

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 294 of 2006
with
IA No. CAN 1 of 2005 (CAN 152 of 2005)
(Application is not in the file)

The Oriental Insurance Company Limited
Vs.
Dipu Mandal @ Dipak Mandal & Anr.

Mr. Sanjay Paul
... For the appellant/Insurance Company

None appears on behalf of the respondent/
claimant in spite of service of administrative notice issued
by this Court. This appeal is pending since 2004.

Learned advocate appearing on behalf of the
appellant/Insurance Company submitted that the appeal
may be disposed of due to long pendency.

In such circumstances, the appeal is taken up for
disposal on merit.

This appeal is directed against the judgment and
award dated 23rd September, 2004 passed by the learned
Judge, Motor Accident Claims Tribunal, Durgapur, in
connection with MAC Case No.113 of 2001 under Section
166 of the Motor Vehicles Act, 1988 whereby the learned
Tribunal awarded compensation to the tune of
Rs.2,55,000/-.

The claim petition was filed by the claimant/
injured Dipu @ Dipak Mondal in a motor accident

happened on 21st August, 2001 at about 1 p.m. while the claimant/injured was going on a motor cycle as pillion rider towards City Centre, Durgapur. At the time, one Dumper, bearing registration no.WB-37/7819, took a turn all on a sudden towards EPIP More in a rash and negligent manner and knocked down the motor cycle. As a result, the victim fell down from the motor cycle and received severe injuries on his person, particularly, in his hands and legs. He was taken to Durgapur Sub-Divisional Hospital for treatment and he was also treated at CMC Hospital, Vellore. At the time of accident, the injured was a man of 34 years having income of Rs.5,000/- per month as a two-wheeler mechanic. The said dumper, bearing registration no.WB-37/7819, was duly insured with the Oriental Insurance Company Limited.

The Oriental Insurance Company Limited contested the case by filing written objection denying all material averments of the claim petition contending, inter alia, that the claimant is not entitled to any compensation, as prayed for.

To prove the case, the claimant examined himself as PW-1 and in course of his evidence he corroborated the entire averments in the claim petition. He testified in his evidence that he was engaged in a cycle repairing works when he met with the accident and he used to earn Rs.5,000/- to Rs.6,000/- per month. The income stated by

the claimant/injured was denied in course of his cross-examination.

One Samaresh Kesh was examined as PW-2 who stated in his evidence that the claimant had a motor garage at Rajbandh where he used to repair cycles. He also claimed himself to be an eyewitness to the accident. In cross-examination, PW-2 has specifically stated as follows:-

“Dipu Mondal at present somehow works in the garage.”

In course of evidence, a good number of medical documents along with insurance policy and written complaint were admitted in evidence.

After analyzing the entire evidence along with the materials on record, the learned Tribunal assessed compensation to the tune of Rs.50,000/- towards medical expenses, Rs.40,000/- towards pain and suffering, Rs.1,20,000/- towards pecuniary loss and a sum of Rs.1,00,000/- towards future pecuniary loss totaling Rs.3,10,000/-. But after deducting Rs.55,000/-, the learned Tribunal awarded compensation to the tune of Rs.2,55,000/-.

After careful scrutiny of the evidence on record, I do not find anything to disbelieve the injury sustained by the respondent/claimant by the involvement of one dumper, bearing registration no.WB-37/7819, due to its

rash driving. I also find from the record that the said dumper was duly insured with the Oriental Insurance Company Limited.

Mr. Sanjay Paul, learned advocate, appearing on behalf of the appellant/Insurance Company did not argue on the issue of injury sustained by the claimant/respondent in the motor accident by the involvement of the dumper, bearing registration no.WB-37/7819, which was duly insured with the Oriental Insurance Company Limited. Mr. Paul only contended in respect of assessment of quantum of compensation. It is submitted by Mr. Paul that the learned Judge did not calculate pecuniary loss of Rs.1,20,000/- and future pecuniary loss to the tune of Rs.1,00,000/- properly.

It is needless to mention that the claimant/respondent did not take any plea on disability either in the claim petition or in the evidence and it also appears from the record that no disability certificate was also filed on behalf of the claimant.

From the evidence of witnesses, it is not intelligible whether the claimant had any garage of his own or work in a garage. Be that as it may, it is not disputed that he was a mechanic of a cycle and not motor cycle. PW-2 in his evidence and also in cross-examination has testified that after the accident the claimant was working in a garage presently.

Considering the materials on record, particularly, the medical documents, I propose to modify the compensation as follows:

Towards pain and suffering Rs.50,000/-

Towards Medical Expenses Rs.50,000/-

With regard to the pecuniary loss, if I come to the claim petition, I find that the income of the claimant was Rs.5,000/- per month, though in his evidence, he claimed Rs.5,000/- to Rs.6,000/- per month. However, no document has been filed in this case in support of ownership of the garage. Even if I take Rs.5,000/- per month, I find that the claimant was engaged in treatment not more than a year and it is evident from the record that he is working in the garage presently. However, after calculating the pecuniary loss for a year after considering the monthly income of Rs.5,000/-, it comes to Rs.60,000/-.

Thereby the claimant is entitled to compensation to the tune of Rs.1,60,000/- (Rs.50,000/- + Rs.50,000/- + Rs.60,000/-).

Accordingly, the appellant/Oriental Insurance Company Limited is directed to deposit the entire awarded amount of Rs.1,60,000/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e., on 11th December, 2001 till the actual deposit of the amount after adjustment of statutory amount of Rs.25,000/-

before the office of the learned Registrar General of this Court, within six weeks from the date of this order.

The claimant/respondent is entitled to withdraw the entire compensation amount with interest.

The learned Registrar General is requested to disburse the amount with interest and accrued interest to the claimant/respondent on proper identification and proof.

In the result, the appeal, being FMA 294 of 2006, succeeds and stands disposed of on merit along with the application, being CAN 1 of 2005 (CAN 152 of 2005).

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

Department is directed to inform the claimant regarding disposal of this appeal, forthwith.

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.)