

02.08.2021

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(Via Video Conference)
F.M.A. 2120 of 2018
I.A. No. CAN 3 of 2019 (old No. CAN 9059 of 2013)

Sk. Hasan
Vs.
Bablu Ghosh & anr.

Ms. Sudarshana Dutta
...For the Appellant/claimant

Mr. M. P. Chakraborty
... For the respondent no.2/Insurance Co.

This appeal is directed against the judgement dated 28th March, 2008 passed by the Learned Judge, Motor Accident Claims Tribunal, Fast Track 2nd Court, Burdwan in M.A.C. Case No.45 of 2006/552 of 2005 in a claim under Section 166 of Motor Vehicle Act, 1988.

Learned Advocate for the appellant/claimant submits that the injured person was earning Rs.9,000/- per month as a businessman and he also submits that the learned Tribunal did not consider the disability certificate as well as did not pass an award considering the multiplier process and the learned Tribunal has passed an award of Rs.90,000/- only mechanically without following the procedure of law.

On the other hand, Mr. M.P. Chakraborty, learned Advocate for the Insurance Company submits that the award passed by the learned Tribunal is just and as such it need not to be modified. He also submits that the claimant failed to produce the disability certificate before the learned Tribunal and also failed to prove the claim for

medical expenses and thus, he submits that the award passed by the learned Tribunal should not be set aside by this Hon'ble Court.

Learned Advocate for the claimant/appellant relied on the judgement of **Raj Kumar Vs. Ajay Kumar and anr.**, reported in **(2011) 1 SCC 343**, wherein it was held that the disability certificate should be considered by the learned Court below if the certificate which has been issued by the Board of a Government Hospital consists of an Orthopaedic doctor.

I have heard the learned Counsel for the appearing parties.

Accordingly, this Court is of the view that there is no difficulty to accept that the accident has been proved by the claimant before the learned Tribunal and the income of the claimant is considered as Rs.9,000/- per month as the claimant was an income tax payee and the claimant has already submitted the relevant documents in connection to the same before the learned Tribunal. Considering the disability certificate submitted before this Court and keeping in view the judgement of **Raj Kumar** (supra) and also considering the Motor Vehicles Act to be a beneficial legislation, I accept the permanent functional disability of the body as 25% instead of 50% mentioned in the disability certificate to do complete justice in respect to both the parties.

It appears that the annual income of the claimant is Rs.9,000/- X 12 = Rs.1,08,000/- to which multiplier of 14 is to be applied as the age of the claimant at the time of accident was 45 years. The claimant is also entitled to Rs.50,000/- towards his medical expenses incurred for his treatment as well as Rs.20,000/- for future medical expenses and also entitled to Rs.50,000/- for pain and trauma suffered by the claimant. Thus, the total compensation comes to Rs.4,98,000/-. The claimants are also entitled to interest @ 6% per annum from the date of filing of the claim till actual payment on the amount of compensation.

The respondent/Insurance Company will pay the balance amount of compensation after deducting the amount already paid to the claimant, if any.

Learned Advocate for the appellant will furnish the bank particulars of the claimant to the learned Advocate for the respondent within 30 days from date.

The Insurance Company will ensure payment of the said amount to the claimant within one month after receipt of the bank particulars. Learned Advocate for the appellants will forward the bank account details of the appellants within a fortnight from date to the learned Advocate for the Insurance Company.

With the aforesaid directions, the instant appeal is disposed of.

In view of the disposal of this appeal, connected applications, if any, are also disposed of. The concerned Department is directed to tag the applications, if any, with the main appeal.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of all formalities, on priority basis.

(Shekhar B. Saraf, J.)