

S/L No. 28  
16.11.2022  
Ct-297  
(PA.RD)

**FMA 1344 of 2012**  
**Baren Rauth**  
**Vs.**  
**The New India Assurance Co. Ltd. & Anr.**

*Mr. Ashique Mondal*  
*Mr. Snehasis Jana*  
*... for the Appellant.*

*Mr. Saibalendu Bhowmik*  
*... for the respondent*

Quantum of award in connection with Motor Accident Claim Case No. 114 of 2006 dealt with by Motor Accident Claims Tribunal, Additional District Judge, 3<sup>rd</sup> Court, Paschim Medinipur, has been challenging in this appeal.

On 21.08.2005 at about 10.30 a.m. the claimant/injured was travelling in a bus bearing no. 11-A/0063 proceeding towards Junput through Contai bypass road with excessive high speed and negligent manner, dashed a lorry bearing no. W.M.G-6836 coming from the opposite direction. In effect, several passengers including the claimant sustained injury and they were shifted to Contai Sub-divisional Hospital and subsequently claimant had to undergo treatment in Appollo Hospital, Chennai and Orissa.

After the accident Contai PS NO. 188/2005

dated 21.08.2005 under Sections 279, 338 and 427 of Indian Penal Code was started and charge sheet was submitted against the driver of that bus.

According to claim application monthly income of the claimant was Rs. 3,000/- per month and he was aged 28 years. Accordingly, he claimed Rs. 2,00,000/- as compensation.

OP/ owner of the bus did not contest the case. OP/Insurance Company contested this case by filing written statement denying all material allegations of the claim petition contending, inter alia, that accident took place solely on the ground of rash driving of truck no W.M.G-6836 and therefore respondent Insurance Company is not liable to pay compensation. In course of trial, claimant Sri. Baren Routh examined himself as PW-1 and one Laxmi Kanta Mondal claiming himself to be member of the Medical Board issuing disability certificate has been examined as PW-2. In course of evidence, certified copy of FIR, Seizure List, charge sheet, photocopy of Insurance Policy, outdoor ticket and Voter ID Card were admitted in evidence. It is not out of place to mention here that the claimant, in course of his evidence, filed a good number of medical

documents including purchase voucher of medicine and receipt of Appollo Hospital showing treatment cost but those documents were not admitted in evidence. Ld. Tribunal, after considering entire evidence on record, returned his finding in favour of disability of claimant to the extent of 80% and took the age 27 years from the Voters ID Card (exhibit 5).

Ld. Advocate appearing on the behalf of the claimant assailed the judgment and award with regard to notional income with reference to observation of the Ld. Tribunal and Ld. Tribunal also did not consider future prospect, non-pecuniary damages and medical expenses.

Therefore, Ld. Advocate on the behalf of the claimant/injured has prayed for enhancement of compensation.

Per contra, Ld. Advocate appearing on behalf of the Insurance Company has referred to cross-examination of doctor (PW-2) and has tried to convince this Court that PW-2 not being expert in orthopedic subject matter proved the disability certificate. He has further contended that orthopedic surgeon issued the disablement certificate but he has not examined in this case to prove the disability certificate. From that point of view, according to him, disability

certificate can not be relied upon. Ld. Advocate on behalf of the Insurance Company has also referred to the disability certificate and submitted that there is '**chance of variation**' of percentage of disability subject to reviewing after 10 years. Ld. Advocate on behalf of the Insurance Company, submitted that due to latches on the part of the claim petition could not be disposed of in time.

In reply to this argument on the issue of latches Ld. Advocate on behalf of the claimant submits that on several occasion summons was issued to Appollo Chennai and Orissa.

However, we are dealing with a case under a beneficial legislation i.e. Motor Vehicles Act, 1988.

After going through the evidence of PW-1 and exhibit 1 & 2, it is found that factum of accident due to rash and negligent driving on the part of the driver of the bus has been proved. It is seen from the exhibit 2 that after investigation Police submitted charge sheet against the driver of the bus in connection with Contai PS case no. 188/2005 dated 21.08.2005 under Sections 279/338/427 of Indian Penal Code.

From the evidence of PW-1 and the medical papers (though not marked as exhibit), I am

unable to come to any conclusion that claimant was not treated in any hospital in spite of suffering of disability to the extent of 80% as has been proved by one the Dr. Laxmi Kanta Mondal, one of the member of the Medical Board issuing disability certificate (exhibit-6 and 6/1) in favour of the claimant.

With regard to income, Ld. Tribunal observed as follows:

*“ I am not unmindful that the Claimant is an able bodied person, aged about 27 years and the person would earn Rs. 3,000/- per month in view of the present market-rate.*

*But for want of proper evidence in the matter of income, it can safely be said that it is a fit case to apply notional income of Rs. 15,000/-.”*

In view of aforementioned contradictory observation of the Ld. Tribunal, I am sorry to subscribe the view of income per annum as Rs. 15,000/-. Keeping an eye to the minimum wages as well as settled principle enunciated by the Hon’ble Apex Court in catena of decisions, I am of the view that income of Rs. 3,000/- per month should be taken for considering compensation.

After careful scrutiny of the disability

certificate I find that Medical Board constituted in Midnapur Medical and Hospital, Paschim Medinipur issued the disability certificate in favour of claimant and one of the member of the Board proved the certificate. Therefore, I can not disbelieve the facts of issuance of disability certificate which was issued on 02.02.2010. So far as the argument on **‘chance of variation’** is concerned, I am of the view that **‘chance of variation’** can not be considered as **‘variation’** at this stage, by way of reducing percentage of disability unless contrary is proved.

Thus, I determine the compensation as follows:

|                                 |                   |
|---------------------------------|-------------------|
| Annual Income (Rs. 3,000 x 12)  | : 36,000.00       |
| Add: Future Prospects @ 40%     | : 14,000.00       |
|                                 | <hr/>             |
|                                 | 50,400/-          |
| Disability 80% of 50,400        | : 40,320.00       |
| Multiplier:- ‘17’ (40,320 X 17) | : 6,85,440.00     |
| Non- Pecuniary Damages          | : 1,00,000.00     |
| Medical expenses                | : 50,000/-        |
| <br>Total Award                 | <br>: 8,35,440.00 |

So far as interest is concerned it is found from

the record that though injured filed calim petition on 27.02.2006 but deficit court fees was filed on 07.08.2008. For such delay of two years injured can not claim interest.

It is reported that claimants has already received Rs. 2,16,000/- from the Insurance Company.

Therefore, claimant is entitled to balance amount of Rs. 6,19,440/- along with interest from the date of filing deficit court fees i.e. 7.8.2008 till deposit of the amount for payment, subjected to payment of *ad velorem* Court fees on the balance amount.

Respondent/The New India Assurance Company Ltd. Is directed to deposit the balance amount of Rs. 6,19,440/- along with interest @ 6% per annum from 07.08.2008 till deposit of the amount before office of the Ld. Registrar General, within 6 (six) weeks from the date of this order.

Ld. Registrar General is requested to disburse the amount to the claimant on proper identification and proof.

Let the records of the tribunal along with a copy of this order, be send back at once.

F.M.A 1344 of 2012 is being disposed of without any order as to cost.

All pending application, if there be any, stand disposed of.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

**(Bibhas Ranjan De)**