendon, loss of grapping

capacity of left hand finger, permanent disability of left hand and multiple abrasion all over the body. After treatment, she could resume her duties

and had been performing her duties in the same capacity as she was before the accident. This Court, therefore, in the said case held that the claim

for prospective loss of earning should fall through in its entirety in view of the fact that claimant Doctor was admittedly still working in the same

capacity. The benefit of the said decision could not be availed by the appellant in this instant case in view of the fact that the claimant is still suffering

from complete paralysis i.e. 100% permanent disablement and there is no chance of recovery in future and he would not be able to resume his

duties. He is being paid the monthly salary by the Government out of sympathy only and there is no guarantee of being paid the monthly salary for

the rest of his service life. This being the factual and legal position, the Appellant Insurance Company is liable to compensate the claimant for the

loss of prospective earning and the learned Tribunal rightly awarded the same in favour of the claimant, which warrants no interference by this

Court.

14. Last of all Mr. Malhotra, learned Counsel for the appellant submits that the learned Tribunal had no right to award Rs. 24,983/- to the claimant

as special damage for purchase of medicine and medical treatment inasmuch as the said expenditure was admittedly reimbursed by the

Government of Mizoram. The appellant would not question the entitlement of special damage of Rs. 24,983/- for meeting the expenditure incurred

for the purchase of medicine and treatment in the Hospital but it should not be again realized from the Appellant Insurance Company since all the

bills have been cleared by the Government for the claimant. I am not prepared to accept the submission of the learned Counsel for the appellant.

The Government of Mizoram has shown the generosity by defraying above mentioned medical expenditure as a measure of immediate financial aid

at the time of great need to the claimant but it would not lend an excuse to the Appellant Insurance Company for escaping itself from the liability of

damages to be paid to the claimant. The appellant is liable to pay the aforesaid special damage of Rs. 24,983/- to the claimant and it is for the

State of Mizoram to consider whether the amount so paid by it for clearing the bills on account of medical expenditure should be taken back from

him after the said damage is paid to the claimant by the Appellant Insurance Company.

The appellant did not question the multiplier applied by the learned Tribunal in calculating the compensation and it raised objections on the limited

aspects of the matter as discussed above.

Having considered all the aspects of the matter and for all the reasons stated above, the appeal fails and stands dismissed. However, there shall be

no order as to costs.

15. Send down the LCR forthwith.