

12.12.2022
SL No.5
Court No. 654
Ali

**IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction**

F.M.A.T. 525 of 2020

IA No: CAN/1/2021, CAN/2/2022

The National Insurance Co. Ltd.

Vs.

Smt. Atreyee Maji Representing Sankar Maji & Anr.

Mr. Sanjay Paul

....for the appellant-Insurance Co.

Mr. Jayanta Kumar Mandal

.....for the respondent No. 1.

This appeal is preferred against the judgment and award dated 3rd October, 2020 passed by learned Judge, Motor Accident Claims Tribunal, Fast Track, 1st court in M.A.C case no.373 of 2014 granting compensation of Rs.25,68,236/-in favour of the injured-claimant under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 5th August 2013 at about 10:30 PM while the victim was moving as a pillion rider on a motorcycle bearing the registration no.WB-34AD/7845 at that time one truck in a rash and negligent manner overtook the motorcycle and the driver of the motorcycle lost control and dashed the divider of the road as a result of which the victim fell down on the road and sustained severe injuries on his person. The victim-injured was taken to Debra Gramin Hospital wherefrom he was shifted to *Sanjiban* Hospital and then to Medica Superspeciality

Hospital. Due to such injuries the victim-injured suffered financial losses. On account of such injuries the victim-injured through his wife filed application for compensation along with medical expenditure of Rs.16,50,000/-under Section 166 of the Motor Vehicles Act, 1988.

Upon considering the materials on record and the evidence adduced on behalf of the claimant the learned tribunal granted compensation of Rs.25,68,236/-in favour of the injured-claimant.

Being aggrieved by and dissatisfied with the impugned judgment and award the insurance company has filed the present appeal.

Although the respondent no.2-owner of the offending vehicle appeared and filed written statement before the learned tribunal but subsequently did not contest and the claim case was disposed of *exparte* against him. In the aforesaid backdrop the service of notice of appeal upon respondent no.2-owner of the offending vehicle is dispensed with.

Mr Sanjay Paul, learned advocate for appellant-insurance company argued that in a case under Section 166 of the Motor Vehicles Act the burden of proof primary lies with the claimant to establish that the accident took place due to rash and negligent driving on the part of the driver of the offending vehicle however in the case at hand the claimant-injured have hopelessly failed on such

score due to which reason the claim application is liable to fail. He further submits that as per the averments made in the claim application the accident took place due to rash and negligent driving of an unknown truck which on the relevant time of accident overtook the motorcycle in which the injured was travelling as pillion rider. However there is a stark difference and variance in the averments and the evidence adduced by the purported eyewitness PW2 and therefore due to such variance the pleadings and the evidence led raises doubt so far manner of alleged accident asserted by the claimant-injured in the claim application is concerned. Moreover the purported eyewitness PW2 has neither been listed as a witness in the charge-sheet nor has been examined by the investigating agency, hence his evidence of the manner of occurrence is to be taken with a pinch of salt. Further there is unexplained delay of more than 20 days in lodging the FIR which also raises doubt in the manner of such occurrence.

Furthermore he submits that the disablement certificate issued by the Medical Board has been made valid for one year in order to review the extent of such disability. Save and except such disability certificate showing 80% disablement of the injured there are no other medical evidence to show that the injured-victim continued to have 80% disablement since sustaining injuries in the

accident. Thus the injured at best can be entitled to have loss of income for the one year for which period the disability certificate has been validated. He further indicates that the claimant injured has also not produced any document of review of disability by the Medical Board. Furthermore he submits that as there is no evidence of permanent disablement the computation of compensation adopting multiplier method by the learned tribunal is erroneous which requires modification.

Moreover it is submitted that the injured at the time of accident was 42 years of age however the learned tribunal erred in adopting multiplier 15 instead of 14 and to that extent the impugned award needs to be modified.

In light of the aforesaid he submits for allowing the appeal and modifying the impugned judgment and award.

In reply to the contentions raised on behalf of the appellant-insurance company, Mr Jayanta Kumar Mandal, learned advocate appearing for the respondent no.1-injured submits that as per the written complaint, charge sheet, seizure list and the evidence of the eyewitness PW2 the involvement and the manner of rashness and negligence of the driver of the motorcycle has been sufficiently established by the injured-claimant during hearing of the claim application. He further submits that the evidence of eyewitness PW2 with regard to the rash and

negligent act of the driver of the offending vehicle in the said accident has remained unchallenged in cross examination. Further the insurance company has not produced any evidence to impair the evidence adduced by the claimant in the aforesaid regard. Thus the evidence on record sufficiently establishes the rash and negligent driving of the driver of the offending vehicle. Furthermore he submits that delay *per se* in lodging FIR does not make the claim case doubtful in the absence of attending circumstances.

He further submits that as per the disability certificate the victim sustained 80% disablement which is also supported by the medical documents produced along with medical bills showing severe head injuries and of undergoing several operative measures for recovery. However, the victim continued to suffer due to such injuries and therefore the assessment made by the learned tribunal should be affirmed in this regard.

Having heard the learned advocates of both the sides, I now proceed to decide the issues raised in this appeal.

The appellant-insurance company in the present appeal has precisely raised four issues *firstly* that the fact of rash and negligent driving of the driver of the motorcycle has not been established, *secondly* the delay in lodging of the FIR raises doubt in the claim case, *thirdly* the disability

of 80% shown in the disability certificate is not of permanent nature and as such multiplier method should not have been adopted in the present case and *fourthly* the multiplier should be 14 instead of 15.

With regard to the first issue it is found that the claimant-injured for establishing the fact of rash and negligent driving of the driver of the offending vehicle adduced oral evidence of one Sukumar Samanta as PW2 and also produced the certified copy of FIR, charge sheet, and seizure lists. Mr Paul, learned advocate for appellant-insurance company strenuously argued that the claimant himself stated in the claim application of involvement of an unknown truck which is in variance to the evidence adduced on behalf of the claimant and therefore the case of the claimant is doubtful. On going through the evidence of PW2 who is an eyewitness to the occurrence it is found that he has categorically stated that due to rash and negligent driving by the motorcyclist the motorcycle dashed the divider and the victim sustained injuries. The evidence of the said witness as above has remained unchallenged in cross-examination. The said witness in his evidence stated that he was not interrogated by the police. It is also relevant to note that he has not been listed as a witness in the chargesheet. Be that as it may, there is no such hard and fast rule that only the witnesses listed in the chargesheet can adduce

evidence with regard to the manner of accident relating to the claim case. The facts stated by the eyewitness PW2 is also disclosed in the written complaint. Moreover upon completion of investigation the investigating agency submitted charge sheet against the driver of the offending vehicle. During the course of investigation the offending vehicle has been seized in connection with the case. Therefore in view of the aforesaid available evidence adduced by the claimant it is found that the involvement and rash and negligent driving of the driver of the motorcycle has been sufficiently proved by the claimant-injured.

As far as second issue is concerned, Mr Paul, learned advocate for appellant-insurance company has vociferously argued that there is a delay in lodging of the FIR which raises serious doubt in the manner of the alleged accident. It is relevant to note that there is a delay of 22 days in lodging the FIR. The father of the injured-claimant, who is the FIR maker has given explanation that due to treatment of his son he could not lodge the FIR immediately. There is no indication of fabrication or concoction or exaggerations in the FIR.

The Hon'ble Supreme Court in the case of ***Ravi versus Badrinarayan and Others*** reported in **2011(1) T.A.C 867 (SC)** observed as follows.

“20. It is well settled that the delay in lodging FIR cannot be a ground to doubt the claimant’s case. Knowing the Indian conditions as they are, we cannot expect the common man to first rush to the Police Station immediately after an accident. Human nature and family responsibilities occupy the mind of Kith and Kin to such an extent that they give more importance to get the victim treated rather than rush to the Police Station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the Police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim. In cases of delay, the Courts are required to examine the evidence with a closer scrutiny and in doing so; the contents of the FIR should also be scrutinized more carefully. If Courts finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons then, even if there is a delay in lodging the FIR the claim case cannot be dismissed merely on that ground.”

Bearing in mind the aforesaid observation of the Hon’ble Supreme Court and as in the present case at hand there is no indication of fabrication or concoction or engineering hence the delay in lodging the FIR cannot be a ground for dismissal of the claim case. Further the delay in lodging the FIR has also been explained in the FIR. Thus delay *per se* would not affect the case of the claimant. Accordingly, the argument of the appellant-insurance company in this regard falls short of merit.

With regard to the third issue raised in this appeal, it is argued on behalf of the appellant-insurance company that there are no iota of materials to suggest that the victim-injured

continued to have 80% disability of permanent nature and thus the multiplier method should not be applied in the facts of the case. Upon perusal of the disability certificate (**Exhibit 13**) as well as the evidence of PW6, Dr Amit Kumar Ranjan, who was member of the Medical Board issuing disability certificate, it is found that the disability has been assessed to the extent of 80% for reason of post traumatic (head injury) with Quadriplegia and Contracture of all joints. Taking judicial notice of the discharge against medical advice dated 3.9.2013 of *Sanjiban* Hospital it appears that the injured suffered fracture of right temporal skull and fracture of facial bone and the condition at discharge was that the patient is discharged against medical advice. The medical bills submitted by the claimant-injured shows that he was under continuous treatment and operative measures were undertaken from time to time stretching over a period of two years. The discharge certificate of Institute of Neurosciences, Kolkata dated 12.2.2015 reveals that the victim had to undergo frontal craniotomy for head injury and his neurological recovery was very slow and still cognitive function is not very good. Similarly the discharge certificate dated 2.3.2015 of the Institute of Neurosciences, Kolkata shows that the patient remained neurologically same after surgery and it is indicated that he needs long-term rehabilitation for further improvement.

Quadriparesis as noted by the medical board is a condition characterized by weakness in all four limbs both arms and both legs which affects the mobility of the arms and limbs. Bearing in mind the aforesaid aspects revealing from the medical documents and the disability certificate it goes without saying that such injury would certainly affect the earning of the injured. Though the disability certificate has been issued for review after one year but there are no such materials that the victim ultimately recovered from his injuries to resume his normal duties which he used to perform prior to the accident. Thus considering the preponderance of probabilities the nature of disability appears to be permanent to the extent of 80%. Accordingly the multiplier method adopted by the learned tribunal in assessing the compensation amount does not call for interference.

The fourth issue raised in this appeal relates to the multiplier adopted by the learned tribunal. It is found that at the time of accident the claimant was aged 42 years hence in view of observation of Hon'ble Supreme Court made in ***Sarla Verma & Others versus Delhi Transport Corporation and another*** reported in **2009 ACJ 1298** the multiplier should be 14 instead of 15.

The other findings of the learned tribunal have not been challenged in this appeal.

In the aforesaid backdrop the calculation of compensation amount is made hereunder:-

Calculation of compensation

Monthly Income.....	Rs.10,000/-
Annual Income.....(Rs.10,000/- X 12).....	Rs 1,20,000/-
80% loss of Income due to disablement of 80%...	Rs.96,000/-
Adopting multiplier 14 (Rs.96,000/- X 14) ..	Rs.13,44,000/-
Medical Expenses Incurred	Rs.10,28,236/-
Non-pecuniary damages.....	Rs.1,00,000/-
Total Compensation.....	Rs.24,72,236/-

Thus the respondent no.1-claimant is entitled to compensation of Rs.24,72,236/- along with interest @ 6% per annum from the date of filing of the claim application till payment. It is found that the appellant-insurance company in terms of order dated 3 March 2022 has deposited a sum of Rs.37,47,852/- vide OD challan no.128 dated 8.04.2022 with the Registry of this court. Accordingly the aforesaid amount along with accrued interest shall be adjusted against the entire amount of compensation and the interest thereon.

The appellant-National Insurance Company Limited is directed to deposit the balance amount, if any, and the interest as indicated above by way of cheque with the learned Registrar General, High Court, Calcutta within the period of four weeks from date. The learned Registrar General, High Court, Calcutta upon deposit of the aforesaid balance amount, if any, shall release the entire compensation amount along with interest in favour

of respondent no.1-claimant on satisfaction of his identity.

Accordingly the appeal is allowed, in part, on contest against respondent no.1 -claimant and *exparte* against respondent no.2-Owner of the offending vehicle. The impugned judgment and award of the learned tribunal stands modified to the aforesaid extent. No order as to cost.

Respondent No. 1-claimant is directed to deposit *ad-valorem* Court Fees on the amount of compensation assessed if not already paid.

With the aforesaid direction the appeal and the connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

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

(Bivas Pattanayak, J.)