



IN THE GAUHATI HIGH COURT
HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

MACApp./67/2018

Oriental Insurance Co. Ltd.,
Having Its Registered Office At Oriental
House A 25/27 ASAF Ali Road, New Delhi
110002 And Regional Office At Guwahati
7, Represented By The Regional Manager.

.....Appellant

-Versus-

1. Fakar Uddin Talukdar,
R/o South Kandigram,
P.O. Malua, P.S. Badarpur,
District-Karimganj, Assam,
Pin-788806.
2. Khairul Islam,
R/o Vill. And P.O. Kanishail,
P.S. And District-Karimganj, Assam,
Pin-788711 (Owner of the Vehicle Bearing No.
AS-10-3439.

.....Respondents

For Appellant Mr. S. Dutta, Advocate.

For Respondent(s) Mr.G. Uddin, Advocate.

Date of Hearing : **14.05.2026**
 Date of Judgment : **27.07.2026**

BEFORE

HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA

JUDGMENT AND ORDER

- [1]** Heard Mr. S. Dutta, the learned counsel for the appellant. Also heard Mr. G. Uddin, the learned counsel for the respondent No. 1.
- [2]** This appeal under Section 173 of Motor Vehicles Act, 1988 has been preferred by the appellant, namely, Oriental Insurance Co. Ltd. impugning the judgment and award dated 16.06.2017, passed by the learned District Judge-cum-Member, Motor Accident Claims Tribunal, Karimganj, in MAC Case No. 93/2018.
- [3]** The facts relevant for consideration of the instant appeal, in brief, are that on 18.02.2011, at about 9:30 P.M., when the son of the present respondent No. 1, namely, Zakir Hussain Talukdar, was driving a motor cycle, a Truck bearing Registration No. AS-10-3439, driven in a rash and negligent manner, dashed against the motor cycle causing an accident wherein, he sustained grievous injuries on his person. Thereafter, after the said accident, the father of the injured Zakir Hussain Talukdar, namely, the present respondent No. 1, had approached the Motor Accident Claims Tribunal,

Karimganj by filing an application under Section 166 of the Motor Vehicles Act, 1988 claiming compensation for the injuries sustained by his son in the above-mentioned vehicular accident. The aforesaid claim case was registered as MAC Case No. 93/2018. The present appellant contested the claim by filing written statement taking various defences, including the defence that the offending truck was not covered under valid insurance policy. The owner of the offending vehicle did not appear before the Tribunal and the claim case proceeded *ex-parte* against the said owner. On the basis of the pleadings of the parties, the Motor Accident Claims Tribunal framed following issues:-

"i. Whether the alleged accident took place due to rash and negligent driving of the offending vehicle bearing registration No. AS-10-A-1214 in question and injures of the injured occurred in the accident?

ii. Whether the vehicle was duly insured with respective opposite party Insurance Company covering the period of the accident?

iii. Whether the claimant is entitled to get any compensation, if so, to what extent and by whom payable?

iv. To what other relief/reliefs the claimant is entitled in law and equity?"

[4] In support of his claim, the father of the victim examined 4(four) witnesses and exhibited several documents. The insurance company did not examine any witness in support of

their defence. Ultimately, by the judgment and award dated 16.06.2017, which has been impugned in this appeal, a compensation amount of Rs. 20,00,000/-along with an interest @ 6% per annum was awarded to the claimant.

- [5]** Mr. S. Dutta, the learned counsel for the appellant/insurance company has submitted that this appeal is mainly directed against the impugned judgment in as much as the Motor Accident Claims Tribunal erred in assessing the loss of earning capacity of the injured without taking into consideration the injury report, as well as laid down principles in this regard by the Apex Court. He submits that though the doctor, who has been examined as witness No. 4 and, who, was one of the members of the medical board, which assessed the disability of the injured victim has categorically found that the physical disablement of the victim (son of the claimant) was only to the extent of 10 %, as his right lower limb was found to be 2 cm short causing permanent physical disablement. However, the Tribunal assessed the functional disability to the extent of 100%. He further submits that the medical board, which examined the injured, had also opined that the injured suffered intellectual impairment reducing the intelligence quotient to 60. However, it failed to take into consideration that the medical board has recommended further assessment and evaluation of the injured by neurologist and neurosurgeon.

- [6] The learned counsel for the appellant submits that the Tribunal without directing an assessment regarding the intellectual impairment of the victim by neurologist and neurosurgeon, as was recommended by the medical board, had itself assessed the loss of earning capacity at 100% without taking aid of any medical expert opinion from any qualified neurosurgeon or neurologist.
- [7] The learned counsel for the appellant further submits that the injured victim has failed to adduce any evidence to show that he was actually and gainfully employed before the accident and an observation to that effect was also made by the Tribunal in the impugned judgment. However, in spite of that it came to a finding that loss of future earning capacity of the victim is to the extent of 100%.
- [8] The learned counsel for the appellant submits that the Tribunal was wrong in arriving at such a decision. He submits that the permanent disability whether it is physical or intellectual is to be ascertained only on the basis of medical evidence and after ascertaining permanent disability, the Tribunal has to assess loss of actual earning capacity and for that the Apex Court in the case of "**Raj Kumar Vs. Ajay Kumar And Anr.**" reported in "**(2011) 1 SCC 343**" has laid down a formula involving three steps. He submits that the Tribunal has to first ascertain as to what activities the claimant could carry on in spite of the permanent disability and what he
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could not do as a result of such disability. The second steps is to ascertain his vocation, profession and the nature of work he was engaged before the accident and also his age and the third step is to find out whether the claimant is totally disabled from earning any kind of livelihood or whether in spite of permanent disability the claimant could still effectively carry on activities and function which he was carrying on earlier or he could carry on some other work or some lesser scale of activities of function so as to continue to earn his livelihood.

[9] The learned counsel for the appellant submits that in the instant case, the Tribunal without asking for an assessment report on the intellectual impairment of the injured by neurologist or neurosurgeon, on its own presumed that the injured victim is unable to perform any kind of work thereby, loss of his earning capacity was assessed at 100%.

[10] He submits that this is a fit case for remand of the case back to the Tribunal for subjecting the injured victim to medical examination by neurosurgeon or neurologist for assessing the actual intellectual impairment and his intelligence quotient.

[11] On the other hand, Mr. G. Uddin, the learned counsel for the respondents/claimants has submitted that the Tribunal has correctly granted compensation to the son of the present respondent No. 1 for the injuries sustained by him in the motor vehicular accident. He also submits that the Tribunal

has correctly assessed the loss of earning capacity at 100%. He submits that though the physical permanent disability of the injured victim was assessed at 10% due to shortage of his right limb by 2 cm, however, the Tribunal had not only taken into consideration the physical disability, but also the intellectual impairment caused to him due to injury sustained by him on his head. He submits that the intelligence quotient of the injured victim was found to be 60, which is much below the intelligence quotient of 90-150, which should be there for a normal person.

[12] He submits that the Tribunal had correctly arrived at a conclusion that due to impairment of intellectual capacity and due to reduction of the intelligence quotient to 60, the injured victim was not in a position to perform any kind of work and, therefore, the loss of his earning capacity was assessed at 100.

[13] In support of his submission, the learned counsel for the respondents has cited a ruling of the Apex Court in the case of "***R. Halle Vs. Reliance General Insurance Company Limited***" reported in "***2026 INSC 260.***"

[14] He submits that in the said case the intelligence quotient of the injured victim was found to be 65, which is more than the intelligence quotient of the present injured victim. However, the Apex Court held that a person with intelligence quotient of

65 may be placed within the category of mild intelligence disability and, thereafter, it assessed the functional disability at 100 % as due to impairment of intellectual capacity, the victim was not in a position to perform any kind of work.

[15] The learned counsel for the respondents further submits that since the accident in question took place way back in the year 2011, and already 16 years have lapsed, the ends of justice may not be served by remanding the case back. He, therefore, submits that there is no infirmity in the impugned judgment and the appeal is liable to be dismissed.

[16] I have considered the submissions made by the learned counsel for both sides and have gone through the materials available on record, including the records of the MAC Case No. 93/2011, which was requisitioned from the concerned Motor Accident Claims Tribunal. I have also gone through the rulings cited by the learned counsel for both sides in support of their respective submissions.

[17] The point to be determined in this appeal is as to whether the Motor Accident Claims Tribunal had correctly assessed the functional disability of the son of the respondent No. 1 at 100% due to the intellectual impairment suffered by him which has reduced the intelligence quotient to 60.

- [18]** As per the Oxford English Dictionary the phrase “intelligence quotient” means a number denoting the ratio of a person's intelligence to the normal or average. It is a standardized score derived from a set of structured tests designed to measure human intelligence and cognitive abilities.
- [19]** In the case of ***"R. Halle Vs. Reliance General Insurance Company Limited"*** (supra), the Apex Court accepted that a person with an intelligence quotient of 65 may be placed within the category of mild intellectual disability. In the said case, the Apex Court assessed the functional disability of the injured victim at 100% considering not only the cognitive impairment but also the partial blindness and orthopedic limitations affecting the mobility and stability of the victim.
- [20]** In the instant case, the medical injury report of the victim Zakir Hussain Talukdar, which was issued by the Medical Board and exhibited as Exhibit-19 shows that the injured sustained head injury with fracture of right femur. Though the permanent physical impairment of the injured was assessed by the medical board at 10 % due to 2 cm shortening of right lower limb, however his intelligent quotient assessment indicating intellectual impairment was assessed at 60 and it was further recommended that he requires further evaluation and assessment by neurologist and neurosurgeon.

[21] Though, the medical board recommended further assessment and evaluation by neurologist and neurosurgeon, however the assessment made by it wherein it found the intelligent quotient of the injured victim to be 60 has not been challenged and it remains uncontroverted. The intelligent quotient of 60 falls in the range of mild intellectual disability. This court is of considered opinion that the intelligent quotient of 60 destroys the core cognitive faculties required to manage a business independently.

[22] The neurological damage sustained by the victim in the accident has rendered him incapable of resuming his previous vocation or engaging in any gainful employment resulting in a complete loss of earning capacity. As such, the assessment made by the Motor Accident Claims Tribunal regarding 100% loss of earning capacity does not appear to be without any basis or unreasonable. The principles governing the assessment of functional disability for purpose of awarding compensation has been authoritatively laid down in the case of "**Raj Kumar Vs. Ajay Kumar AndAnr.**" (supra) by the Apex Court.

[23] It has been held by the Apex Court that the percentage of permanent disability assessed by a medical board cannot be mechanically equated with the percentage of loss of earning capacity. What is required to be determined is the actual impact of such disability on the earning capacity of the

injured, having regard to his vocation, age and nature of work performed. The Tribunal is required to undertake a structured analysis to ascertain the activities the claimant can or cannot perform post injury, the nature of his profession prior to his accident and whether the disability has resulted in total incapacity or merely restricted or reduced the earning capacity.

[24] In the instant case, though the claimant has failed to adduce evidence to show his income, however, there are materials on record to indicate that he was doing business to earn his livelihood. The Tribunal after considering the report of the medical board which assessed the intelligence quotient of the injured at 60 has come to a finding that a person of intelligent quotient of 60 cannot be employed in any employment. Hence, his loss of earning capacity is assessed to be at 100%. Apart from the impairment of cognitive faculties of the injured, the Tribunal also took into consideration the other injuries sustained by him to come to the finding that the loss of earning capacity or functional disability of the injured is 100%.

[25] The Motor Vehicles Act, 1988 is a beneficial and welfare-oriented legislation enacted with the object of ensuring expeditious relief and just compensation to victims of motor accidents and their families. The statutory framework is designed to advance social justice and to provide solace and

financial security to those who suffer on account of road accident. Any interference with a reasoned award of motor vehicle accident claims tribunal must, therefore, be consistent with the spirit and object of enactment and supported by sound judicial reasoning.

[26] In the instant case, for the reasons stated in the foregoing paragraphs and discussions made therein, this court is of considered opinion that the reasons cited by the Motor Accident Claims Tribunal for assessing the functional disability of the injured victim at 100% may not be faulted with as the intelligent quotient of the victim was assessed by the medical board at 60% which has impaired his cognitive faculties resulting in total incapacity of earning in a livelihood.

[27] For the reasons stated and the discussions made in the foregoing paragraphs of this judgment, this court does not find any reason to interfere with the impugned judgment and award.

[28] Accordingly, this appeal is dismissed.

[29] Send back the records of MAC Case No. 93/2011 to the concerned Motor Accident Claims Tribunal, along with a copy of this judgment.

JUDGE**Comparing Assistant**

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n Boruah** Digitally signed by
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