

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 463 of 2013
with
IA No. CAN 1 of 2013 (CAN 8257 of 2013)
with
CAN 2 of 2015 (CAN 1781 of 2015)
(Applications not in the file)

Laxmikanta Maity
Vs.
New India Assurance Company Ltd. & Anr.

Mr. Krishanu Banik
... For the appellant/claimant

Mr. Parimal Kumar Pahari
... For the respondent no1/Insurance Co.

This appeal is directed against the judgment and award passed on 8th August, 2012 by the learned Judge, Motor Accident Claims Tribunal, 1st Court, Tamluk, Purba Medinipur, in MAC Case No.64 of 2008/335 of 2007 under Section 166 of the Motor Vehicles Act, 1988 wherein compensation was awarded to the tune of Rs.2,80,800/-.

On 6th September, 2007 at about 6.00 a.m. the appellant/claimant was going towards Mecheda through left flank of the road of NH-41. When he reached near Vitaragar, suddenly a Bus bearing registration no.WB-29/3479 coming from the side of Nandakumar with high speed and without blowing any horn dashed the claimant. As a result, he sustained fracture injury on both the legs. He had to be admitted in the hospital and nursing home

for a considerable period of time. Even he had to go to CMC Vellore for treatment for the period from 9th October, 2007 to 19th October, 2007 and incurred a huge expenditure. It is alleged in the claim petition that the accident took place due to rash and negligent driving of the driver of the Bus and at the time of accident, the claimant, being a man of 48 years, used to earn Rs.3,000/- per month. In the aforesaid view of the matter, the appellant/claimant filed the claim petition with a prayer for compensation to the tune of Rs.5,00,000/-.

The respondent no.1/New India Assurance Company Limited contested the claim petition only by filing written statement denying all material allegations made in the claim petition contending, inter alia, that the victim was solely responsible for the accident and the Insurance Company is not liable to pay any compensation to the claimant.

In course of trial, two witnesses were examined, namely, the victim himself as PW-1 and one Medical Officer attached to Tamluk District Hospital as PW-2. In course of evidence, PW-1 narrated all the incident while he sustained injury by the involvement of negligent driving of the Bus. He stated that he was 48 years of age at the time of accident and used to earn Rs.3,000/- per month, being a Rickshaw Pullar.

In course of evidence, certified copy of First Information Report, charge sheet, seizure list, injury

report, referral card, voters identity card and insurance policy were admitted in evidence as Exhibit 1 to 7.

From the evidence of PW-1, it appears that the medical expenditure incurred by him was Rs.1,50,000/- but he had lost some of the medical bills.

From the record, it appears that the appellant/claimant filed a good number of medical vouchers before the learned Tribunal but those documents were not admitted in evidence.

PW-2, being a Medical Officer attached to Tamluk District Hospital came to Court and proved the disability certificate showing disability of the claimant to the extent of 60%.

Disability certificate was admitted in evidence as Exhibit-6.

After considering the evidence on record, the learned Tribunal granted award of Rs.2,80,800/- after assessing monthly income of Rs.3,000/- per month and also relying on the 60% disability.

Mr. Krishanu Banik, learned advocate on behalf of the appellant/claimant in course of argument has submitted that the learned Tribunal did not consider the future prospect, non-pecuniary damages and medical expenses. In support of his argument, he submitted that bunches of medical bills were produced before the learned

Tribunal showing the expenditure towards treatment of the claimant. In support of the argument, he relied on a decision of a Division Bench of this Court delivered on 29th June, 2012 in **FMA 967 of 2009 (Suresh Chandra Panday @ Suresh Chand Panday v. The New India Assurance Company Limited & Anr.)**.

Per contra, Mr. Parimal Kumar Pahari, learned advocate appearing on behalf of the respondent no.1/ Insurance Company has submitted that the medical bills have not been admitted in evidence so those documents cannot be considered.

So far as the accident by the involvement of the Bus bearing registration no.WB-29/3479 is concerned, I find that there is sufficient evidence in the record that on 6th September, 2007, the appellant/claimant sustained serious injuries on his legs due to rash and negligent driving of the offending Bus. The said incident was reported to the Kolaghat Police Station. Accordingly, Kolaghat Police Station Case No.152 of 2007 dated 11th September, 2007 under Sections 279/337/338 of the Indian Penal Code was started and ended with charge sheet.

So far as the claim of the appellant/claimant is concerned, the learned Tribunal did not consider the future prospect and medical expenses as well as non-pecuniary damages.

It is true that in case of disability to the extent of 60%, Court should take care of the trauma suffered by the injured. In this case, admittedly, numerous document showing expenditure towards treatment have been filed before the learned Tribunal but those were not looked into only on the ground of not exhibited.

As I have had the opportunity to go through those medical bills and I find that most of the bills were issued from CMC Vellore and the learned Tribunal should have taken care of the situation that whether it was possible to bring the witnesses from CMC Vellore to prove all those bills. That apart, it cannot be overlooked that no treatment was given to the claimant after accident where he sustained severe fracture injuries. It cannot be presumed that the claimant received treatment without any kind of expenditure.

In the aforesaid view of the matter, I am of the considered view that the appellant/claimant is entitled to medical expenses and in view of the guidelines laid down by the Hon'ble Apex Court, appellant/claimant is also entitled to future prospect and non-pecuniary damages.

Therefore, I modify the award as follows:-

Monthly Income	Rs. 3,000/-
Annual Income (Rs.3,000/- x 12)	Rs. 36,000/-
Add: Future prospect (@ 25%)	Rs. 9,000/-

	Rs. 45,000/-
60% Loss of earning capacity (Rs.45,000/- x 60%)	Rs. 27,000/-

Multiplier by 13 (Rs.27,000/- x 13)	<u>x 13</u>
	Rs.3,51,000/-
Add: Medical Expenses	<u>Rs. 98,083/-</u>
	Rs.4,49,083/-
Add: Non-Pecuniary Damages	<u>Rs.1,00,000/-</u>

Total	Rs.5,49,083/-
Less – Awarded by ld. Tribunal	<u>Rs.2,80,800/-</u>
ENHANCEMENT	Rs.2,68,283/-

For the reasons, it is seen that the appellant/claimant is entitled to the total compensation of Rs.5,49,083/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e. on 21st November, 2007 till the deposit of the amount.

It is reported that the appellant/claimant has already received Rs.2,80,800/- as awarded by the learned Tribunal.

Accordingly, the respondent no.1/Insurance Company is directed to deposit the enhanced amount of Rs.2,68,283/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e. on 21st November, 2007 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.49,083/- (Rs.5,49,083/- – Rs.5,00,000/-) before the learned Tribunal.

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

With the above observation, the appeal, being FMA 463 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.)