

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 1160 of 2013

Gayani Alias Gayne Paswan
Vs.
National Insurance Company Ltd. & Anr.

Mr. Krishanu Banik
Ms. Chinmoyee Roy Bhattacharya
... For the appellant/claimant

Mr. Rajesh Singh
... For the respondent no.1/Insurance Co.

This appeal is directed against the judgment and award passed on 7th January, 2013 by the learned Judge, Motor Accident Claims Tribunal, 14th Additional District Judge, Alipore, South 24-Parganas, in MAC Case No.61 of 2010 under Section 166 of the Motor Vehicles Act, 1988.

On 22nd January, 2009 at about 6.40 a.m., the victim/claimant Gayani @ Gayno Paswan received accidental injury at the time of joining his duty at Khiderpore through Belvedere Road. The accident took place by the involvement of a Bus bearing registration nos.WB-19/1192 which was proceeding from south to north direction with abnormal high speed and knocked down the claimant. He was brought to SSKM Hospital, Kolkata for treatment. In connection with that accident, Alipore Police Station Case No.29 dated 22nd January, 2009 under Sections 279/338/304A of the Indian Penal

Code was started and after investigation, charge sheet was filed against the driver of the Bus.

In course of trial, five witnesses were examined on behalf of the claimant/injured. Claimant himself has been examined as PW-1, one Ram Khilawar Dusad examined as PW-2 (eye-witness), Dr. Binoti Das examined as PW-3, Santosh Kumar Das, Sub-Overseer of Kolkata Municipal Corporation examined as PW-4 and Dr. Prasanta Kumar Mondal examined as PW-5. In course of evidence, a good number of documents were admitted in evidence and marked as Exhibit 1 to 15.

Learned Tribunal after considering all the evidence on record awarded compensation to the tune of Rs.1,40,137/-.

After going through the evidence of PW-1 and PW-2, I find no reason to disbelieve that the claimant did not suffer any accidental injury by the rash and negligent driving of the Bus, bearing registration no.WB-19/1192.

It is not disputed that the appellant/claimant was an employee of Kolkata Municipal Corporation under Solid Waste Management Department as a Conservative Majdoor and he used to earn Rs.6,269/- per month as salary. From the evidence and the documents exhibited in this case, it is found that the appellant/claimant sustained the road traffic accident and he sustained injury of left leg amputation as it appears from the Exhibit-A, which is an

opinion by a doctor (PW-3). From the record, particularly, the evidence of PW-4, it appears that after submitting fit certificate, he joined in the service on 1st April, 2009 and he has not lost even his promotional benefit due to his accident. PW-4 has further stated in his evidence that Gayani @ Gayno Paswan has received his medical reimbursement from the office.

Considering all the facts and circumstances, I am of the opinion that the learned Tribunal has rightly assessed Rs.20,000/- for loss of income and Rs.45,137/- for loss of earning capacity. But so far as non-pecuniary damages is concerned, I find that the appellant/claimant suffered for a considerable period of time in hospital after the accident and to substantiate that sufferings, the appellant/claimant has filed a good number of documents showing his treatment in the hospital.

In the aforesaid facts and circumstances, I find it justified to assess Rs.1,00,000/- instead of Rs.75,000/- as non-pecuniary damages.

It is submitted on behalf of the appellant/claimant that the appellant/claimant has already received Rs.1,40,137/- as compensation awarded by the learned Tribunal.

Therefore, the appellant/claimant is entitled to the balance amount of Rs.25,000/- along with interest @ 6% 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.

The respondent no.1/National Insurance Company Limited is directed to deposit the balance amount of Rs.25,000/- along with interest @ 6% per annum from the date of filing of the claim petition till the actual 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 will be entitled to withdraw the balance amount with interest.

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

With the above observation, the appeal, being FMA 1160 of 2013, stands disposed of.

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.)