

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 851 of 2012

Gobinda Das
Vs.
The National Insurance Company Limited & Anr.

Mr. Subir Banerjee
Mr. Sandip Bandyopadhyay
Ms. Ruxmini Basu Roy
... For the appellant/claimant/driver

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

This appeal is directed against the judgment and award passed on 29th November, 2011 by the learned Additional District and Sessions Judge, 1st Court-cum-Judge, Motor Accident Claims Tribunal, Raiganj, Uttar Dinajpur, in MAC Case No.158 of 2008 under Section 163A of the Motor Vehicles Act, 1988 whereby the learned Judge dismissed the claim petition.

The claim petition was filed on account of injuries sustained by claimant Gobinda Das on 10th March, 2007 at about 9.15 a.m. while he was driving a vehicle (Matador) bearing registration no.WB-03A/7703 met with an accident due to burst of the front side tire. Consequently he lost control and hit the vehicle with a roadside tree. At the time of accident, the claimant/driver was aged about 42 years and he prayed for Rs.5,50,000/- as

compensation. National Insurance Company Limited contested the said case by filing a written statement denying all materials and documents.

In course of trial, the appellant/claimant examined three witnesses, namely, the claimant himself as PW-1, one Dr. Rash Behari Ghosh as PW-2 who proved the medical certificate (Ext.-5) showing disability of the claimant/driver and one Dr. Arabinda Tantri attached to Raiganj District Hospital as Superintendent, was examined as PW-3. In course of his evidence, he proved the disability certificate (Ext.-6) and from his evidence, it appears that he was one of the members of the Medical Board issuing disability certificate in favour of the appellant/claimant/driver.

The owner of the vehicle himself examined as OPW-1 and he stated about the accident made by his driver on 10th March, 2007 and he sustained injury.

Learned Judge of the Tribunal after appreciation of the evidences and documents available on record returned his finding that the appellant/claimant is not entitled to any compensation under Section 163A of the Motor Vehicles Act as the accident happened on account of his own negligence. In support of his observation, he relied on a case reported in AIR 2008 Vol. III (Bombay) R 607.

In course of argument, learned advocate on behalf of the appellant/claimant submitted that it is a case under

Section 163A of the Motor Vehicles Act and negligence of the driver cannot be an issue to be determined and the appellant/claimant is entitled to compensation as per the structural formula. In support of his claim, learned advocate appearing on behalf of the appellant/claimant relied on a judgment of the Hon'ble Apex Court reported in **2018 (1) TAC 3 (SC) (United India Insurance Co. Ltd. v. Sunil Kumar & Anr.)** and a judgment of this Court reported in **(2008) 2 WBLR (Cal) 59 (Arati Dolai @ Arati Rani Dolai & Ors. v. Baser Ali Box & Ors.)**.

So, from the entire evidence and documents on record, I find that the driver of the vehicle bearing registration no.WB-03A/7703 (Matador) sustained injury in an accident while he was driving the vehicle in the Highway for which Rotua Police Station Case No.39 of 2007 under Sections 279/338/427 of the Indian Penal Code was started and charge sheet was submitted against the driver. From that point of view, it is needless to mention that the driver was the person responsible for the accident but in a case of 'no fault liability' under Section 163A of the Motor Vehicles Act, negligence or responsibility cannot be an issue to be discussed. That apart, from the observation of the Hon'ble Apex Court in **Sunil Kumar** (supra) and also the view of this Court in **Arati Dolai @ Arati Rani Dolai** (supra), I find no other alternative but to allow the compensation on 'no fault liability' under Section 163A of the Motor Vehicles Act.

Learned advocate on behalf of the respondent/ Insurance Company also submitted that the driver/ claimant is entitled to compensation on the ground of 'no fault liability' within the meaning of Section 163A of the Motor Vehicles Act.

Considering the age of the victim and the income appearing from the evidence, I would like to determine the compensation as follows:-

Gross Monthly Income	Rs. 3,000/-
Annual Income (Rs.3,000/- x 12)	Rs. 36,000/-
Less: 30% Deduction (disability 70%)	Rs. 10,800/-
	<u>Rs. 25,200/-</u>
Multiplier 15 (Age 42 yrs.) Loss of dependency	<u>Rs.3,78,000/-</u>

In the aforesaid view of the matter, it is seen that the appellant/claimant/driver is entitled to an amount of Rs.3,78,000/- along with interest @ 6% per annum from the date of filing of the claim petition.

The respondent/Insurance Company is directed to deposit the amount of Rs.3,78,000/- 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 appellant/claimant/driver will be entitled to withdraw the amount along with interest subject to payment of *ad valorem* court fees on the amount.

The learned Registrar General will release the total amount to the appellant/claimant/driver on proper identification and subject to verification of the payment of *ad valorem* court fees.

With the above observation, the appeal, being FMA 851 of 2012, stands disposed of.

All pending applications, if 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.)