

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 59 of 2008

United India Insurance Co. Ltd.
Vs.
Smt. Geeta Ghosh & Ors.

Mr. Parimal Kumar Pahari
... For the appellant/Insurance Company

None appears on behalf of the respondents/
claimants. Learned advocate appearing on behalf of the
appellant/United India Insurance Company Limited is
present.

The appeal is taken up for disposal on merit
considering its long pendency.

This appeal has been preferred against the
judgment and award dated 30th April, 2007 passed by the
learned Judge, Motor Accident Claims Tribunal, Additional
District Judge, Alipore, 24-Parganas (South), in MAC Case
No.147 of 2006 under Section 166 of the Motor Vehicles
Act, 1988 wherein the learned Tribunal passed an award
of compensation to the tune of Rs.5,77,651/-.

The claim petition was filed by the injured herself
on account of an accident which she met with on 5th
November, 2002 at about 4.30 p.m. On that date and time,
the injured Smt. Geeta Ghosh was travelling by a Bus

bearing registration no.WB-33/5320 through Midnapore Road at Haldia. It was alleged that the vehicle was plying with high speed and in negligent manner and as a result, it turned upside down and passengers of the Bus, including the claimant, sustained injury. The claimant sustained fracture injury on her right leg and she sustained permanent and partial disability to the extent of 40%. That is why she filed the claim petition for the compensation to the tune of Rs.8,50,000/- with interest.

In course of the trial, four witnesses adduced and among them the injured examined herself as PW-2 and she stated about the manner of accident and injury sustained by her. She has also stated about her employment and salary.

PW-1, Dr. P.K. Mondal, proved the Disability Certificate showing 40% disability, who in his evidence has stated that he examined the injured and found 40% permanent partial disability. He has further stated that he did not treat the injured at any point of time. He only issued the certificate on perusing x-ray reports and treatment-sheet and has further deposed that the injuries he found were non-schedule injuries.

PW-3 Biharilal Kar proved the employment of the injured who was a School Teacher drawing salary of Rs.15,973/-.

PW-4 claiming himself to be an eyewitness has stated that had seen the offending Bus bearing registration

no.WB-33/5320 which was running with high speed and before arriving at Mecheda, the said Bus dashed a stack of brick and turned upside down. As a result, passengers sustained injuries.

From the aforesaid evidence, I find that the injured sustained no pecuniary loss as she was a School Teacher and it is not the case of the injured that her salary was stopped or she could not attend school after the accident till her superannuation. Therefore, by no stretch of imagination I can come to any conclusion that the injured sustained any pecuniary loss, save and except non-pecuniary loss like pain and suffering.

In the aforesaid view of the circumstances, I am unable to hold that the injured/claimant has lost her earning capacity and I find that the learned Tribunal made an error granting compensation to the tune of Rs.5,77,651/- but the injured/claimant is entitled to the amount of award towards non-pecuniary loss, i.e., pain and suffering only.

I am of the humble view that the injured/claimant is entitled to get Rs.1,00,000/- along with interest @ 6% per annum from the date of filing of the claim petition till the date of deposit of Rs.5,77,651/- by the Insurance Company before the office of the learned Registrar General of this Court.

It is reported that the appellant/United India Insurance Company Limited has already deposited the

entire amount of Rs.5,77,651/- as awarded by the learned Tribunal before the office of the learned Registrar General.

The appellant/Insurance Company is directed to deposit the Rs.1,00,000/- along with interest @ 6% per annum from the date of filing of the claim petition till the date of deposit of Rs.5,77,651/- 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 appellant/Insurance Company is at liberty to withdraw the surplus amount from the office of the learned Registrar General.

The learned Registrar General is requested to disburse the amount along with interest to the respondent/claimant on proper identification and proof.

With the above observation, the appeal, being FMA 59 of 2008, stands disposed of on merit.

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.

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

(Bibhas Ranjan De, J.)