

GAHC010034282021



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

Case No. : MACApp./64/2021

NATIONAL INSURANCE COMPANY LIMITED
HAVING ITS REGISTERED OFFICE AT KOLKATA, REP. BY ITS REGIONAL
OFFICE, G.S. ROAD, BHANGAGARH, GUWAHATI-5, ASSAM

VERSUS

SRI ASHOK PANDEY AND 2 ORS
S/O SRI BALI RAM PANDEY, R/O SEUNI GAON, PS JORHAT, DIST. JORHAT

Advocate for the Petitioner : MR. B J MUKHERJEE, MR S S SHARMA, MR H BURAGOHAIN

Advocate for the Respondent : MR G N SAHEWALLA (R1), MD ASLAM (R1), MR H K SARMA (R1), MR. M SAHEWALLA (R1)

Linked Case : I.A.(Civil)/652/2021

NATIONAL INSURANCE COMPANY LIMITED
HAVING ITS REGISTERED OFFICE AT KOLKATA
REP. BY ITS REGIONAL OFFICE AT G.S. ROAD
BHANGAGARH
GUWAHATI-5
ASSAM

VERSUS

SRI ASHOK PANDEY AND 2 ORS
S/O BALI RAM PANDEY
R/O SEUNI GAON
PS JORHAT
DIST. JORHAT

2:SURESH RATHI
R/O BHERIA BUILDING
4TH FLOOR
RADHIA BABU LANE
OLD BALIBAT
PO AND PS JORHAT
DIST. JORHAT

OWNER OF TRUCK (AS-03-1497)

3:SANJAY RABHA
S/O NIRAD RABHA
R/O TUENSANG TOWN
DIST. NAGALAND

DRIVER OF TRUCK (AS-03-F-1497)

Advocate for : MR. B J MUKHERJEE
Advocate for : appearing for SRI ASHOK PANDEY AND 2 ORS

BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG

JUDGMENT

Date : 05-09-2024

Heard Mr. H. Buragohain, learned counsel for the appellant. Also heard Mr. M. Sahewalla, learned counsel for the respondents.

[2.] This is an appeal filed under Section 173 of Motor Vehicle Act, 1988 against the Judgment & Award dated 18.03.2020 passed by the learned Member, Motor Accident Claims Tribunal, Jorhat in MAC Case No.32/2017, wherein the claimant were awarded Rs.14,44,423/- (*Rupees Fourteen lakhs, forty four thousand, four hundred*

twenty three) only payable by the appellant Insurance Company along with 9 % interest from the date of filing the claimed petition till realization of the entire amount.

[3.] Facts of the case in a nutshell is that on 18.10.2016 at about 7:30 p.m., one Truck, bearing registration No.AS-03 F/1497, driven by the driver in a rash and negligent manner knocked down the claimant Sri Ashok Pandey, for which, the claimant fell down on the road and the offending vehicle ran over his right leg, as a result of which, the victim suffered severe injury and was immediately taken to Jorhat Medical College & Hospital for medical treatment.

[4.] On 21.10.2016, the attending doctor had to amputate the right lower leg of the claimant for which he became permanently disabled and could not work and earn income in the manner prior to the accident. The FIR was lodged at Jorhat P.S. and registered as Jorhat P.S. Case No.2304/2016, under Sections 279/338 of IPC.

[5.] The claimant had claimed a compensation amounting to Rs.20,00,000/- (*Rupees twenty lakhs*) only. The appellant as Opposite Party No.1 in the MACT Tribunal had filed their written statement claiming that the compensation amount was exorbitant and that the claimant was not entitle to the compensation as claimed. From the pleadings of the parties the following issues were framed :

(1) *Whether the accident occurred due to rash and negligent driving by the driver of the offending vehicle bearing registration No.AS-03 F/1497 (Truck)?*

(2) *Whether the claimant Sri Ashok Pandey sustained injuries due to the said accident which occurred on 18/10/2016 at about 7:30 p.m., at N.R. Mill Campus, Kenduguri, A.T. Road, Jorhat, under Jorhat P.S. ?*

(3) *Whether the offending vehicle No.AS-03 F/1497 was duly insured with the National Insurance Company Limited at the time of accident?*

(4) *Whether the driver of the offending vehicle had a valid and effective driving licence at the time of accident ?*

(5) *Whether the claimant is entitled to get any compensation? And, if so, to what extent and by whom it shall be paid?*

[6.] All the issues were decided in favour of the appellant and the learned Tribunal, finding that the age of the appellant was 30 years old at the time of the accident and his annual income before accident was Rs. 1,08,000/- wherein he sustained 70% disability on his right leg, calculated the awarded amount to Rs.14,44,423/- and held that the Insurance Company was liable to pay the said amount with interest @ 9% per annum from the date of filing the claimed petition till the realization of the entire amount.

[7.] Mr. H. Buragohain, learned counsel for the appellant Insurance Company submits that the instant appeal is against the amount awarded by the learned Tribunal under the head of loss of amenity, wherein, the learned Tribunal had awarded Rs.3,00,000/- (*Rupees three lakhs*)only. The learned counsel submits that awarding Rs.3,00,000/- (*Rupees three lakhs*)only is highly exorbitant and submitted that the

appropriate amount would be Rs.1,00,000- *Rupees one lakh*)only.

[8.] In support of his submission for reducing the amount of Rs.3,00,000/- *Rupees three lakhs*)only under loss of amenities, the learned counsel cited the judgments of the Apex Court in (1) **Sri Lakshmana Gowda B.N. versus Oriental Insurance Co. Ltd. and Another** reported in **2023 Legal Eagle (SC) 684**, (2) **Benson George Vs. Reliance General Insurance Company Limited and Another** reported in **2022) 13 SCC 142**, (3) **Lalan D.@ Lal & Anr. Vs. Oriental Insurance Company Ltd.** reported in **2020 Legal Eagle (SC) 563** & (4) **Anant Son of Sidheshwar Dukre Vs. Pratap Son of Zhampannappa Lamzane** reported in **(2018) 9 SCC 450**.

[9.] Mr. M. Sahewalla, learned counsel for the respondent/claimant on the other hand submits that due to the injuries sustained in the accident, the claimant is suffering from 70% disability on his right leg and therefore his whole life style has been affected including his chance of getting married. He has further pointed out that the learned Tribunal had not awarded any amount under the head of compensation for pain and suffering and therefore awarding Rs.3,00,000/- for loss of amenities is not excessive. He has brought to the notice of this court that in the Judgments cited by the learned counsel for the appellant, the victims were awarded compensation under the head of pain and suffering because of which loss of amenities was of a less amount. He further submits that the nature of injury in decided cases were not the

same in the present case and therefore there was no reason to reduce the compensation of Rs.3,00,000/- *Rupees three lakhs*) only given under the heading loss of amenities considering the nature of injury suffered by the claimant.

[10.] Having heard the submissions made by the learned counsels for both the parties, it is noted that the learned counsel for the appellant has not made any rebuttal to the submission that, no compensation is given to the appellant for pain and suffering. It is seen that the claimant had suffered permanent disability and the percentage of the disability is 70% on his right leg. The disability certificate reveals that the disability of 70% is not likely to improve. The learned Tribunal had also observed that because of the injuries sustained, the claimant will not be able to enjoy the amenities of his life. It is seen that his further prospects and the chance of him leading a normal life, as before the accident, have become bleak. Thus, this court finds no grounds to interfere with the Judgment & Award dated 18.03.2020 passed by the learned Member, Motor Accident Claims Tribunal, Jorhat in MAC Case No.32/2017.

[11.] Accordingly, MAC.App. No.64 of 2021 stands dismissed and disposed of.

JUDGE

Comparing Assistant