

GAHC010122902016



undefined

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

Case : MACApp./375/2016

UNION OF INDIA and ANR
REPRESENTED BY THE SECY. TO THE GOVT. OF INDIA
MINISTRY OF DEFENCE
NEW DELHI

2: COMMANDING OFFICER

299 FIELD REGIMENT C/O 99 APO
VERSUS

SRI KHAGEN BORO
S/O LATE PITHU RAM BORO
R/O NO. 1 BORPUKHURI
P.O. and P.S. THELAMARA
DIST. SONTIPUR
ASSAM.

Advocate for : MR.S CHAKRABARTY
Advocate for : appearing for SRI KHAGEN BORO

Linked Case No. : MACApp./374/2016

UNION OF INDIA and ANR
REPRESENTED BY THE SECY.T O THE GOVT. OF INDIA, MINISTRY OF
DEFENCE, NEW DELHI

2: COMMANDING OFFICER

299 FIELD REGIMENT C/O 99 AP

VERSUS

SRI KHAGEN BORO
S/O LATE PITHU RAM BORO, R/O NO. 1 BORPUKHURI, P.O. and P.S.
THELAMARA, DIST. SONITPUR, ASSAM.

Advocate for the Petitioner : MR.A C KALITA, MR. P S BHATTACHARYYA,C.G.C.,MR.S CHAKRABORTY

Advocate for the Respondent : MR. A S DHILLON,

BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG

JUDGMENT & ORDER

Date : 10-09-2024

Heard Mr. P.S. Bhattacharyya, learned Central Government counsel for the appellant along with Mr. K. Biswakarma, learned counsel for the respondents.

2. This is an appeal against the Judgment & Order dated 19.12.2013 in MAC. Case No.63/2012 passed by the learned Member, Motor Accident Claims Tribunal, Biswanath Chariali, Sonitpur.

3. Brief facts of the case is that the claimant is the rider of the motorcycle, who was driving his motorcycle and his wife was the pillion rider when the accident took place at extreme left side of the road NH-52 from Thelamara to Dhekiajuli on 16.12.2011, due to accident he had sustained grievous injuries on his head and chest, and claimed compensation of Rs.2,50,000 for the injuries sustained by him in the accident since he was hospitalized and he was shifted from Baptist Christian Hospital, Tezpur to GNRC, Guwahati due to the critical nature of his injuries. The claimant as CW No.1 had submitted his hospital bills and cash memos amounting to Rs. 44,256/-. Though the claimant had stated that due to the injuries sustained by him he had become unable to do normal works however he did not produced any disability

certificate or adduce evidence of any Doctor to prove his claim of permanent disablement. He claimed Rs.2,50,000/- for the injuries sustained by him.

4. The respondent No.1/Union of India represented by C/O-Commandant 99 A.P.O. Fd. Regt. P.O. & P.S. Mathurapur, Sibsagar, District Sibsagar, Assam as the owner of offending vehicle while respondent No.2 is the driver of the offending vehicle and respondent No.3 is the Govt. of India.

5. The respondents filed their joint written statement wherein the accident was denied and it was stated that the said offending vehicle was not involved with the accident.

6. From the pleadings of both the parties, the following issues were framed :

- (i) *Whether the instant case is maintainable in its present form and circumstances ?*
- (ii) *Whether there is any cause of action in this case?*
- (iii) *Whether the alleged accident occurred due to rash and negligent driving of the driver of the vehicle?*
- (iv) *Whether the claimant is entitled to get any compensation, if so, to what extent and from whom?*
- (v) *What relief/reliefs the claimant is entitled to get from the O.P. under the law and equity?*

7. The claimant in support of his claimed petition adduced his evidence as CW-No.1 and exhibited the FIR and medical documents. The respondents, though their filed their written statement, did not cross examine CW-No.1 during trial nor did they adduce evidence.

8. On the basis of evidence on record, all the issues were decided in favour of the claimant.

9. The learned Tribunal after considering the evidence adduced by CW-No.1 found that the offending Army Truck bearing registration No.03-D/153961-H had knocked down the motorcycle from behind due to rash and negligent driving of the driver of the offending truck, as a result of which, claimant had sustained grievous head injuries and chest succumb to his injuries on the spot. CW No.1 had exhibited Ext-1, wherein the police registered Thelamara P.S. Case No.147/2011 U/s 279/338/304(A) of the IPC against the driver of the offending vehicle.

10. The learned Tribunal, on considering the medical bills and vouchers along with transport charge, awarded Rs.44,256/- and for pain and suffering awarded Rs. 20,000/- = Rs. 65,000/- as compensation for the injuries sustained by him.

11. The learned Tribunal held that the O.P. No.1 Union of India represented by C/O-Commandant 99 A.P.O. Fd. Regt. P.O. & P.S. Mathurapur, Sibsagar, District Sibsagar, Assam liable to pay the said compensation amount of Rs.65,000/- with 6% interest from the date of filing of the claimed petition.

12. Mr. P.S.Bhattacharyya, learned counsel for the appellant No.1 submitted that at the time when the matter was heard by the learned Member, MAC Tribunal, though the witnesses were not cross examined, however, since there were no independent witnesses, the claimant has failed to prove that the accident was caused by the vehicle bearing registration No.03-D/153961-H which knocked down the motorcycle from behind due to rash and negligent. He also submitted that the witness was not cross examined because he was not the appointed counsel for the respondent/present appellant while the matter was heard before the learned Tribunal.

13. Mr. K. Biswakarma, learned counsel for the respondents on the other hand submitted that, on perusal of the case records, it is seen that the present appellant was duly represented before the learned Tribunal and therefore, if the witness/CW No.1 was not cross examined, it amounts to the fact that the evidence adduce by the

witnesses is duly accepted and therefore, their evidence cannot be challenged at this appellate stage.

14. Having heard the submissions made by the learned counsels for both the parties, this court has noted that it is not the plea of the respondents/present appellants that they were not given the chance to cross- cross-examine the depositions made by CW No.1 or that the respondents/(present appellants) were not represented before the learned Tribunal.

15. In view of the above, on the failure on the part of the respondents to cross-examine the evidences adduced/deposed by the claimant witnesses, this court finds that there is no ground to interfere with the findings of the learned Tribunal which was based on the evidences adduced by the claimant witnesses. The learned Tribunal had awarded a sum of Rs.65,000/- by considering the medical bills and vouchers along with the transport expenses produced by the claimant for the treatment of the injuries sustained by him and the learned Tribunal had also awarded Rs.20,000/- for the pain and suffering caused due to the accident.

16. In view of the above, this court finds no reasons to interfere with the Judgment and Award dated 19.12.2013 passed by the learned Tribunal in awarding Rs. Rs.65,000/- with an interest of 6% from the date of filing the claimed petition to the claimant to be paid by respondent No.1.

17. For the above reasons, the MAC appeal No.375/2016 stands dismissed and disposed of.

JUDGE

Comparing Assistant