

IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM: NAGALAND: MIZORAM & ARUNACHAL PRADESH)

ITANAGAR PERMANENT BENCH (NAHARLAGUN)

MAC. Appeal No.09(AP) of 2011

1. The Union of India, represented by the Commander, 48 Border Road Task Force(GREF), C/o 99 APO.
2. The Officer Commanding, 116 RCC(GREF) Hayuliang, C/o 99 APO.

.....*Appellants.*

– VERSUS –

1. Shri Jabrakem Chaitom, Village-Supliang, P.O/P.S- Hayuliang,
Anjaw District Tribal Colony, Tezu, Arunachal Pradesh

..... *Respondent.*

Advocate for the Appellants: Mr. N. Ratan

Advocate for the Respondent: Mr. D. Lazi

::: BEFORE :::

HON'BLE MR. JUSTICE NANI TAGIA

JUDGMENT AND ORDER (Oral)

24.10.2019

Heard Mr. N. Ratan, learned counsel for the appellant/Union of India and Mr. D. Lazi, learned counsel for the respondent/claimant.

2. This appeal under Section 173 of the Motor Vehicle Act, 1988 has been filed by the appellant/Union of India challenging the judgment and award dated 07.06.2010 passed by the learned Member, Motor Accident Claims Tribunal (MACT), Anjaw District in MACT Case No.01/2007, whereby an amount of Rs.3,01,325/-(Rupees Three Lakhs One Thousand Three Hundred Twenty Five only) have been awarded as a compensation to be paid to the respondent/claimant.

3. The facts leading to filing of the present appeal may be stated as follows:

4. On 02.06.2006 while the victim, Shri Sokhemlum Chaitom was traveling in the BRTF vehicle bearing Registration No. BA No.97E-61792(Tipper) from Hayuliang towards Zero point, the said vehicle met with an accident near Dalai Bridge point on Hayuliang-Supliang road at around 1430 hrs. As a result thereof, the victim Shri Sokhemlum Chaitom sustained injury and was brought to CHC Hospital, Hayuliang, who was further evacuated to Assam Medical College Hospital, Dibrugarh for further treatment. Hayuliang P.S. Case No.09/2006 under Sections 279/337/338 of the IPC also came to be registered in this connection. Because of the injury sustained by the victim as indicated herein above; the brother of the victim, namely, Jabralum Chaitom was authorized to file a claim petition on behalf of the victim and accordingly, the claimant filed a motor accident claim petition before the learned Member, MACT, Anjaw District, which was registered as MACT Case No.01/2007. The appellant/respondent in the claim petition had also contested the claim petition by filing a written statement. On rival pleadings of both the parties, the learned Tribunal framed the following issues:

- "....1). Whether the claim is maintainable in law and in facts?*
- 2). Whether the injured person was travelling in the said offending vehicle?*
- 3). Whether the accident took place due to rash and negligent driving of the driver of the said vehicle?*
- 4). Whether the injured person sustained grievous injuries in the said RTA took place on 2/6/06?*
- 5). Whether the offending vehicle belongs to the Opp. Parties?*
- 6). Whether the claimant has obtained any authority letter from the injured person or has the power to file the claim petition?*
- 7). Whether the injured person being a cultivator can earn Rs.6000/-p.m., if so, from what sources?*
- 8). Whether the claimant can claim any compensation from the Opp. Parties for boarding the GREF vehicle forcefully and without any indemnity Bond by the injured person?*

- 9). Whether the criminal trial proved any fault of the driver for the injuries caused to the injured person?
- 10). Whether the claim amount not excessive & exorbitant?
- 11). Whether the claimant/injured person is entitled to get compensation?....”

5. On adjudication of the claim petition filed by the claimant, the learned Tribunal found the claimant to be entitled to a compensation of Rs.3,01,325/- (Rupee Three lakhs One Thousand Three Hundred Twenty Five only). The entitlement of the claimant for an amount of Rs.3,01,325/- as compensation under Section 163(A) of the Motor Vehicle Act was calculated in the following manner:

....a). Annual income-Rs.80x30x12	=Rs.28,800/-
b). Using the multiplier of 15(40 yrs)	=Rs.4,32,000/-
c). Calculating the percentage of disablement of 39%	=Rs.1,68,480/-
d). Medical expenses	=Rs.62,865/-
e). Fooding/lodging/journey & other expenses	=Rs.36,180/-
f). Pain & sufferings	=Rs.5,000/-
g). Loss of income-2400/-x12 months	<u>=Rs.28,800/-</u>
	=Rs.3,01,325/-
h). Deducting the NFL amount	<u>(-) 25,000/-</u>
Total compensation amount	=Rs.2,76,325/-....”

6. In arriving at the aforesaid amount of compensation to be given to the respondent/claimant, the learned Tribunal had relied on the injury report (Exhibit-3) and handicapped certificate (Exhibit-7) issued by the Board of Doctors.

7. Assailing the correctness of the compensation amount arrived at by the learned Tribunal, the learned counsel for the appellant, Mr. N. Ratan submits that the basis for arriving at the compensation amount indicated herein are the Exhibit-3 and Exhibit-7, which are the injury report and handicapped certificate issued by the Doctor, but the Doctor, who had issued the certificate as well as report have not been examined before the learned Tribunal; and, accordingly, the Exhibits-3 and 7 remains not proved. If the Exhibits-3 and 7 have not been proved before the learned Tribunal in accordance with law, the compensation amount indicated herein above, which is based on the percentage of disability

suffered by the victim on the basis of un-proved Exhibits-3 and 7 could not be sustained.

8. I have perused the records. On perusal of the record, there is nothing to indicate that the Exhibits-3 and 7 have been proved in accordance with the rules of evidence.

9. At this stage, Mr. Lazi, learned counsel for the respondent/claimant prays for remanding the matter back to the Tribunal for fresh adjudication of the claim petition.

10. Having heard the learned counsels for the parties as well as on perusal of the materials available on record, I am inclined to accept the prayer made by Mr. D. Lazi, learned counsel for the respondent/claimant and, accordingly, this MAC Appeal No. 09(AP)2011 is allowed and the impugned judgment and award dated 07.06.2010 passed by the learned Member, MACT, Anjaw District in MACT Case No.01/2007 are hereby set aside and the same is remanding back to the learned Member, Motor Accident Claims Tribunal, Anjaw District for fresh adjudication of the MACT Case No.01/2007 in accordance with law. For fresh adjudication of the claim petition, the parties shall appear before the learned Tribunal, Anjaw District on 10.12.2019.

The appeal is **disposed of**, in terms above.

Send back the LCR forthwith.

JUDGE

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