

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 149 of 2012
with
IA No. CAN 1 of 2011 (CAN 9309 of 2011)

The New India Assurance Co. Ltd.
Vs.
Naru Gopal Das @ Naru Das & Anr.

Ms. Gopa Das Mukherjee
... For the appellant/Insurance Company

None appears on behalf of the respondents even
at the time of second call.

Learned advocate appearing on behalf of the
appellant/Insurance Company is present.

This appeal is pending since 2011. Therefore, the
appeal is taken up for disposal on merit.

This appeal is directed against the judgment and
award passed on 16th August, 2011 by the learned Judge,
Motor Accident Claims Tribunal, 7th Court of Additional
District Judge, 24-Parganas (South), Alipore, in MAC Case
No.150 of 2007 under Section 163A of the Motor Vehicles
Act, 1988.

The claim petition arose out of an accident which
took place on 27th August, 2003 at about 6.40 hours when
the driver of the vehicle bearing registration no. WB-
19A/4098 (Bus) of the route no.SD/17 was proceeding

along Namkhana-Backkhali Road from Frager Gunge side in rash and negligent manner and endangering human life and safety to other, dashed one rickshaw van and knocked down some persons including the victim i.e., Naru Gopal Das @ Naru Das who sustained severe injury. Thereafter, he was treated in hospital. According to the claim petition, Naru Gopal Das @ Naru Das was a fish seller at the relevant point of time having income of Rs.2,500/- per month. Accordingly, the claimant/injured filed the claim petition with a prayer for compensation to the tune of Rs.1,00,000/-.

The Insurance Company contested the claim petition by filing the written statements denying all material allegations in the claim petition.

To prove the case, the claimant examined three witnesses. The claimant himself examined as PW-1. In course of his evidence, he narrated the accident and injury sustained by him. PW-2 Dr. Binoti Das stated in her evidence that she clinically examined the injured and found permanent partial disability to the extent of 31%. PW-3 Abdul Hai Molla, being the Manager of Sonali Nursing Home, also stated admission of the injured in their hospital. In course of his evidence, discharge certificate was admitted in evidence.

On perusal of the evidence, learned Tribunal assessed the compensation to the tune of Rs.1,57,565/- after assessing monthly income of Rs.3,000/-.

Learned advocate appearing on behalf of the appellant/Insurance Company has submitted that the claim petition disclosed the monthly income of Rs.2,500/- but the learned Tribunal assessed the monthly income as Rs.3,000/-. It has been further submitted that the injured could not produce any document showing his treatment and admission in the Nursing Home etc. In fact, learned advocate appearing on behalf of the appellant/Insurance Company only harps on the point of assessment by the learned Tribunal in respect of monthly income.

On perusal of the evidence, particularly, PW-1, I do not find any reason to disbelieve the factum of accident alleged to have been occurred in this case. So far as the percentage of disability is concerned, I also cannot disbelieve the evidence of PW-2 who clinically examined and issued disability certificate (Ext.-6).

So far as the monthly income is concerned, the learned Tribunal assessed at Rs.3,000/- per month instead of Rs.2,500/- as per claim case. It is trite law that Court can assess the notional income for calculating the just compensation. From that point of view, I do not find any wrong on the part of the learned Tribunal in assessing the monthly income as Rs.3,000/-.

With the above observation, I do not find any reason to interfere with the judgment and award passed by the learned Tribunal. Thus, the judgment and award passed in MAC Case No.150 of 2007 is hereby affirmed.

It is reported that the appellant/Insurance Company has already deposited the total amount of compensation of Rs.1,57,565/- on 12th December, 2011 before the office of the learned Registrar General of this Court.

Therefore, the respondent/claimant is at liberty to withdraw the awarded amount of Rs.1,57,565/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e. on 5th November, 2003 till 12th December, 2011, the date of deposit of Rs.1,57,565/- by the Insurance Company before the office of the learned Registrar General of this Court, along with accrued interest.

The appellant/Insurance Company is directed to deposit interest @ 6% per annum from the date of filing of the claim petition i.e. on 5th November, 2003 till 12th December, 2011, the date of deposit of Rs.1,57,565/- by the Insurance Company before the office of the learned Registrar General of this Court, within six weeks from the date of this order.

The respondent/claimant is entitled to withdraw the awarded amount with interest.

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

With the above direction, the appeal, being FMA 149 of 2012, is disposed of.

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

Records of the learned Tribunal along with a copy of this order 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.)