

32+33
06.12.2022
Ct. No.237
Sourav

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

FMA 783 of 2010

Rajkumar Sitani

Vs.

The New India Assurance Company Ltd. & Ors.

With

FMA 784 of 2010

The New India Assurance Company Ltd. & Ors.

Vs.

Rajkumar Sitani

Ms. Gopa Das Mukherjee

... For the appellant/New India.

Mr. Saidur Rahaman

... For the claimant.

Mr. Sanjay Paul

... For the respondent
National Insurance Co. Ltd.

Both the appeals are directed against the judgment and award passed by the learned Judge, Motor Accident Claims Tribunal, Jalpaiguri, in connection with MAC Case No.14 of 2005 under Section 166 of the Motor Vehicles Act, 1988 whereby the learned Tribunal awarded compensation to the tune of Rs.5,53,000/-.

Claimants have filed an appeal being no. FMA 783 of 2010 and The New India Assurance Company preferred another appeal being no. FMA 784 of 2010 being aggrieved by a common judgment passed in MAC Case No. 14 of 2005.

The claim case arose on account of injury sustained by the claimant in a motor accident on May 24, 2004 at about 8.30 a.m. by the involvement of a bus bearing no. WB-63/1631. According to the claim petition, on the alleged date of accident the injured/claimant was standing with his motor cycle bearing no. WB -74F/4353 in front of Patgola of Anil Ghosh, under P.S. Maynaguri, District- Jalpaiguri. At that time, the said bus running in rash and negligent manner dashed the victim who suffered fracture injury on his left leg. Ultimately he suffered permanent partial disability.

Over such accident, Maynaguri P.S. Case No. 105 of 2004 dated 24.05.2004 under Sections 279/338 of the Indian Penal Code was started against the driver of the bus.

Both the Insurance Companies in respect of bus and the motorcycle were made party in the claim case but the Tribunal directed the New India Assurance Company to pay the compensation for rash and negligent act on the part of the driver of the bus.

Both the Insurance Companies entered appearance by filing their respective written statement contending, *inter alia*, claimant is not entitled to any compensation.

To prove the case, claimants examined two witnesses including himself as P.W. 1 who corroborated the entire case of the claim petition. One Sajan Agarwal has been examined as P.W. 2. P.W. 2 claiming himself as eyewitness of the incident testified that he had seen the

accident which took place only due to rash and negligent driving of the bus. In cross-examination, he also asserted that he had seen the accident.

In course of their evidence, a good number of documents including First Information Report, charge-sheet, seizure list, policy and disability certificate etc., were admitted in evidence as exhibit 1 to 11.

In course of argument, Ms. Gopa Das Mukherjee, learned advocate appearing on behalf of the New India Assurance Company in respect of FMA 784 of 2010 has submitted that disability certificate was filed by the claimant and it was marked as Exhibit 7 and that was not proved by any competent person so disability certificate cannot be taken into account.

Learned advocate, Mr. Saidur Rahaman appearing on behalf of the appellant in respect of FMA 783 of 2010 has replied by saying that disability certificate was admitted in evidence without any objection, so disability certificate cannot be disbelieved at this stage.

From the evidence on record, I do not find any reason to re-appreciate the evidence regarding the accident which has been elaborately discussed by the learned Tribunal. It is found from the evidence that accident took place due to rash and negligent driving of the bus and the victim sustained left leg injury and suffered permanent disability. So far as the income is concerned, learned Tribunal assessed after considering the Income Tax Returns for consecutive three years. On that issue no

specific argument has been advanced by the parties to these appeals. On careful perusal of the entire evidence including the Income Tax Returns (Ext. 10 collectively), I find no reason to interfere with the observation of the learned Tribunal regarding income of the claimant.

With regard to the disability, it is found that Ext. 7 i.e., disability certificate was issued by a Board of doctors constituted by the Superintendent of Sadar Hospital, Jalpaiguri and it bears signatures of all the doctors of the Board. The disability certificate was issued after examining the injured by all doctors who were consensus about the permanent disability to the extent of 40%. The disability certificate was produced before the Tribunal in course of evidence and it was admitted in evidence without any objection. Therefore, I find hardly any scope to disregard the disability certificate containing the permanent disability.

In respect of appeal being No. FMA 783 of 2010 preferred by the claimant, it is found that learned Tribunal did not consider the entire assessed award at Rs. 7,56,810/- as claimant claimed Rs. 5,53,000/-. But I am sorry to subscribe this view of the learned Tribunal as claimant is always entitled to just compensation irrespective of amount of claimed.

With the aforesaid view, I find it necessary to modify the compensation as follows:-

Annual Income be assessed as	Rs. 1,13,370/-
Multiplier as per age of 14 years	Rs. 15,87,180/-
Loss of earning capacity 40%	Rs. 6,34,872/-
Medical expenses	Rs. 61,590/-
Pain and suffering	Rs. 15,000/-
Total	<u>Rs. 7,11,462/-</u>

Therefore, claimants are entitled to total compensation of Rs. 7,11,462/- out of which, as it is reported, the awarded amount of Rs. 5,53,000/- which already been deposited by the New India Assurance Company. The New India Assurance Company is to pay the balance amount of Rs. 1,58,462/- along with interest @ 6% per annum from the date of filing of the claim petition till the deposit. The Insurance Company is also directed to pay interest @ 6% per annum of the awarded amount of Rs. 5,53,000/- from the date of filing of the application till the date of deposit thereof with the office of the learned Registrar General.

Claimant is at liberty to withdraw the amount of Rs. 5,53,000/- already deposited by the insurance company along with accrued interest from the office of the learned Registrar General and inform the New India Assurance Company immediately thereafter for facilitating the insurance company to deposit the balance amount along with interest.

Insurance Company is directed to deposit balance amount with interest within six weeks from the date of information received from the claimant as mentioned hereinabove.

The appellant is entitled to withdraw the balance award amount with interest, subject to payment of *ad valorem* court fees on the amount of Rs.1,58,462/- before the learned Tribunal.

With the above observation, the appeals, being FMA 783 of 2010 and FMA 784 of 2010 are disposed of.

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

Records of the learned Tribunal along with a copy of this order be transmitted back immediately.

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.)