

IN THE HIGH COURT AT CALCUTTA  
CIVIL APPELLATE JURISDICTION  
APPELLATE SIDE

**FMA 45 of 2013**  
**with**  
**IA No. CAN 2 of 2019 (CAN 8122 of 2019)**

Nashiruddin Mondal  
Vs.  
The National Insurance Company Limited & Anr.

Mr. Amit Ranjan Roy  
... For the appellant/claimant

Mr. M.P. Chakrabarty  
Ms. Ratnadipa Karmakar  
... For the respondent no.1/Insurance Co.

This appeal is directed against the judgment and award dated 24<sup>th</sup> February, 2012 passed by the learned Judge, Motor Accident Claims Tribunal, Additional District Judge, 4<sup>th</sup> Court, Nadia, in connection with MAC Case No.385 of 2006 under Section 166 of the Motor Vehicles Act, 1988 whereby the learned Judge awarded compensation to the tune of Rs.66,200/-.

The accident took place 28<sup>th</sup> December, 2002 while the victim was travelling in a hired bus, bearing registration no.WB-25/8402, with some other people for a tour to Mukut Monipur. The driver of that bus was driving at a very high speed and in rash and negligent manner. As a result, at about 2.30 a.m., the driver of the bus lost control over the vehicle and overturned in a ditch. In effect, the appellant/claimant received multiple injuries at

his body, including the right arm. He shifted to Srirampur Hospital from where he was referred to JNM Hospital, Kalyani, thereafter to NRS Medical College and Hospital and lastly he was admitted to Health Care Nursing Home, Kalyani. That is why the claim petition was filed with a prayer for compensation to the tune of Rs.4,00,000/- with interest.

The respondent no.1/National Insurance Company Limited contested the claim petition by filing written statement denying all averments made in the claim petition contending, inter alia, that the Insurance Company is not liable to pay any compensation to the claimant.

In course of trial, six witnesses were examined, including the claimant, doctors and eyewitness. In course of the evidence, documents, i.e., First Information Report, charge sheet, seizure list, injury report and documents showing treatment in the nursing home and disability certificate were admitted in evidence as Exhibit-1 to 7.

Learned Tribunal after considering the entire evidence on record, returned his finding by making observation that the accident took place by the involvement of the vehicle no. WB-25/8402 (bus) and thereby the claimant sustained injury for which he was treated in several hospitals and ultimately in Health Care Nursing Home at Kalyani. That apart, FIR, charge sheet and seizure list (Exts.1, 1/1 and 2) corroborated the

evidence of PW-2 and PW-3. PW-3 claiming to be an eyewitness, has stated in his evidence that the accident took place due to rash driving of the bus for which it overturned and the claimant sustained severe injury in the accident.

Therefore, I need not discuss further on the issue of accidental injury sustained by the appellant/claimant by the involvement of the bus, bearing registration no. WB-25/8402, which was proceeding with high speed and in rash and negligent manner at the relevant point of time.

Mr. Amit Ranjan Roy, learned advocate appearing on behalf of the appellant/claimant has submitted before this Court that the learned Tribunal did not consider the disability certificate on the ground mentioned in the judgment which is not acceptable. He has further submitted that the learned Tribunal did not consider the expenses incurred by the appellant/claimant during his prolonged treatment in hospitals and nursing home. He also submitted that the learned Tribunal also did not consider the non-pecuniary damages and future prospect as well.

Mr. M.P. Chakrabarty, learned advocate appearing on behalf of the respondent no.1/Insurance Company, has supported the judgment passed by the learned Tribunal and tried to make this Court understand that all the documents showing incurring expenditure have not been filed by the appellant/claimant.

After careful scrutiny of the judgment, I find that the learned Tribunal reduced the percentage of disability from 60% to 10% on the ground that the certificate was not signed by all the doctors of the Medical Board and the other ground was that the disability certificate was written by two separate inks.

After careful perusal of the disability certificate, I find that the disability certificate was signed by ENT (Otolary) Surgeon and Orthopaedic Surgeon. Other doctors did not put signature on the disability certificate. Actually from the entire documents of treatment from record, it appears that the appellant/claimant was admitted in the hospitals and nursing home with the injury relating to Ortho. From the disability certificate, it is seen that Ortho Surgeon put his signature. Not only that, Dr. Anupam Samanta, Senior Medical Officer (Ortho), attached to Kharagpur Sub-Divisional Hospital, District – Midnapore, testified in this case that at the relevant point of time he examined the appellant/claimant at Krishnagar Hospital as a member of the District Handicapped Board and recommended 60% permanent disability of the said person. Dr. Samanta also testified that the certificate was issued in favour of the appellant Nasiruddin Mondal and the said certificate bears his signature and admitted in evidence as Ext.-7. On examination, he found that the appellant/claimant had stiffness of wrist and fingers of right hand. It is pertinent to mention here that the cross-

examination of the Doctor (PW-6) was declined on behalf of the respondent/ Insurance Company.

The evidence of PW-6 together with the disability certificate (Ext.-7), I cannot come to any conclusion that the learned Judge of the Tribunal reduced the percentage of disability on a good reason. So far as the separate ink is concerned, it does not make any difference to the merit of the case as one of the members of the Board deposed in the case as PW-6. From the evidence of PW-6 together with the disability certificate, I do not find any reason to reduce the percentage less than the percentage mentioned in the certificate itself.

So far as the medical expenses is concerned, it appears from the record that one Snehungsu Nag was examined as PW-4 and he claimed himself the Manager of Health Care Nursing Home, Kalyani, Nadia, where the appellant/claimant was treated for a considerable period and he had to incur expenditure for Rs.8,050/-. According to the documents relating to Health Care Nursing Home (Ext.-5) along with other documents, I find that the appellant/claimant had to incur considerable amount towards medical expenses. Therefore, the appellant/claimant is entitled to more compensation towards medical expenses.

It is needless to mention that according to the principles laid down by the Hon'ble Apex Court in **Sarala Verma (Smt.) & Ors. v. Delhi Transport Corporation &**

**Anr.** reported in **(2009) 6 SCC 121**, the appellant/claimant is entitled to the compensation towards future prospect and non-pecuniary damages, also.

Considering all facts and circumstances in this case, particularly, the prolonged treatment of the injured/claimant and the nature of disability, I find it justified to award non-pecuniary damages, including pain and suffering and medical expenses, to the tune of Rs.2,00,000/-.

In the aforesaid view of the matter, I modify the award as follows:-

|                                               |                      |
|-----------------------------------------------|----------------------|
| Monthly Income                                | Rs. 3,000/-          |
| Annual Income (Rs.3,000/- x 12)               | Rs. 36,000/-         |
| Less: 60% disability<br>(Rs.36,000/- x 60%)   | Rs. 21,600/-         |
| Multiplier by 16 (as per age of the deceased) | x 16                 |
|                                               | -----                |
|                                               | Rs.3,45,600/-        |
| Add: 40% Future prospect                      | Rs.1,38,240/-        |
|                                               | -----                |
|                                               | Rs.4,83,640/-        |
| Add: Non-Pecuniary Damages                    | Rs.2,00,000/-        |
|                                               | -----                |
| Total                                         | Rs.6,83,840/-        |
| Less – Awarded by ld. Tribunal                | Rs. 66,200/-         |
|                                               | -----                |
| ENHANCEMENT                                   | <u>Rs.6,17,640/-</u> |

For the reasons, it is seen that the appellant/claimant is entitled to the total compensation to the tune of Rs.6,83,840/- along with interest @ 6% per

annum from the date of filing of the claim petition, i.e. on 7<sup>th</sup> September, 2006 till the deposit of the amount.

It is reported that the appellant/claimant has already received Rs.66,200/- as awarded by the learned Tribunal.

Therefore, the appellant/claimant is entitled to the balance amount of Rs.6,17,640/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e., on 7<sup>th</sup> September, 2006 till the deposit of the amount.

Accordingly, the respondent no.1/National Insurance Company Limited is directed to deposit the enhanced amount of Rs.6,17,640/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e. on 7<sup>th</sup> September, 2006 till the deposit of the amount before the office of the learned Registrar General of this Court, within six weeks from the date of this order.

The appellant/claimant is entitled to withdraw the balance award amount with interest, subject to payment of additional *ad valorem* court fees on the amount of Rs.2,83,840/- (Rs.6,83,840/- – Rs.4,00,000/-) before the learned Tribunal.

The learned Registrar General is requested to disburse the amount to the appellant/claimant on proper identification.

With the above observation, the appeal, being FMA 45 of 2013, stands 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.)**