

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 1335 of 2008

Biswanath Sharma Alias Bishu
Vs.
The Oriental Insurance Company Limited & Anr.

Mr. Jayanta Banerjee
Ms. Roxmini Basu Roy
... For the appellant/claimant

Mr. Sanjoy Paul
... For the respondent/Insurance Company

This appeal is directed against the judgment passed on 12th November, 2007 by the learned Additional District Judge, 2nd Court, Nadia (Motor Accident Claims Tribunal) in MAC Case No.297 of 2001 on account of injury sustained by one Biswanath Sharma Alias Bishu in an accident by the involvement of two trucks bearing registration nos.WB-51/1529 and WB-03/4315. The truck bearing no.WB-03/4315 duly ensured under Oriental Insurance Company Limited. The claim petition was filed with the prayer for compensation from the Oriental Insurance Company Limited. Both the owners and insurance companies of the vehicles involved were made party in the MAC case but the owners did not appear to contest the case. Oriental Insurance Company contested the case.

To prove his case, the claimant has examined as many as six witnesses, including himself and doctor who issued Disability Certificate in favour of the claimant.

After careful scrutiny of the evidence, particularly, evidence of the doctor, i.e., PW-6, the learned Tribunal did not make himself convinced to rely on the said Disability Certificate (Exts.4 and 5) and to calculate the compensation amount after applying the percentage of disability. The learned Tribunal also did not consider the application of multiplier in terms of income per annum and ultimately returned his finding by allowing compensation of Rs.20,000/- only though he considered the treatment of the claimant in different hospitals for considerable period.

It is not intelligible to me that what prevented the learned Tribunal to admit these documents submitted by the employees of different hospitals before this Court at the time of giving their respective evidence (PW-2, PW-3 and PW-5). Those documents, being original, were not admitted in evidence and marked as exhibits.

From the entire evidence, it is not disputed that the injury suffered in an accident alleged to have been taken place on 11th June, 2001 by the involvement of the vehicle with insurance coverage by the Oriental Insurance Company Limited. It is surprising to note that the claimant did not produce any single scrap of paper showing his age at the relevant point of time. Not only that, he did not adduce any evidence in support of his income.

So far as the Disability Certificate is concerned, the learned advocate appearing on behalf of the claimant has

strenuously argued that the Disability Certificate issued by the doctor (PW-6) can be relied upon due to his expertise knowledge.

Per contra, learned advocate appearing on behalf of the Insurance Company submitted that the evidence of the doctor does not show any treatment prior to issuing the Disability Certificate (Ext.4).

After careful scrutiny of evidence of PW-6 together with the Disability Certificate (Ext.4), I do not find anything mentioned in the Certificate itself and in the evidence of the doctor (PW-6) that he has even examined the patient along with the relevant documents of treatment as it is admitted that the claimant/patient visited so many hospitals, viz. Calcutta Medical College and Hospital, Burdwan Hospital, Kalna Hospital and Berhampore Hospital etc. It also takes me aback that what prevented the claimant to approach any of the Government hospitals for issuance of Disability Certificate.

In support of his contention, learned advocate appearing on behalf of the claimant relies on a judgment reported in (2011) 1 WBLR (SC) 352 (Raj Kumar v. Ajay Kumar & Anr.) wherein the Hon'ble Apex Court observed in paragraph 12 as follows:-

“12. The Tribunal should also act with caution, if it proposed to accept the expert evidence of doctors who did not treat the injured but who give ‘ready to use’ disability certificates, without proper medical

assessment. There are several instances of unscrupulous doctors who without treating the injured, readily giving liberal disability certificates to help the claimants. But where the disability certificates are giving by duly constituted Medical Boards, they may be accepted subject to evidence regarding the genuineness of such certificates. The Tribunal may invariably make it a point to require the evidence of the Doctor who treated the injured or who assessed the permanent disability. Mere production of a disability certificate or Discharge Certificate will not be proof of the extent of disability stated therein unless the Doctor who treated the claimant or who medically examined and assessed the extent of disability of claimant, is tendered for cross-examination with reference to the certificate. If the Tribunal is not satisfied with the medical evidence produced by the claimant, it can constitute a Medical Board (from a panel maintained by it in consultation with reputed local Hospitals/Medical Colleges) and refer the claimant to such Medical Board for assessment of the disability.”

In the aforesaid view of the matter as well the observation of the Hon’ble Apex Court, I am also not inclined to rely on the Disability Certificate to assess the compensation.

For the reasons, I am of the considered view that a lump sum compensation should be allowed keeping an eye to the bed-head tickets of several Government hospitals showing long sufferings. Therefore, it cannot be denied that the claimant had to undertake pain and sufferings for the treatment.

Considering all facts and circumstances, I find it necessary to allow a Compensation/Award of Rs.2,50,000/- to the claimant.

From the records, it appears that he has already received Rs.20,000/- awarded by the learned Tribunal. Therefore, the claimant is entitled to further Compensation /Award of Rs.2,30,000/- along with interest @ 6% per annum from the date of filing of the claim petition till the actual payment.

The respondent/Oriental Insurance Company Limited is directed to deposit the amount before the learned Registrar General of this Court within six weeks from the date of this order.

The claimants will be entitled to withdraw the amount.

The learned Registrar General will release the amount on proper identification.

With the above observation, the instant appeal, being FMA 1335 of 2008, stands disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Bibhas Ranjan De, J.)