

GAHC010033412021



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

Case No. : MACApp./40/2021

SRI ANUBHAV KHOUND
S/O SRI SAPON KR. KHOUND, BHAGYA MAMA PATH, P.S. GEETANAGAR,
GUWAHATI, DIST. KAMRUP (ASSAM), PIN 781020

VERSUS

REGIONAL MANAGER ORIENTAL INSURANCE CO. LTD AND 2 ORS
ULUBARI, GUWAHATI

Advocate for the Petitioner : MS D D ROY, MS. S.P. BARO

Advocate for the Respondent : MS M CHOUDHURY, MS C BORAH (R-1), MR S DUTTA (R-1)

:::BEFORE:::

HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of hearing : 02.05.2024
Date of Judgment : 21.08.2024

JUDGMENT & ORDER (CAV)

Heard Ms. D. D. Roy, learned counsel for the appellant. Also heard Ms. M. Choudhury, learned counsel for the respondent No.1/Insurance Company.

2. This appeal filed under Section 173 of the Motor Vehicle Act, 1988 challenging the Judgment dated 09.01.2020 passed by the learned Member, MACT (3), Kamrup, Guwahati in MAC Case No. 2183/2017 awarding Rs.23,80,000/- (Rupees Twenty-Three Lakhs Eighty Thousand) only for the injury sustained by the present appellant/claimant in a motor vehicle accident on 07.10.2017.

3. The brief facts of the case is that; the appellant/claimant filed a claim petition for compensation due to injuries sustained in a motor vehicle accident on 07.10.2017 at about 6:30 AM involving vehicle No. AS-01/HC-6829 (Super Bus), which was insured with Oriental Insurance Co. Ltd. At the time of the incident, the appellant/claimant was riding a motorcycle bearing Registration No. AS-01/BH-3066 with a pillion rider. The offending vehicle, Super Bus bearing Registration No. AS-01/HC-6829, was travelling in the same direction at a very high speed and in a negligent manner. It collided with the appellant's motorcycle from behind, causing grievous injuries to both the rider and the pillion rider. Subsequently, a case was registered against the driver of the offending vehicle,

Super Bus, at Gorchuk police station vide Gorchuk P.S. Case No. 402/17, registered under Sections 279/338 of IPC.

4. Thereafter, the appellant filed a claim petition under Section 166 of the Motor Vehicle Act, 1988. In this petition, the appellant named Sri Anjit Borah, owner of the Super Bus; Sri Subhash Prasad, the driver of the Super Bus and Oriental Insurance Co. Ltd., the insurer of the Super Bus, as opposite party Nos. 1, 2, and 3 respectively. The compensation claimed amounted was Rs. 1,00,00,000/- (Rupees one crore) only. However, opposite party Nos. 1 and 2, i.e., the owner and the driver of the Super Bus, did not contest the case, resulting in the case proceeding *ex-parte* against them.

5. The opposite party No. 3, the insurer of the offending Super Bus/present respondent No. 1, contested the case by filing a written statement. Subsequently, the learned Member, MACT (3), framed issues, recorded the evidence and exhibited documents. After hearing arguments and on perusal of the evidence and documents relied by the parties, a judgment and award was passed awarding compensation of Rs. 23,80,000/- (Rupees Twenty-Three Lakhs Eighty Thousand) only, with interest at Rs. 7.5% per annum from the date of filing of evidence on affidavit, i.e., from 02.08.2019, in favor of the present appellant/claimant.

6. The appellant, being highly aggrieved and dissatisfied with the judgment and award dated 09.01.2020 passed by the learned Member, MACT (3), Kamrup, Guwahati in MAC Case No. 2183/2017, has filed the present appeal seeking enhancement of the award.

7. Ms. Roy, learned counsel for the appellant, has submitted that the appellant

presented bills totalling Rs. 10,85,718/- for hospital charges and medicines. However, he was awarded only Rs. 9,00,000/- (Rupees Nine Lakhs) only for medicines, hospital charges, including the cost for the attendant, without proper perusal of the bills and documents filed by the appellant. In awarding the compensation, the loss of income for three months was considered, despite the appellant loss his right leg and required reconstruction of his penis. Therefore, the learned trial Court erred in law and facts while assessing the appellant's loss of income.

8. She also submitted that the Trial Court awarded only Rs. 1 lakh as the cost of the artificial limb, without considering that his disability was assessed at 85%. Despite using a modular leg prosthesis (TF) from Ottobock costing Rs. 1,04,884/-, he applied for a knee prosthesis, an automated modular leg for the right leg, to maintain his mobility. In support of this, he presented evidence from PW-3 and exhibited Ext-9, an invoice showing the cost of the modular leg amounting to Rs. 14,48,328/- (Rupees Fourteen Lakhs forty-Eight Thousand Three Hundred Twenty-Eight) only. However, the evidence of PW-3 was not accepted by the learned Member, MACT (3), who awarded only Rs. 1,04,000/- (Rupees One Lakh Four Thousand) only for his artificial limb.

9. The learned Member, MACT (3), did not consider his 85% disability and accepted it only to the extent of 60%, despite his permanent disability being assessed at 85% by PW-2, Dr. Sujata Hazarika, with a certificate issued accordingly by the Joint Director of Health Services, Kamrup. Additionally, the learned Member erred in law and fact by awarding only Rs. 25,000/- for pain and suffering, Rs. 50,000/- for loss of amenities of life, and nothing for loss of expectation of life. Furthermore, the Court also disregarded the impact on the

appellant's marriage prospects due to the reconstruction of his penis, which made his future marriage uncertain. Therefore, the appellant is entitled to proper compensation for loss of future prospects. It is submitted that without considering these aspects of the case, the learned Member, MACT (3), Kamrup, awarded compensation amounting to Rs. 23,80,000/- (Rupees Twenty-Three Lakhs Eighty Thousand) only, which is inadequate. The petitioner is entitled to an enhanced amount of compensation.

10. In addition to her submissions, she relies on a decision passed by the Apex Court in the case of ***Master Ayush vs. Branch Manager, Reliance General Insurance Company Limited & Anr.*** reported in **(2022) 7 SCC 738**. In paragraph 14 of this decision, the Apex Court had held that:

Para-14: The determination of damages in personal injury cases is not easy. The mental and physical loss cannot be computed in terms of money but there is no other way to compensate the victim except by payment of just compensation. Therefore, we find that in view of the physical condition, the appellant is entitled to one attendant for the rest of his life though he may be able to walk with the help of assistant device. The device also requires to be replaced every 5 years. Therefore, it is reasonable to award cost of 2 devices i.e., Rs.10 lakhs. The appellant has not only lost his childhood but also adult life. Therefore, loss of marriage prospects would also be required to be awarded. The learned Tribunal has rejected the claim of taxi expenses for the reason that the taxi driver has not been produced. It is impossible to produce the numerous taxi drivers. Still further, the Tribunal should have realized the condition of the child who had complete sensory loss in the legs. Therefore, if the parents of the child have taken him in a taxi, probably that was the only option available to them. Accordingly, we award a sum of Rs.2 lakhs as conveyance charges."

11. She also relies on a decision passed by the Co-ordinate Bench in the case of ***Gregory Vanlalfinga Vs. Smti. Lalbiaktluangi & Anr.***, reported in **2017 (4) T.A.C. 912 (Gau.)**, where, the Court awarded Rs. 3(three) lakhs for pain and suffering.

12. She further relied on a decision passed by the Apex Court in the case of ***Jagdish vs. Mohan & others*** reported in ***2018 (2) T.A.C. 14 (S.C.)***, wherein, the Apex Court considered the percentage of disability and future perspectives, awarding reasonable compensation to the claimant.

13. Ms. Roy, learned counsel for the appellant further submitted that the appellant has spent a significant amount on his treatment. Due to financial stress, he could not afford an artificial limb, which costs Rs. 14,48,328/- . Additionally, the learned Member, MACT (3), did not assess the compensation considering his disability, future prospects, and marriage prospects. Consequently, the claimant/appellant has preferred this appeal seeking enhanced compensation.

14. On the other hand, Ms. Choudhury, learned counsel for the respondent has submitted that the learned Member, MACT (3), Kamrup had rightly assessed the compensation and accordingly awarded fair and reasonable compensation to the present appellant. While passing the order, the Trial Court also considered the functional disability of the appellant at the time of passing the judgment. From the statement made by the PW-2, Doctor, it is seen that the disability was assessed by the board for particular limb of the body and not the whole body and there is no mention about any other damages of the other parts of the body at the time of assessment by the medical board of doctors. More so, from the evidence of the PW-3, it is seen that the board did not suggest for any artificial limb. It is likelihood the cure of artificial limb may reduce the disability to the extent 30%.

15. It is further submitted that the Exhibit-9 is only the proforma invoice as per which the artificial limb from Ottobock is costs Rs. 14,48,328/- , but, it has

not been used or purchased by the appellant while claim petition was pending before the learned Member, MACT (3). She further submitted that Rs.50,000/- has already been awarded for the loss of amenities to the appellant which is rightly assessed by the learned Trial Court. In the present case, the rate of interest is not challenged and 7.5% has already been given to the present appellant towards the interest by the learned Member, MACT (3). More so, she submits that the appellant has not adduced any evidence to prove his income. She accordingly submitted that interference of this Court is not at all necessary as the appellant has been reasonably and fairly awarded by the Trial Court.

16. In support of her submission, she relied on the decision passed by the Apex Court in a case of ***Syed Basheer Ahamed & Ors. vs. Mohd. Jameel & Ors.***, reported in **2009 (2) SCC 225** and emphasized in paragraph No.14 of the said Judgment, which read as under:

14. In the instant case, the main grievance of the appellant is that the High Court erred in reducing the monthly income of the deceased from Rs.7,000/- to Rs.4,000/- . More so, when the claim of the appellants was that the deceased was earning about Rs.20,000/- per month. It needs little emphasis that insofar as the question of earnings of the deceased is concerned, the onus lies on the claimants to prove this fact by leading reliable and cogent evidence before the Tribunal. A bare assertion in the claim petition in that behalf is not sufficient to discharge that onus. In the present case, as noticed earlier, the deceased was carrying on a business. The Return of Income filed by him for the assessment year 1998-1999 (Ex.P-34) was brought on record along with his monthly turnover and tax paid statements submitted to the Commercial Tax Officer (Ex.P-27). Copies of the current account (Ex.P-38) showing the money deposited in the bank maintained by the deceased have also been brought on record. The Return of Income filed on 15th April, 1998 and the accompanying document, namely, trading and profit and loss account for the period ending 31st March, 1998 show a net profit of Rs.42,996/- . Taking into consideration the said documents, the Tribunal took the monthly income of the deceased at Rs.7,000/- per month. However, the High Court felt that in the light of the Income Tax Return, declaring income from the business carried on by the deceased, the yearly income of the deceased was not more than Rs.40,000/- and, therefore, the Tribunal

was not justified in adopting the monthly income of the deceased at Rs.7,000/- per month to work out the loss of dependency. According to the High Court, the monthly income of the deceased should have been taken at Rs.4,000/- per month.

17. She further relied on another decision rendered by the Apex Court in the case of ***Raj Kumar vs. Ajay Kumar & Anr.*** reported in ***2011 (1) SCC 343***, wherein, in paragraph 15 of the said judgment, it has been held that "when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation.

18. In regards to the compensation award in terms of the disability, she further, relied on ***Raj Kumar (Supra)*** wherein, paragraph Nos.9, 10 and 11, the Apex Court had discussed in detail as to how disability has to be considered at the time of awarding the compensation. In paragraph No.25 of the said judgment, it has been held that the extent of permanent disability of the limb could not be considered to be the functional disability of the body nor could it be assumed to result in a corresponding extent of loss of earning capacity.

19. Citing the above judgments, she accordingly submitted that the learned Member, MACT (3) had rightly assessed the compensation amount considering all the aspect including the functionally disability, loss of future amenities and expenditures incurred towards the medical treatment. Thus, the interference of his Court is not required.

20. After hearing the submissions made by the learned counsels for both sides, and after perusal of the case record and evidence recorded, it is seen that

in the present appeal the accident and the injuries sustained by the appellant are not disputed. However, the present appeal has been filed challenging the quantum of the awarded compensation.

21. Upon reviewing the record, it is observed that the appellant's income was initially considered to be Rs. 7,000/-(Rupees Seven Thousand) only, which was then increased by 40%, resulting in a revised income of Rs. 9,800/- per month. However, the appellant claimed to have been employed as a Site Manager (probationer) at M/s B. B. Associates, Guwahati, a private partnership company, with a fixed salary of Rs. 30,000/-(Rupees Thirty thousand) only per month. This salary certificate was submitted and exhibited as Exhibit-7 by the appellant/claimant. It is admitted that this claim was not substantiated by adducing evidence of any official from the company. Nevertheless, given that the appellant has computer knowledge and worked as a Site Manager, this Court is of the opinion that his income should be considered as Rs. 10,000/- per month, which may be increased by 40%, resulting in Rs. 14,000/- (Rupees Fourteen thousand) only per month.

22. However, the learned Trial Court correctly noted that the disability of 85% pertains to a specific limb rather than the whole body, as indicated by the medical evidence. It is also considered that the appellant is using an artificial limb for walking and has spent Rs. 1,04,000/- on it. Consequently, the learned Member, MACT (3) had rightly assessed his functional disability at 60% and based on the revised income of Rs. 14,000 per month, the total amount would be Rs. 3,024,000/- ($14,000 \times 12 \times 18$) (Rupees Thirty Lakhs Twenty-Four Thousand) only. Further, it is seen that, after reviewing the medical and other bills, the learned Member, MACT (3), concluded that though the submitted bills amounted to Rs. 11,70,802/-, the actual expenditures were approximately Rs.

9,00,000/-.

23. The learned Member, MACT has awarded Rs. 25,000/- towards pain and suffering due to the amputation of the right knee upper thigh. However, considering the nature of injury sustained by the appellant, this Court is of the opinion that Rs. 50,000/- would be more appropriate for pain and suffering. For the loss of amenities, the learned Trial Court's assessment of Rs. 50,000/- is considered to be reasonable. Additionally, as the appellant has undergone penis reconstruction surgery, which has impacts on his marriage prospects, accordingly, I am of the opinion that Rs. 2,00,000/- (Rupees Two lakhs) only can be awarded for loss of marriage prospects.

24. The learned counsel for the appellant mentioned that he had applied for a new prosthesis (TF) and an automated modular leg for his right leg to maintain mobility. The PW-3 also produced an invoice (Exhibit-9) showing costs of modular leg is of Rs. 14,48,328/-. However, the respondent's counsel rightly pointed out that this item was not purchased by the appellant and that only one invoice was presented. Thus, this could not be considered in the judgment and award. Furthermore, the doctor's evidence does not suggest or prescribed for any artificial limb or modular leg from Ottobock. Since no receipt or doctor's advice was provided, the learned Member of the MACT correctly decided not to consider the invoice for Rs. 14,48,328/-, while, assessing the award of compensation.

25. In light of the detailed discussion made above and considering the judgments of the Apex Court relied upon by both parties, the following compensation is assessed and awarded to the appellant:

SI. No.	HEADS OF CLAIM	AMOUNT (RS.)
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1.	Loss of income @ 10,000 for 3 months	30,000/-
2.	Medical Expenses (actual expenditure)	
(i)	Medicines	
(ii)	Hospital Charges	
(iii)	Attendant Charges	9,00,000/-
(iv)	Special Diet	
(v)	Transportation	
3.	Pain & Suffering (amputation of right mid upper thigh)	50,000/-
4.	Disability	30,24,000/-
5.	Loss of amenities	50,000/-
6.	Marriage Perspective	2,00,000/-
7.	Diet and Nutrition	10,000/-
8.	Cost of artificial limb	1,04,000/-
	Total=(RS.)	43,68,000/-

26. As a result, the appellant's claim is allowed to the extent of Rs. 43,68,000/- (Rupees Forty-Three Lakhs Sixty-Eight Thousand) only, carrying interest at the rate of 7.5% per annum from the date of filing the evidence on affidavit, 02.08.2019, until its realization.

- 27.** The respondent No.1/Oriental Insurance Company is directed to release the awarded amount with interest in favour of the present appellant/claimant within 2(two) months from the date of this order to the Tribunal for onward disbursement to the appellant in time.
- 28.** With above observation, the MAC. Appeal No.40/2021 stands allowed and disposed of, with a slight modification to the quantum of compensation disposed of.
- 29.** Sent back the LCR.

JUDGE

Comparing Assistant