

07.12.2023
SL No.5
Court No. 551
Ali

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

FMA 555 of 2018

**Raisuddin Sk.
Vs.
M/S Oriental Insurance Co. Ltd. & Anr.**

Ms. Sima Ghosh,
Ms. Sabina Khatun
..... for the appellant.

Mr. Sanjay Paul,
Ms. Jaita Ghosh
...for the respondent No. 1/Insurance Co.

The instant appeal has been preferred against the Judgment and Award dated 10th Day of August, 2016 passed by learned Judge, Motor Accident Claims Tribunal, Berhampur, Murshidabad, in M.A.C. Case no. 400 of 2012 under Section 166 of the Motor Vehicles Act.

The brief facts of the case is that the present appellant being the petitioner has preferred an application before the learned tribunal for getting compensation on the ground that he suffered severe bodily injuries in a road traffic accident due to rash and negligent driving of the driver of the offending vehicle duly insured under the policy of the Insurance Company. By such accident he became permanently disabled and could not maintain his livelihood. Accordingly, he prayed for compensation of Rs.3,00,000/-.

The claim case was contested by the Insurance Company.

Learned tribunal after hearing the parties and after receiving the evidences has allowed the claim case in favour of the appellant/claimant and directed the insurance company to pay the compensation amounting to Rs. 10,000/-.

Being aggrieved by and dissatisfied with the said award the present appellant has preferred this appeal.

Learned advocate for the appellant submits that the present appellant was 50 years old at the time of accident and he sustained severe bodily injuries by such accident. The appellant became 45% disabled by such accident. The evidences were produced before the learned tribunal including the medical documents and original disability certificate but the learned tribunal without considering the materials on record has awarded only Rs. 10,000/- in favour of the present appellant. The award passed by the learned tribunal is very meagre one so he prayed for just and proper compensation.

Learned advocate appearing on behalf of the insurance company submits that the claimant could not produce any evidence before the learned tribunal. The learned tribunal is of opinion that though claimants have exhibited police papers but no medical documents were produced. He further

argued that without any document it was justified for the learned tribunal to pass the award. There is no illegality in the amount of the award. The accident actually happened and he sustained bodily injuries which was revived by the medical treatment Rs. 10,000/- is sufficient for compensation of this case.

Heard the learned advocate perused the materials on record also perused the LCR. On perusing the LCR it appears that during evidence of PW-1 i.e. the injured appellant, he produces written examination-in-chief of evidence which mentioned of his medical papers and disability certificate in the chief itself. But, such medical documents and the disability certificate were not proved. Accordingly, learned tribunal had no opportunity to peruse the unexhibited document placed in the record. Thus, it appears to me that the learned tribunal has considered the fact that the appellant has sustained injuries in such accident thus awarded the compensation.

In considering the present case in hand it appears that if the instant accident happened in the year 2012. At this juncture, if the case be sent back on remand for proving the disability certificate as well as the medical documents placed in the LCR, another 10 years would be elapsed.

Considering the entire circumstances, I think it necessary that on perusing the LCR and on perusing the medical certificate produced before the learned tribunal and the award passed by the learned tribunal may be enhanced.

It appears that the claimant has sustained severe injuries and he was treated in the hospital for more than 7 days. Some medical expenses have incurred and he had also suffered immense mental pain and agony. The Medical Board has issued a disability certificate it reflected the percentage of disability to be 45% but it was not mentioned whether it is partial or permanent. However, it would not be prudent to take cognizance of the disability certificate which was not properly proved.

Considering the entire facts and circumstances of this case, I think it would be fit to award the claimant a further compensation amounting to Rs. 1,20,000/-.

In this case, it has been proved that the injured is aged about 50 years when he was sustained injuries, now he is more than 60 years. So at this stage, it would be appropriate for the insurance company to pay the compensation to the claimant amounting to Rs. 1,20,000/- more alongwith interest @ 6% per annum from the date of filing of the claim application.

The impugned award passed by the learned tribunal is hereby modified and the observation made above.

The insurance company is further directed to pay the compensation within six weeks from the date of passing of this order through the office of the learned Registrar General, High Court, Calcutta. On such deposit the claimant is at liberty to receive the same according to the prevalent Rules.

It appears from the LCR that the court fees has already been paid. The court fees appear to be sufficient.

The instant FMA 555 of 2018 is disposed of.

All connected applications, if any, stand disposed of.

Interim orders, if any, stand vacated.

Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)

