

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 595 of 2010
with
IA No. CAN 2 of 2018 (CAN 4113 of 2018)
(Application not in the file)

Subal Murmu
Vs.
The Oriental Insurance Co. Ltd. & Anr.

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

Mr. Parimal Kumar Pahari
... For the respondent no.1/Insurance Co.

This appeal is directed against the judgment and award passed on 9th July, 2008 by the learned Judge, Motor Accident Claims Tribunal, 4th Court, Paschim Medinipur, in connection with MAC Case No.247 of 2007 whereby the learned Judge awarded compensation to the tune of Rs.3,00,000/-.

The claim petition arose out of an application filed under Section 166 of the Motor vehicles Act, 1988 on account of injury sustained by the claimant Subal Murmu in a motor accident occurred on 24th January, 2007 at about 3.30 p.m. by the involvement of one Truck, bearing registration no.WB-11A/6909, due to rash and negligent driving of the said truck. As a result, he sustained severe injury in his both legs and ultimately both his legs were

amputated in OMM Orthopaedic Hospital at Suxi Bagar, Cuttack under famous Orthopaedic add Professor P.T. Rao. At the time of accident, Subal Murmu was a mason by profession having income of Rs.5,000/- per month and aged about 48 years. The claimant/injured claimed compensation to the tune of Rs.5,00,000/-.

As the Truck was duly insured with the Oriental Insurance Company Limited, the claim petition was contested by the Insurance Company by filing written statement denying all averments in the claim petition contending, inter alia, that the Insurance Company is not liable to pay any compensation.

To prove the case, the claimant/injured himself examined as PW-1. In course of his evidence, he has corroborated the entire averments of the claim petition regarding the manner of accident and amputation of both legs.

In course of his evidence, First Information Report, seizure list, charge sheet which was filed against the driver of the bus, referral card, discharge certificate and Disability Certificate were admitted as Exhibit 1 to 6.

After considering the entire evidence on record, the learned Tribunal opined that the accident took place due to fault on the part of the claimant/injured. It was observed by the learned Tribunal that the accident took place at the pitch road and there was no scope on the part

of the claimant/injured to go to the crossing point and the claimant/injured also failed to prove that he was standing on the bus stoppage. Learned Tribunal considering the failure to prove the income and other facts and circumstances in the case, granted compensation to the tune of Rs.3,00,000/- without assessing pecuniary damages.

From the evidence on record, including the documents exhibited in this case, there is no scope to draw any presumption even that accident took place due to any fault on the part of the appellant/claimant. The appellant/claimant has specifically stated in his evidence that on the alleged date of accident on 24th January, 2007 at about 3.30 p.m. he was standing at Amtala Bus Stoppage near Kshudiram Park and at the time the offending truck coming with high speed and in rash and negligent manner dashed him with force. As a result, he sustained injury on his both legs. Ultimately, he had to undergone amputation of both the legs. He also denied in the cross-examination as follows:-

“Not a fact that the driver of vehicle had no fault for such accident but suddenly I appeared from roadside to the leaving portion of the pitch Road and it was a four point road and for my fault this accident took place.”

That apart, from the exhibited documents, particularly, the FIR, seizure list and charge sheet, it cannot be presumed by any stretch of imagination that the

accident took place due to fault on the part of the appellant/claimant. Therefore, it took me aback that how the learned Tribunal observed that the accident took place due to negligence on the part of the claimant.

So far as the income of the petitioner is concerned, it is true that the appellant/claimant could not produce any evidence to substantiate his profession as mason but notional income of Rs.3,000/- per month can be taken for assessing the pecuniary damages in this case in terms of severe injury, i.e., amputation of both legs.

In the aforesaid view of the matter, I modify the award as follows:-

Monthly Income	Rs. 3,000/-
Annual Income (Rs.3,000/- x 12)	Rs. 36,000/-
Add: Future prospect (@ 25%)	Rs. 9,000/-

	Rs. 45,000/-
Less: Deduction 20% (since the claimant was disabled to the extent of 80%)	Rs. 9,000/-

Total loss of Income	Rs. 36,000/-
Multiplier by 14 (as per age of the victim)	x 14
	Rs.5,04,000/-

That apart, the appellant/claimant is also entitled to compensation towards non-pecuniary heads. From the documents, it is seen that he was admitted in hospital for three months.

Considering all facts and circumstances, the appellant/claimant is entitled towards loss of earning to

Rs.9,000/-, towards pain and sufferings to Rs.1,00,000/- and Rs.1,00,000/- towards future medical expenses and loss of expectation of life.

For the reasons, it is seen that the appellant/claimant is entitled to the total compensation to the tune of Rs.7,13,000/- (Rs.5,04,000/- + Rs.9,000/- + Rs.1,00,000/- + Rs.1,00,000/-) along with interest @ 6% per annum from the date of filing of the claim petition, i.e. on 23rd April, 2007 till the deposit of the amount.

It is reported that the appellant/claimant has already received Rs.3,00,000/- as awarded by the learned Tribunal without any interest.

Therefore, the appellant/claimant is entitled to the balance amount of Rs.4,13,000/- (Rs.7,13,000/- – Rs.3,00,000/-) along with interest @ 6% per annum from the date of filing of the claim petition, i.e., on 23rd April, 2007 till the deposit of the amount.

Accordingly, the respondent no.1/Oriental Insurance Company Limited is directed to deposit the enhanced amount of Rs.4,13,000/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e. on 23rd April, 2007 till the actual deposit of the amount before the office of the learned Registrar General of this Court, within six weeks from the date of this order.

The respondent no.1/Insurance Company is also directed to deposit interest @ 6% per annum on the

awarded amount of Rs.3,00,000/- by the learned Tribunal from the date of filing of the claim petition, i.e., on 23rd April, 2007 till the date of receipt of the amount by the appellant/claimant, before the office of the learned Registrar General of this Court.

The appellant/claimant is entitled to withdraw the balance award amount with interest, subject to payment of additional *ad valorem* court fees on the amount of Rs.2,13,000/- (Rs.7,13,000/- – Rs.5,00,000/-) before the learned Tribunal.

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

With the above observation, the appeal, being FMA 595 of 2010, is disposed of.

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

Records of the learned Tribunal along with a copy of this order 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.)