

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 1067 of 2012
with
IA No. CAN 2 of 2013 (CAN 4247 of 2013)

Prabir Sarkar
Vs.
United India Insurance Co. Ltd. & Anr.

Mr. Amit Ranjan Roy
... For the appellant/claimant

Mr. Parimal Kumar Pahari
... For the respondent no.1/Insurance Co.

This appeal is directed against the judgment and order passed on 5th March, 2009 by the learned Motor Accident Claims Tribunal, Additional District Judge, 2nd Court, Murshidabad, in MV Case No.103 of 2006 under Section 163A of the Motor Vehicles Act, 1988 dismissing the claim petition.

The claim petition filed under Section 163A of the Motor Vehicles Act, 1988 by the claimant himself who sustained grievous injury on his right leg due to an accident happened on 6th July, 2004 by the involvement of the two vehicles bearing registration nos.WB-57/3658 (Bus) and WB-57/3943. On that date of accident, while the claimant/injured was going by Bus, bearing registration no.WB-57/3658, collided with another Bus bearing registration no. WB-57/3943 near Harurpara under Police Station – Domkal. After the accident, injured was shifted to Berhampore Hospital where he was treated

and subsequently at NRS Medical College and Hospital, Kolkata. Thereby he sustained 60% disability. At the time of accident, claimant used to work in a bookstall and would receive salary of Rs.2,500/- per month. As the injured was unable to work, he claimed Rs.5,00,000/- as compensation.

The respondent no.1/United India Assurance Company Limited contested the claim petition by filing the written statement denying all materials allegations contending, inter alia, that the claimant is not entitled to any compensation.

In course of the proceedings, claimant examined himself as PW-1. One Dr. Hriday Krishna Mondal was examined as PW-2 and one Bablu Sk. as PW-3.

PW-1 narrated all the incident of accident when he sustained injury on his right leg causing his disability. He stated about his monthly income and his age was 19 years at that time. In the cross-examination, he denied all the suggestions put to him on behalf of the Insurance Company.

PW-2 claiming himself to be a member of the Medical Board for issuing Disability Certificate in favour of the claimant, showing 60% disability, has stated that after examining the patient by all members of the Board, disability Certificate was issued. He also corroborated the

admission of the claimant in the hospital on 6th July, 2004 till 14th October, 2004 when he was discharged.

PW-3 corroborated the income of the claimant by showing, inter alia, that the claimant was an employee in his bookstall and used to earn Rs.2,500/- per month.

In course of evidence, charge sheet, injury report, insurance policy and other medical papers, including Disability Certificate, were admitted in evidence as Exhibit 1 to 8. It is not out of place to mention here that the vehicle bearing registration no.WB-57/3658 was under insurance coverage with the United India Assurance Company Limited at the relevant point of time.

Learned Tribunal dismissed the claim petition on two grounds. One is that the name of the claimant did not appear in the First Information Report and secondly, the claimant did not implead the Insurance Company of other vehicle bearing registration no. WB-57/3943.

With regard to the first issue raised by the learned Tribunal, I find that the First Information Report was lodged by one Nisith Biswas immediately after the accident. Naturally, the FIR maker may not know the names of the injured but the charge sheet (Ext.-A), it is found that in the accident happened on 6th July, 2004 by the involvement of two vehicles bearing registration nos.WB-57/3658 (Bus) and WB-57/3943, the claimant sustained serious injury for which he had to admit in

hospitals and that has been corroborated by the injury report (Ext.-5). Therefore, I am unable to agree with the learned Tribunal that the claimant failed to prove his injury by the involvement of the accident alleged in the case.

With regard to the second issue raised by the learned Tribunal that the claimant should have impleaded the Insurance Company of the another vehicle bearing registration no.WB-57/3943, I find it profitable to refer to a decision of **Khenyei v. New India Assurance Co. Ltd. & Ors., 2015 (2) TAC 677 (SC)** wherein the Hon'ble Apex Court has observed as follows:-

“18.

(i) In the case of composite negligence, plaintiff/claimant is entitled to sue both or any one of the joint tort-feasors and to recover the entire compensation as liability of joint tort-feasors is joint and several.”

Therefore, I am unable to get rid of the observation of the learned Tribunal in dismissing the claim petition on the aforesaid two grounds.

In this case, after careful scrutiny of the entire evidence on record together with the documents, I find that the appellant/claimant has successfully proved the case of accident and injury and that is why he is entitled to compensation in terms of 60% disability corroborated by one of the members of the Medical Board (PW-2).

In the aforesaid view of the matter, I determine the compensation as follows:-

Monthly Income	Rs. 2,500/-
Annual Income (Rs.2,500/- x 12)	Rs. 30,000/-
Multiplier 16 (Rs.30,000/- x 16) (Age 19 years)	Rs.4,80,000/-
Disability 60% (60% of Rs.4,80,000/-)	Rs.2,88,000/-
Add: Non-Pecuniary	Rs. 15,000/-
Total Award	Rs.3,03,000/-

For the reasons, it is seen that the appellant/claimant is entitled to the compensation Rs.3,03,000/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e., on 17th February, 2006, till the deposit of the amount before the office of the learned Registrar General.

The respondent no.1/United India Assurance Company Limited is directed to deposit the compensation amount of Rs.3,03,000/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e., on 17th February, 2006, till the actual deposit of the amount before the office of the learned Registrar General of this Court, within six weeks from the date of this order.

The appellant/claimant will be entitled to withdraw the entire amount with interest.

The learned Registrar General will disburse the amount to the appellant/claimant on proper identification.

With the above observation, the appeal, being FMA 1067 of 2012, stands disposed of.

All pending applications, if there be any, also stand disposed of.

Accordingly, the judgment passed by the learned Tribunal is set aside. Consequently, the appeal is allowed.

A copy of this order be forwarded to the learned Tribunal immediately.

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

(Bibhas Ranjan De, J.)