

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 403 of 2008
with
IA No. CAN 4 of 2009 (CAN 1433 of 2009)
(Application not in the file)

National Insurance Company Limited
Vs.
Mohan Chandra Halder & Anr.

Mr. Krishanu Banik
... For the respondent/claimant

Learned advocate on behalf of the respondent/
claimant appears and submits that this appeal is pending
for a considerable period. On calls, none appears on behalf
of the appellant/Insurance Company.

Considering the pendency of this appeal since
2008, I find no option but to dispose of this appeal on
merit.

This appeal is directed against the judgment and
order passed on 29th September, 2004 by the learned 14th
Additional District Judge, Motor Accident Claims Tribunal,
24-Parganas (South) in connection with MAC Case No.229
of 2004 whereby the learned Judge allowed compensation
to the tune of Rs.6,00,000/-.

The claim petition arose out of an application
under Section 166 of the Motor Vehicles Act, 1988 on
account of injury sustained by the claimant Mohan
Chandra Halder.

According to the claimant, on 24th April, 2001 at about 19.00 hours while he was standing with his bicycle on Budge Budge Trunk Road, suddenly one Damper bearing registration no. AP 31T/2720 coming with high speed dashed the claimant and as a result the claimant sustained serious injuries on his person. He was removed and admitted to ESI Hospital for a considerable period.

The OP-1 did not contest this case. The appellant/ Insurance Company contested the case by filing written statement denying all materials and allegations in the application and prayed for dismissal of the same.

In course of trial, four witnesses were examined, namely, the claimant/injured himself as PW-1, Goutam Show as PW-2 who claimed himself as an eyewitness to the accident occurred on 24th April, 2001 at about 7 p.m. on Budge Budge Tank Road at Baddyer Bandh More. Dr. Prasanta Kumar Mondal was examined as PW-3 who examined the injured and issued disability certificate which was admitted in evidence as Exhibit-9 and one Saikait Mallick as PW-4 to prove the employment and remuneration of the claimant.

After considering all the evidence and documents available on record, the learned Tribunal returned his finding by way of granting compensation to the tune of Rs.6,00,000/-.

From the Memorandum of Appeal, it is found that on behalf of the appellant/Insurance Company assailed

the judgment and order passed by the learned Tribunal on the ground of percentage of disability in view of voluntary retirement of the claimant and also assailed the disability certificate issued by Dr. Prasanta Kumar Mondal, PW-3.

After careful perusal of the judgment and award passed by the learned Tribunal, I find that the learned Tribunal scanned the entire evidence on record and came to its final opinion.

From the evidence available on record together with the police reports including the charge sheet (Ext.-2), I do not find any reason to disbelieve the factum and accident alleged in this case. So far as the disability is concerned, PW-3 Dr. Prasanta Kumar Mondal specifically stated that on 14th July, 2004, he examined claimant Mohan Chandra Halder and he noted down all the history and all sorts of examinations done in the hospital and opined that the claimant suffered permanent disability to the extent of 70% due to severe shortening of left thigh. The disability certificate was marked as Ext.-9. That apart, a good number of documents in the record including the x-ray/injury report (Ext.-7), I find no reason to interfere with the observation of the learned Tribunal with regard to the disability of the claimant.

Exhibit-11 shows the employment and remuneration of the claimant. In these circumstances, voluntary retirement of the respondent/injured does not make any difference to the claim application, rather,

voluntary retirement further supports disability of the claimant.

In the aforesaid view of the matter, I do not find any reason to interfere with the award passed by the learned Tribunal. The judgment and award dated 29th September, 2004 stands affirmed.

At this stage, learned advocate appearing on behalf of the respondent/claimant submits that the claimant/respondent has already withdrawn Rs.3,50,000/- pursuant to the order passed on 2nd March, 2005. Therefore, the respondent/claimant is entitled to the rest amount with accrued interest.

The learned Registrar General will disburse the rest amount with accrued interest to the respondent/claimant on proper identification.

With the above observation, the appeal, being FMA 403 of 2008, stands disposed of.

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

Records of the learned Tribunal be transmitted back 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.)