18 27.8.2021 **(Via Video Conference)**
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F.M.A. 49 OF 2019
with
I.A. No. CAN 1 OF 2018
(Old No. CAN 7537 OF 2018)

The National Insurance Company Ltd.
Vs.
Sri Malay Chakraborty & Anr.

Mr. P. K. Pahari
...For the Appellant/ Claimant.

Ms. Sudarshana Dutta
...For the Respondent No.1/ Claimant

The appeal is directed against the judgment and award dated 4th June, 2018 passed by the learned Additional District Judge, Motor Accident Claims Tribunal, Fast Track Court, 1st Court, Burdwan in M.A.C. case no. 50 of 2015 under Section 166 of the Motor Vehicles Act, 1988.

Mr. Pahari, learned advocate for the appellant/Insurance Company submits that the tribunal only mechanically, without following the procedure of law, has awarded an amount of Rs.4,50,000/- along with 7% interest from the date of filing. He also submits that there is no legal proof of the involvement of the vehicle bearing no.WB 18D 5073 in the accident of the respondent no.1/claimant.

Learned advocate for the appellant/Insurance Company submits also submits that the assessment of compensation on the basis of disability certificate, issued by Dr. Tarak Chandra Halder, P.W.3, is not in conformity with the provisions as laid down in the Motor Vehicles Act, 1988.

Ms. Dutta, learned advocate for the respondent no.1/claimant submits that the award passed by the tribunal is just and it need not to be modified. She also submits that the claimant has exhibited three documents before the tribunal which are copy of the formal FIR, certified copy of the Charge-sheet and certified copy of the Seizure List which clearly proves that the vehicle number WB 18D 5073 was involved in the accident of the claimant, happened on 13th September, 2014. Ms. Dutta, also submits that the delay in lodging the FIR was due to the claimant's treatment that was going on after the said accident and the claimant lodged the FIR as soon as he recovered from the accidental injuries.

Learned advocate for the claimant also submits that the doctor who issued the disability certificate was also one of the members in the panel for disability assessment. Ms. Dutta also submits that on clinical examination of the claimant it was found that the claimant had some hassles in walking.

Learned advocate for the claimant has relied on the judgement of ***Raj Kumar –vs.- Ajay Kumar & Anr.***, reported in ***(2011) 1 SCC 343*** wherein it was held that the tribunal may invariably make it a point to require the evidence of the doctor who treated the injured or assessed permanent disability, mere production of a disability certificate or discharge certificate will not be the proof of the extent of disability stated therein unless the doctor who treated the claimant or who medically examined and assessed the extent of disability of the claimant is tendered for cross-examination with reference to the certificate.

Heard learned advocates for the parties and perused the materials on record. This Court is of the view that there is no difficulty to accept that the accident has been proved by the claimant as well as from the exhibited documents it is clear that the vehicle bearing no.WB 18D 5073 was involved in the said accident. The tribunal also after considering the evidence laid down in respect of the disability certificate, provisions of the Motor Vehicles Act and also keeping in view the judgment of ***Raj Kumar*** (supra) has correctly assessed the permanent functional disability of the claimant to 10%.

Accordingly, the impugned award is modified and recalculated in the manner referred hereinafter.

Particulars	**Amount (Rs.)**
Medical treatment	Rs.30,000/-
Pain and suffering accompanying Physical and mental agony	Rs.80,000/-
Compensation towards loss of earning during the period of treatment and loss of future earnings on account of permanent disability(Rs.4000+1000=5000x12 X 13 X 10/100)	Rs.78,000/-

Future medical expenses	Rs.30,000/-
Loss of amenities and enjoyment of life and loss of expectation of spending quality life	Rs.50,000/-
Food and nourishment	Rs.25,000/-
Conveyance charges for Treatment at Kolkata and Burdwan	Rs.23,000/-
Total	Rs.3,16,000/-

Accordingly, a total sum of Rs.3,16,000/- along with interest @6% per annum would become payable to the claimant by the Insurance Company, on and from the date of filing of the claim application till its realisation.

The Insurance Company submits that a total sum of Rs.4,75,000/- has been deposited with the Registrar General of this High Court who has invested the aforesaid amount in a short-term fixed deposit.

The Registrar General shall check the veracity of the bank account of the claimant and the identity of the claimant before disbursing the amount to the claimant within four weeks from date and the remaining amount, if any, will be handed over to the Insurance Company.

Accordingly, with the above directions the appeal is disposed of.

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

The department is directed to send down the lower court records, if arrived, immediately.

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.

(Shekhar B. Saraf, J.)