

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 2470 of 2014

National Insurance Co. Ltd.
Vs.
Smt. Adity Chatterjee & Anr.

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

Mr. Ashim Ghoshal
Mr. Kaustav Banerjee
Mr. Supriyo Ghosh
... For the respondent no.1/claimant

This appeal is directed against the judgment and award passed on 22nd December, 2011 by the learned Judge, Motor Accident Claims Tribunal, 2nd Court at Alipore, South 24-Parganas, in MAC Case No.97 of 2008 under Section 166 of the Motor Vehicles Act, 1988, allowing compensation to the tune of Rs.2,49,800/- and after deducting Rs.25,000/- already received under Section 140 of the Motor Vehicle Act, 1988, it comes to Rs.2,24,800/-.

The claim petition arose out of an accident which took place on 6th December, 1998 at about 12 noon by the involvement of a Truck, bearing registration no. USA/6191. At the time of accident, the victim was aged about 32/33 years and used to earn Rs.2,000/- per month and accordingly the claim petition was filed with a prayer for compensation to the tune of Rs.3,00,000/-.

National Insurance Company Limited contested the claim petition by filing the written statement denying all material allegations in the claim petition contending, inter alia, that the claimant is not entitled to any compensation from the Insurance Company.

In course of proceeding, two witnesses were examined, i.e., the claimant himself as PW-1 and one Dr. H.K. Mukherjee as PW-2. PW-1 in her evidence has narrated all the incident and corroborated the contentions of the claim petition. She stated in her cross-examination that she was engaged in private tuition but could not do that all the time for her physical difficulties.

PW-2 examined the claimant/injured clinically and issued Disability Certificate to the extent of 40% in favour of the claimant. In his cross-examination, he has stated that the injury may happen by any other means other than traffic accident and those are non-schedule injuries and he clinically examined the claimant and found the disability to the extent of 40%. He examined the claimant after three years of accident.

So far as the accident and involvement of the offending vehicle are concerned, no argument has been advanced by either of the parties to this appeal. After going through the evidence on record, I also do not find any reason to reconsider the issue of accident by the involvement of the offending vehicle. In this appeal, I have to determine the quantum of compensation disputed by

the learned advocate Mr. Parimal Kumar Pahari, appearing on behalf of the Insurance Company, regarding Disability certificate.

Mr. Pahari has relied on a case of **Barun Kumar Das v. New India Assurance Co. Ltd. & Ors.** reported in **2005 (1) TAC 225 (Cal)**, in support of the contention regarding Disability Certificate.

After going through the observation of the Hon'ble Division Bench in the case of **Barun Kumar Das** (supra), I find that the Hon'ble Division Bench came across a fact where the injured sustained injury on his toe and he deposed that there was change of improvement of the injury unlike our case where doctor stated various injuries in his certificate and that too after three years and after clinically examined, he found disability to the extent of 40%.

It is true that no certificate issued by the Medical Board has been filed in this case but for that reason I cannot disregard the certificate issued by a doctor having experience of running a railway hospital as Superintendent.

Mr. Pahari also contended that there was no loss of income, but during cross-examination on behalf of the Insurance Company, PW-1/injured has specifically stated that she engaged in profession of private tuition and she could not do her profession due to physical disability and

that remains unchanged throughout the rest of the cross-examination.

In that view of the matter, I am unable to come to any finding that there was no loss of income.

On careful perusal of the judgment, I find that the learned Tribunal after considering the entire evidence on record, including the exhibited documents, returned his finding that the injured was entitled to the compensation to the tune of Rs.2,49,800/- after deduction of the amount of Rs.25,000/- already received by the injured under Section 140 of the Motor Vehicles Act. Finally, the learned Tribunal assessed the total compensation of Rs.2,24,800/- in terms of notional income of Rs.3,000/- per month and applying the multiplier 17 in terms of age of the injured.

With the above observation, I do not find any reason to interfere with the judgment and order passed by the learned Tribunal. Thus, the judgment and order passed in MAC Case No.97 of 2008 is hereby affirmed.

It is reported that the appellant/Insurance Company has already deposited the total amount of compensation of Rs.2,24,800/- on 18th September, 2012 and 20th November, 2012 before the office of the learned Registrar General of this Court.

Therefore, the respondent no.1/claimant is at liberty to withdraw the awarded amount of Rs.2,24,800/- along with accrued interest before the office of the learned Registrar General of this Court.

The learned Registrar General is requested to disburse the amount to the respondent no.1/claimant on proper identification.

With the above direction, the appeal, being FMA 2470 of 2014, 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.)