

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 2330 of 2004
with
IA No. CAN 1 of 2011 (CAN 4196 of 2011)

Hamidul Islam @ Hamizul Islam
Vs.
National Insurance Company Limited,
Jalpaiguri Branch & Ors.

Mr. Subir Banerjee
Mr. Sandip Bandyopadhyay
... 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 1st November, 2003 by the learned Judge, Motor Accident Claims Tribunal, Jalpaiguri, in MAC Case No.78 of 2002 whereby award of Rs.20,000/- was promulgated.

The claim petition arose out of an application filed under Section 163A of the Motor vehicles Act, 1988 on account of injury sustained by the claimant while he was travelling by a vehicle bearing registration no.WB-73/2014 with his goods towards Jhalong Beat. The said vehicle overturned and claimant suffered injury causing partial disability and he was unable to do his normal work. That is why the claim petition was filed with a prayer for compensation to the tune of Rs.99,000/-.

The respondent no.1/National Insurance Company Limited contested the case by filing written statement denying all material allegations in the claim petition contending, inter alia, that the claimant was a gratuitous passenger and was not entitled to any compensation as prayed for.

In course of proceedings, two witnesses were examined on behalf of the appellant/claimant. Claimant himself was examined as PW-1 and one Rajindar Parihar as PW-2. In course of their evidence, First Information Report, discharge certificate, Disability Certificate, police report and one trade licence issued by the village Panchayat were admitted in evidence as Exhibit 1 to 6.

Learned Tribunal after considering the evidence on record, assessed the compensation at Rs.20,000/-. In course of determining the compensation, the learned Tribunal returned his finding that the claimant sustained injury in the accident by the involvement of the vehicle which was duly insured with the Insurance Company and learned Tribunal also relied on hospitalisation and disability to the extent of 40%. Learned Tribunal also accepted the trade licence certificate in support of the occupation of the claimant who returned his last finding awarding compensation to the tune of Rs.20,000/- in favour of the claimant.

Mr. Subir Banerjee, learned advocate on behalf of the appellant/claimant has submitted that the appellant/

claimant was not a gratuitous passenger. In support of his argument, he refers to the evidence of both the witnesses, particularly, cross-examination of PW-2 who virtually supported the victim of travelling by the Truck for the purpose of vegetable business in the haat. Mr. Banerjee also relied on the document, i.e., trade licence issued by the village Panchayat showing business of the claimant as vegetable selling.

In opposition to that, Mr. Parimal Kumar Pahari, learned advocate appearing on behalf of the respondent no.1/Insurance Company has submitted that the claimant was gratuitous passenger and no document has been filed on behalf of the appellant/claimant regarding injury and thereby Mr. Pahari supported the judgment passed by the learned Tribunal.

This is a case under Section 163A of the Motor Vehicles Act, 1988. It is needless to mention that the appellant/claimant is not required to prove any rash or negligent act on the part of the driver of the vehicle. In spite of that, one report of the Officer-in-Charge, Nagarkata Police Station, District – Jalpaiguri, was admitted in evidence as Exhibit-2 and that report corroborates the accident which took place on 23rd February, 2000 at about 8.30 hours by the involvement of a Tractor bearing registration no.WB-73/2014, which was further corroborated by the First Information Report (Exhibit.-1).

From the claim petition, it is found that the appellant/claimant sustained fracture injury on his leg. That was further substantiated by his oral evidence and the Disability Certificate (Exhibit-5). From the evidence on record, I find that the learned Tribunal rightly assessed the disability to the extent of 40% in favour of the claimant but the learned Tribunal did not assess the compensation in terms of the pecuniary loss within the meaning of Section 163A of the Motor Vehicles Act, 1988.

In the aforesaid view of the matter, I find that Rs.3,000/- as notional income would be justified to assess the compensation after applying multiplier 15. Thus, I find it necessary to modify the compensation as follows:-

Monthly Income	Rs. 3,000/-
Annual Income (Rs.3,000/- x 12)	Rs. 36,000/-
Less: Deduction 60% (since the claimant was disabled to the extent of 40%)	Rs. 21,600/- -----
Total loss of Income	Rs. 14,400/-
Multiplier by 15 (Rs.14,400/- x 15)	x15 Rs.2,16,000/-
Add: Grievous Injury	Rs. 5,000/-
Total	Rs.2,21,000/-
Less – Awarded by ld. Tribunal	Rs. 20,000/-
ENHANCEMENT	Rs.2,01,000/-

For the reasons, it is seen that the appellant/claimant is entitled to the total compensation to the tune of Rs.2,21,000/- along with interest @ 4% per

annum from the date of filing of the claim petition till the deposit of the amount.

It is reported that the appellant/claimant has already received Rs.20,000/- as awarded by the learned Tribunal.

Therefore, the appellant/claimant is entitled to the balance amount of Rs.2,01,000/- along with interest @ 4% per annum from the date of filing of the claim petition till the deposit of the amount.

Accordingly, the respondent no.1/National Insurance Company Limited is directed to deposit the enhanced amount of Rs.2,01,000/- along with interest @ 4% per annum from the date of filing of the claim petition 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.1,22,000/- (Rs.2,21,000/- – Rs.99,000/-) 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 2330 of 2004, 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.)