
(1999) 02 GAU CK 0012

Gauhati High Court

Case No: M.A. (F) No. 24 of 1990

Aswini Kr. Deka

APPELLANT

Vs

G.M., A.S.T.C. and Another

RESPONDENT

Date of Decision: Feb. 2, 1999

Acts Referred:

- Motor Vehicles Act, 1988 - Section 163A(1)

Citation: (1999) 1 GLT 244

Hon'ble Judges: D.N. Chowdhury, J; D. Biswas, J

Bench: Division Bench

Advocate: S.S. Sharmah and B.N.S. Bordoloi, for the Appellant; P.C. Deka, Usha Baruah and C.K. Das, for the Respondent

Judgement

D. Biswas, J.

The Appellant Shri Aswini Kumar Deka was on board of an A.S.T.C. bus No. ASX 2474 and was on his way to Kharupetia from Guwahati on 7.10.85. The bus was involved in an accident with 155 DNTinsukia Mail on the railway level crossing at Changsari alongwith another vehicle (Truck No. UBQ 7744). The casualties included the Appellant who had suffered serious injuries and has been rendered permanently disabled. The Appellant as claimant filed MAC Case No. 43(K) of 1986 before the Learned Member, Motor Accident Claims Tribunal, Kamrup, claiming a compensation of Rs. 5 lakhs. The Learned Tribunal, on completion of the proceedings, awarded compensation of Rs 1,50,000/- with a direction to the N.F. Railway to pay 75% and the balance to be paid by the Assam State Transport Corporation.

2. Being dissatisfied with the aforesaid, the claimant has preferred this appeal for enhancement of quantum of compensation. During the pendency of the appeal, the Appellant filed a petition on 26.3.1998 claiming an additional amount of compensation by way of reimbursement of medical expenses incurred by him

during the pendency of the trial and also prayed for permission to adduce additional evidence. This court vide order dated 17.6.98 directed the Learned Tribunal to record additional evidence and to forward the same to this court. On receipt of the additional evidence recorded by the Learned Tribunal, the matter has come for a decision by this Court.

3. We have heard counsel for both the parties. There appears to be no dispute as to any other matter except the quantum of compensation and additional claim. Therefore, this Court proposes to confine its discussion to the above limited questions.

4. It would appear from the award of the Learned Tribunal that he has dealt with the quantum of compensation to be awarded in Para-15. For better appreciation, we reproduce herein below the observations of the Learned Tribunal- .

15. Next coming to M.A.C. Case No. 43(K) of 86, it is found that Aswini Kumar Deka is a young man of 25 years of age and he is a science graduate. He has claimed a compensation of Rs. 5,00,000/- and has spent Rs.25,000/- on medical treatment. The claimant at the time of evidence shows the marks of the injuries and the infirmity suffered by him. He is a young man. But due to the accident he has become permanently disabled person for his life. There is no chance of recovery. His leg has become shorten and he cannot walk first due to limping. That apart he is unable to pursue normal activities of life. Considering the age, educational background degree of infirmity I feel that a lump-sum amount of Rs. 1,50,000/- should be paid as compensation. Out of it 75% shall be paid by the N.F. Railway and the remaining 25% shall be paid by the A.S.T.C.

5. It would appear from the above observation that the Learned Tribunal without reference to the provision relating to computation of compensation incorporated in the Second Schedule of the Motor Vehicles Act, 1988, has fixed the amount of Rs. 1,50,000/- as compensation on a lump sum basis on his personal feeling. Therefore, the manner and method in which the compensation amount has been assessed cannot be said to be fair and just. Note-5 of the Motor Vehicles Act, 1988, provides for the manner in which compensation has to be assessed in case of disability in non-fatal accidents. The relevant provision is quoted below:

5. Disability in non-fatal accidents:

The following compensation shall be payable in case of disability to the victim arising on of non-fatal accidents:

Loss of income if any, for actual period of disablement not exceeding fifty two weeks.

PLUS either of the following:

- (a) In case of permanent total disablement the amount payable shall be arrived at by multiplying the annual loss of income by the Multiplier applicable to the age on the date of determining the compensation, or
- (b) In case of permanent partial disablement such percentage of compensation which would have been payable in the case of permanent total disablement as specified under item (a) above.

Injuries deemed to result in Permanent Total Disablement/Permanent Partial Disablement and percentage of loss of earning capacity shall be as per Schedule I under Workmen's Compensation Act, 1923.

6. It would appear from the medical report specially Exhibit-7 and Exhibit-12 as well as from the evidence on records that the right leg of the Appellant has become shorter and he cannot walk fast due to limping. The percentage of disability is not available in any of the medical reports. Considering the documentary as well as oral evidence on record and taking lenient view, if we may relate the percentage of loss to the one permissible in case of amputation of one leg, the percentage of loss of earning capacity can be fixed at 50 percentage as per Entry-22 of Para-2 of Schedule-I of the Workmen's Compensation Act, 1923.

7. It would appear from the claim petition that the Appellant's monthly income was Rs. 1,500/-. Therefore, his annual income can be assessed at Rs. 18,000/-. He was 28 years old at the time of accident. Applying the multiplier of 18 and reducing it by 50%, we find Rs. 1,62,000/- as the just and proper compensation in this case. Therefore, the compensation of Rs. 1,50,000/- worked out by the Learned Tribunal has to be increased to Rs. 1,62,000/-. Alongwith it he is entitled to loss of income, if any, for actual period of disablement not exceeding 52 weeks. It would appear from Exhibit-13, that he was confined as Indoor patient from 7.10.85 to 10.5.86 at the Central Hospital, Maligaon and was referred to Eastern Railway Orthopadic Hospital, Howrah for treatment where he was treated from 19.5.86 to 31.7.86. That apart, Exhibit-7 shows that he was admitted at Christian Medical College and Hospital, Vellore on 28.7.93 and discharged on 9.8.93, that is, for 12 days all together. That means he is entitled to compensation for loss of income during those period as he was not in a position to attend his normal duties and this counts for addition of income at the rate of Rs. 1,500/- per month for 43 weeks. The total loss of income during this period amounts to Rs.16,125/-. This amount along with compensation computed as above figures at Rs. 1,78,125/-. The Appellant is therefore entitled to this amount as per computation as laid down in the Motor Vehicles Act, 1988 and the Workmen's Compensation Act, 1923.

8. Now the question arises whether the Appellant is entitled to reimbursement of the expenses incurred by him for treatment during the pendency of the appeal. There is no specific provision debarring such claim in the concerned Act. The Appellant in his petition dated 26.3.1988 in Para-3 claimed to have spent more than

Rs. 50,000/- for his treatment and other miscellaneous expenses. No specific amount has been quoted in this petition. Therefore, the matter was referred to the Learned Tribunal for recording additional evidence. The Learned Tribunal recorded the statement of the Appellant on 24.7.98. In the statement recorded after remand for limited purpose, the Appellant has not in clear terms stated the actual amount spent by him for which he claims reimbursement. However, it would appear from the additional evidence that he has relied upon the documents marked as Exhibits - 8, 9, 10 and 11 Series. A casual statement has also been made by him that the expenses during the pendency of the appeal has gone upto Rs. 1,20,000/-. This necessitates examination of the documents at Exhibits- 8,9,10 and 11 Series.

9. As per documents of expenditure exhibited vide Exhibits-8,9, 10 and 11, the total amount spent by the Appellant for treatment including Air, Rail and Taxi Fare approximately comes to Rs. 37,600/-. This amount added with the compensation assessed as above stands at Rs. 2,15,725/-. The Appellant is entitled to this amount as compensation on all counts as per provisions of law.

10. The learned Counsel for the Appellant has referred to the following decisions in order to justify a higher compensation:

(i) [R.D. Hattangadi Vs. M/s. Pest Control \(India\) Pvt. Ltd. and Others,](#)

(ii) [Shashendra Lahri Vs. UNICEF and Others,](#)

(iii) (Shanti Bai and Ors. v. Charan Singh)

(iv) (1989) 2 GLR 39 (Drupad Kumar Barua v. ASTC).

11. In [U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others,](#) the Supreme Court has laid down the guidelines as to computation of compensation under the Motor Vehicles Act, 1988. Following the guidelines laid down in this case and taking into consideration the provisions of Section 163-A(1) of this Act, we have computed the amount to be paid. While doing so we have already given lenient consideration to the percentage of disability suffered. Therefore, the ratio laid down in Hattangadi cannot be straightway applied in this case for the purpose of further enhancement of compensation. In Shashendra Lahiri's case, the Supreme Court awarded a higher compensation considering the various circumstances peculiar to that case and the ratio laid down in the said case cannot determine the course of computation of the instant case. In our considered view, the compensation of Rs. 2,15,725/- as calculated above, as per provisions of Motor Vehicles Act, 1988 and the Workmen's Compensation Act, 1923 and in the light of the decision of Trilok Chandra (Supra) is just, proper and reasonable.

12. In the result, we allow the appeal to the extent indicated above. The Appellant is entitled to total compensation of Rs. 2,15,725/- with interest at the rate of 12% from the date of institution of this case. The Appellant be paid the amount within a period of two months from today less the amount, if any, already paid.

No order as to cost.