

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 1944 of 2001

Smt. Shephali Sarkar
Vs.
The Divisional Manager,
Oriental Insurance Co. Ltd. & Anr.

Mr. Saidur Rahaman
... For the appellant/claimant

Mr. Sanjay Paul
... For the respondent no.1/Insurance Co.

This appeal is directed against the judgment and award passed on 22nd March, 2001 by the learned Judge, Motor Accident Claims Tribunal (Additional District Judge), Dakshin Dinajpur at Balurghat in MAC Case No.264 of 2000 under Section 166 of the Motor Vehicles Act, 1988.

The claim petition filed on account of an accident which took place on 10th November, 1999 at about 08.00 hours, while the injured/appellant was standing by the roadside at Paranpur Sib Mandir. Under Balurghat Police Station, one vehicle bearing registration no.WB-61/0404 proceeding towards Patiram side from Balurghat with high speed, lost its control and dashed against the applicant/appellant. As a result, she sustained injury and taken to Balurghat Sadar Hospital where she was admitted till 23rd January, 2000.

It was further alleged in the claim petition that the applicant/appellant was an active woman and she was performing all household duties and also looked after two cows of her husband. It was alleged that after the accident, she was not in a position to walk smoothly as her leg has been **shortened**.

In the aforesaid view of the matter, the injured claimed compensation to the tune of Rs.1,00,000/- from the Oriental Insurance Company Limited.

During the trial, the claimant herself examined as PW-1. She corroborated the factum of accident which took place due to rash and negligent driving of the vehicle bearing registration no. WB-61/0404. She also corroborated the statement written in the claim petition regarding her income and sufferings.

The Learned Tribunal after considering the evidence and documents exhibited, came to its finding that the claimant neither proved any disability on her person after the accident nor proved any specific income. From that point of view, the learned Tribunal granted compensation to the tune of Rs.5,000/- only towards pain and suffering for injury sustained by the claimant. Learned Tribunal also opined that there was no loss of earning and she is not entitled to any other compensation.

Being aggrieved, this appeal has been preferred.

In course of argument, learned advocate appearing on behalf of the appellant/claimant submits that the claimant, being a housewife, entitled to compensation towards her loss of earning and the claimant is also entitled to compensation towards treatment, pain and sufferings during her admission in the hospital from 10th November, 1999 to 23rd January, 2000.

Learned advocate appearing on behalf of the respondent/Insurance Company has submitted that the amount of Rs.25,000/- is sufficient towards pain and sufferings and further amount of Rs.5,000/- may be awarded towards loss of income.

On careful perusal of the evidence on record, I do not find any kind of disability on the person of the claimant as that has not been substantiated by any disability certificate. Evidence shows that the claimant only suffered fracture injury for which she remained in the hospital for two and a half months. That apart, no document has even been filed before the learned Tribunal showing expenditure towards treatment.

However, considering the sufferings for two and a half months for the grave injury, I am of the opinion that the amount of Rs.40,000/- should be awarded for pain and sufferings and Rs.10,000/- towards loss of income.

Therefore, the appellant/claimant is entitled to total compensation of Rs.50,000/- 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.

It is reported that the amount awarded by the learned Tribunal has already been received by the appellant/claimant. However, the appellant/claimant is entitled to receive further amount of Rs.45,000/- 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/Insurance Company is directed to deposit the enhanced amount of Rs.45,000/- along with interest @ 6% per annum from the date of filing of the claim petition till the actual deposit of the amount before the learned Registrar General of this Court within six weeks from the date of this order.

The appellants/claimants will be entitled to withdraw the enhanced amount with interest.

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

With the above observation, the appeal, being FMA 1944 of 2001, stands disposed of.

All pending applications, if there be any, also stand disposed of.

Records of the learned Tribunal 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.)