



GAHC010219082018

Page No.# 1/11



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

PRINCIPAL SEAT AT GUWAHATI

MAC Appeal No. 89 of 2019

Sri Kunal Kashyap Sharma, aged about 29 years,
Son of Sri Hariprasad Sharma,
Resident of Village- Borpukhuri,
Post Office- Bhalukmari,
District- Nagaon, Assam

.....Appellant/Claimant

-Versus-

1. Sri Kanaklal Bhuyan,
Son of Late Bipin Chandra Nath,
Resident of village Habibarangabari,
Police Station- Mikirbheta, District- Morigaon,
Assam, Pin – 782105.
(Owner & Driver of the offending vehicle
Bearing Registration No. AS-01-DC-7724)
2. United India Insurance Company Limited,
Jagiroad Branch, Assam,
Pin- 782410,



(Insurer of the Vehicle bearing Registration No.
AS-01-DC-7724, vide Policy No. 130103/31/12/01/00000887 Valid Upto:
24.05.2013

.....Respondents.

Advocates for the appellant : Mr A Lal.
Advocate for the respondent : Mrs M Choudhury

BEFORE
HON'BLE MRS. JUSTICE MALASRI NANDI

Date of Judgment : 02.03.2023

JUDGEMENT AND ORDER (CAV)

Heard Mr A Lal, learned counsel appearing for the appellant and Mrs M Choudhury, learned counsel appearing on behalf of the respondent No. 2/Insurance Company.

2. The injured claimant as appellant has filed this appeal under Section 173 of the Motor Vehicles Act, 1988, challenging the judgment and Award dated 13.07.2018, passed by the learned Member, MACT, Morigaon, in MAC Case No. 43 of 2014, awarding compensation amounting to Rs. 7,55,726/- (Rupees Seven Lakhs Fifty Five Thousand Seven Hundred Twenty Six Only) Only, in favour of the claimant/appellant and has prayed for enhancement of compensation.

3. The brief facts of the case is that on 14.06.2004, at about 9:00 pm, while the claimant/appellant was proceeding towards Morigaon by riding his motor cycle bearing Registration No. AS-02-H-0109 and when he reached Na-Bheti, another vehicle (Bolero Pick-



Up Van) bearing Registration No. AS-01-DC-7724, coming in a rash and negligent manner knocked him down from behind, as a result of which, the claimant/appellant sustained grievous injuries on his person. Immediately after the accident, the claimant/appellant was shifted to Morigaon Civil Hospital for treatment, and subsequently, he was referred to Guwahati and on the next day, he got admitted to Dispur Hospital, Guwahati, where he took treatment for a couple of days as an indoor patient. The claimant/appellant had to undergo two operations. But, he was not fully recovered and his treatment was still going on at the time of filing of the case.

4. On receipt of the information regarding accident, a case was registered before the Morigaon Police Station, vide Morigaon PS Case No. 244 of 2012, under Sections 279/338/427 IPC. At the relevant time of accident, the offending vehicle was duly insured with the respondent No. 2, United India Insurance Company Limited.

5. The respondent No. 1/owner-cum-driver of the offending vehicle bearing Registration No. AS-01-DC-7724, by filing his written statement had admitted that he was the registered owner and driver of the vehicle bearing Registration No. AS-01-DC-7724. The respondent No. 1 further asserted that at the relevant time of the accident, the said vehicle was insured with the respondent No. 2/United India Insurance Company Limited and clarified that as the accident occurred within the validity period of the policy, as such, if any liability arises for the accident, it should be absolved by the respondent No. 2/Insurance Company, being the insurer of the offending vehicle.

6. It is submitted by the learned counsel for the appellant that the claimant/appellant is a post-graduate Diploma Holder in Management (General) for the Academic Session- 2012-



2014 from Asia Pacific Institute of Management, New Delhi. The appellant had suffered bodily injuries in the road accident and due to which he became permanently disabled, which was assessed as - 40% and because of the disability, it would surely affect his earning capacity and his livelihood.

7. It is also the submission of the learned counsel for the appellant that the compensation of the appellant deserves to be enhanced as the learned Member, MACT, Morigaon wrongly considered a sum of Rs. 3000/- per month as notional income of the appellant. As such, he submits that the compensation award should be enhanced on the basis of qualification and not on the basis of notional income. He further submits that a Simple Interest @ 12% per annum should be awarded along with enhanced compensation, from the date of accident and not from the date of filing of the claim petition. Hence, the Judgment and Award dated 13.07.2018, passed by the learned Member, MACT, Morigaon, in MAC Case No. 43 of 2014, needs to be interfered by this Court.

8. In support of his submission, the learned counsel for the claimant appellant has placed reliance on the following caselaws:-

- 1) 2018 SCC Online Delhi 12086; (*Raj Bala & Anr. Vs. Sumit Dahiya & Ors*)
- 2) 2013 (100) ALR 730; (*Josphine James -Vs- United India Insurance Company Ltd. & Anr.*)
- 3) 2017 SCC Online Gau 740; (*Smt. Puspa Maheswari & 2 Ors. -vs- United India Insurance Company Ltd.*)
- 4) 2012 STPL 118 SC; (*Amresh Kumari -Vs- Niranjana Lal Jagdish Parshad Jain.*)

5) 2020 SCC Online SC 752; (*Pappu Deo Yadav –vs- Naresh Kumar & Others*)

9. On the other hand, learned counsel for the respondent No. 2/Insurance Company has submitted that there is no question of enhancing the income of the student as considered by the learned Tribunal, as because the claimant/appellant had no income at all at the time of accident. The learned Tribunal has rightly delivered the Judgment considering the income of the claimant/injured as Rs. 3,000/- per month.

10. It is also submitted by the learned counsel for the respondent No. 2/Insurance Company that the interest with the entire compensation amount has already been paid.

11. In support of his submission, learned counsel for the Insurance Company has placed reliance on *Kaushnuma Begum (Smt) & Others –vs- New India Assurance Co. Ltd;* reported in (2001) 2 SCC 9.

12. I have considered the arguments of both the learned counsel for the parties. I have also gone through the judgment of the learned Tribunal and also the documents, which are available in the record of MAC Case No. 43 of 2018.

13. Before proceeding further, it would be necessary to have a look at the judgment of the Apex Court on permanent disablement in the case of ***Rajkumar v. Ajay Kumar***, reported in **(2011) 1 SCC 343**, wherein, the following principles have been enunciated.:

1. All injuries or permanent disabilities arising from injuries do not result in loss of earning capacity.
2. The percentage of permanent disability with reference to a whole body of a person cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent

disability.

3. The doctor who treated the injured claimant or subsequently who examined to assess the extent of his permanent disability can give evidence only in regard to the extent of permanent disability. The loss of earning capacity is something, that will have to be assessed by the Tribunal with reference to the evidence in entirety.

4. The same permanent disability may result in different percentage of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.

14. In the instant case, only three witnesses were examined before the Tribunal, i.e., the victim/claimant and the two Medical Officers.

15. In this case, the Tribunal has proceeded on the basis that permanent disability of the injured appellant was 40% and the loss of his future earning capacity was considered on multiplier method. And the learned Tribunal did not consider that the claimant/appellant was having a Post-Graduate Diploma in Management and considered the income of the claimant/appellant as Rs. 3,000/- per month on the basis of notional income.

16. From Exhibit-73, it can be ascertained, that the claimant/ appellant had been conferred upon the Post-Graduate Diploma in Management(General) for the Academic Session-2012-14, but except Exhibit-73, no other educational documents of the claimant are available in the record, so that we can come to the conclusion that the claimant/appellant is a meritorious student and as a result of his Diploma in Management, he could earn more than the income as considered by the learned Tribunal.

17. The accident occurred on 14.06.2012. Exhibit-73 shows that the claimant was pursuing

the Post-Graduation diploma in Management course during the Session-2012-2014. However, from the Exhibit- 73, it cannot be ascertained, whether the Diploma was taken on online mode, as he was confined to bed after the accident and it would have been difficult for him to participate in Class-Room Session during the period since 2012-2014. No any other document has been filed by the claimant/appellant to show that he took the Management Diploma through correspondence course. Under such backdrop, Exhibit-73 cannot be taken into consideration in the case. Hence, in the absence of any documentary evidence regarding professional qualification of the claimant/appellant, he is not entitled for any compensation on the basis of his Post-Graduate Diploma in Management, vide Exhibit-73.

18. As per the claim petition, the occupation of the injured/claimant/appellant was shown as service/business, but no any document has been proved regarding his service or business. The claim petition is totally silent as to whether he was a student of PGDM Course, prior to the accident or he was a Graduate at the time of the accident. Under such backdrop, the loss of income of the claimant/appellant has to be calculated on the basis of the minimum wages fixed by the Government of Assam, Labour Welfare Department, Labour (RC) Branch, vide No. GLR.503/81/Pt-I/252, dated 16th March, 2022, for the unskilled worker, which is Rs. 9,246/- per month.

19. In the instant case, the petitioner has been suffering from 40% permanent disability as per the disability certificate.

20. In *Raj Kumar (supra)*, Hon'ble Supreme Court brought out the difference between permanent disability and functional disability resulting in the loss of earning capacity. It was laid down that the compensation on account of loss of earning capacity has to be granted

keeping in view the nature of work performed by the victim of motor accident and the effect of the permanent disability on his earning potential.

21. In United India Insurance Co. Ltd. v. Rama Swamy and Others; 2012 (2) T.A.C. 34 (Delhi), claimant suffered permanent disability in respect of right upper limb and right lower limb to the extent of 28%. Claimant was employed as a Beldar. It was observed by the Delhi High Court that in the absence of any expert evidence led by the first respondent, loss of earning capacity was reduced to 14% in respect of whole body and awarded compensation.

22. In another case in Arun Kumar vs. Nand Kishore & Ors.; (MAC Appeal No. 193/2011, decided on 29.11.2012), the appellant suffered 70% permanent locomotor impairment with respect to his left lower limb. It was proved on record that appellant would have difficulty in moving walking, climbing and sitting which would definitely affect his earning capacity. Delhi High Court relying on Raj Kumar (supra) wherein Supreme Court took 45% disability in respect of left lower limb as 20% loss of future earning capacity, Delhi High Court took 70% locomotor impairment in relation to left lower limb as 35% loss of earning capacity.

23. In Balvinder Singh vs. Satish Kumar & Ors.; (MAC Appeal No. 61/2012, decided on 03.12.2012), the appellant was working as a welder. He suffered 38% physical impairment in relation to his right lower limb on account of post traumatic stiffness of right knee, ankle with puss discharge while observing that the job of welder requires constant sitting and frequent movement of the knees. It was held that the Delhi High Court took loss of earning capacity as 19%.

24. In New India Assurance Company Ltd. v. Deepak Kumar & Ors.; (MAC Appeal No. 675/2011, decided on 10.10.2012), injured was admittedly a manual worker. He suffered

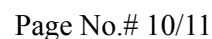
44% locomotor impairment in relation to his right lower limb. Delhi High Court assessed his functional disability to the extent of 22%.

25. In the case in hand, the petitioner suffered 40% permanent disability in relation to deformity and shortening of the left lower limb, following both bones fracture of left leg due to road traffic accident. According to the learned counsel for the claimant/appellant, the claimant/appellant was a student at the time of the accident. Therefore, as he was a student, he was not engaged in any type of work for earning his livelihood. Under such backdrop, in view of the judgments discussed above, loss of earning capacity of the claimant/appellant is assessed as 20%.

26. The age of the claimant/appellant was considered by the learned Tribunal around 22 years, which was not disputed by the respondent's side. One driving licence is also available in the record, from which it reveals that the date of birth of the claimant is 17.08.1989. The accident took place on 14.06.2012. It transpires that the claimant/appellant was around 23 years of age at the relevant time of accident. As per the Judgment of **Sarala Verma –Vs- DTC; reported in (2009) 6 SCC 121**, the multiplier would be 18.

27. Now, coming to the question as to the rate of interest, the principle laid down in *Municipal Corporation of Delhi vs. Association of Victims of Uphaar Tragedy*; (2011) 14 SC 481, can be relied upon, wherein, the Hon'ble Apex Court granted interest @ 9% p.a. So, interest @ 9% may be awarded from the date of filing of the claim petition till realization.

28. The compensation on the head of future prospects cannot be considered as it is not proved that the claimant/appellant was doing any business or any service at the relevant time



29. However, the other amounts awarded under the Heads of Pain and mental Agony, Pecuniary loss (medical expenditure, Transportation and Special Diet, Cost of Litigation, by the learned Tribunal, shall remain as same. After computation of compensation, the award would come as follows:-

F. For future treatment = Rs. 1,00,000/-

Total – Rs. 7,66,353/-

(Rupees Seven Lacs Sixty Six Thousand Three Hundred and Fifty-Three Only)

30. In the result, with the aforesaid modification, the appeal is partly allowed. The Insurance Company is directed to deposit the amount of Rs. 7,66,353/- (Rupees Seven Lacs Sixty Six Thousand Three Hundred and Fifty-Three Only) in the savings account of the claimant/appellant, Sri Kunal Kashyap Sharma, through NEFT. The amount of compensation shall carry an interest @ 9% per annum, from the date of filing of the claim petition till full



and final realization. The Insurance Company is directed to discharge the liability of the award within a period of 30 days from the date of receipt of the order. The appellant, Sri Kunal Kashyap Sharma, is directed to furnish his bank details of any nationalized bank to the Insurance Company for necessary payment. The amount of compensation, if any, paid earlier, be adjusted accordingly.

31. Send down the LCR.

JUDGE

Comparing Assistant