

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Bibhas Ranjan De

F.M.A 152 of 2012

With

CAN 1 of 2011 (CAN 6515 of 2011)

(Application not in the file)

Mir. Md. Mobin Ahammed @ Mir Mobin

Ahammed @ Mir Md. Mobin Ahmed

Vs.

Modan Gopal Chatterjee & Anr.

For the Appellant/
Claimant

:Mr. Subrata Bhattacharjua, Advocate
Mr. Indranuj Dutta

For the Respondent No. 2/
Insurance Co.

:Ms. Rajesh Singh, Advocate

Hearing concluded on
Judgment on

: December 05, 2022
: January 04, 2023

Bibhas Ranjan De, J.

1. This appeal involved in a Motor Accident Claim Case under Section 166 of the Motor Vehicles Act, arising out of the claim petition filed by the injured himself.
2. In the accident which occurred on 04.03.2006, Mir Md. Mabin Ahamad @ Mir Mobin Ahamad, aged about 51 years, claimed to have worked as driver of the Bus bearing no. WB11A/2846 owned by one Mujibur Rahaman, earned Rs. 6,000/-. Injured further claimed that on the alleged date of accident at about 2.50 p.m. injured was travelling by a bus bearing 37A/6666 from Suri towards his house and the said bus was running with high speed and due to rash driving said bus capsized. As a result, claimants sustained injury on person and was sent to Dubrajpur Hospital wherefrom he was shifted different hospital one after another. After the accident Khairashole PS case No. 8 of 2006 dated 04.03.2006 was started and after

investigation charge sheet was filed against the driver of the bus no. WB 37A/6666.

3. New India Assurance Company/ respondent of this appeal entered appearance and contested the claim petition by filing a written statement. Specific case of the Insurance Company that there was no negligence on the part of the driver of the bus bearing no. WB 37A/6666 and claimant did not suffer any injury hereby.

4. To prove the case claimant/appellant examined himself as PW-1 who corroborated all the statements made in the claim petition with a prayer for compensation to the tune of Rs.6,64,400/-.

5. In cross-examination injured testified that he came to Court to depose after travelling 30 k.m.by a mini bus. He denied the all suggestions thrown to him during cross examination.

- 6.** PW-2, Ranjit Mukherji, claimed himself to be an eye-witness to the accident due to rash and negligent driving of the bus no. WB37A/6666 and as a result many passengers including claimant sustained injury. He also supported treatment of claimant in different medical institutions.
- 7.** PW-3, Sukur Khan, also claiming himself to be an eye witness to that accident corroborated the same.
- 8.** PW-4, Dr. Abir Banerjee, Block Medical Officer, Dubrajpur Primary Health Centre, District Birbhum has deposed that on 04.03.2006 he treated claimant in the emergency department of the hospital. He submitted injury report which was admitted as exhibit 10 and 10/1. He referred the claimant to Sub Divisional Hospital Suri for better management. Cross-examination of this witness reveals that he had no knowledge about the accident. But, he stated that injured passengers came to his health centre after the accident.

9. PW-5, Mujibar Rahaman, claimed himself as owner of the bus bearing no. WB11A/2846 and claimant was the driver of the bus. He issued income certificate marked as exhibit 12.

10. PW-6, Rabindranath Singha, a panel investigator of New Indian Assurance Company Ltd. who stated as follows

“Md. Mobin Ahamad was the victim of the case. On investigation I found that he was the driver of bus bearing no. WB 37A/6666 who was coming from Suri to Haripur. The bus was capsized near Pandra Gita Bhavan Patharkuchi village at about 2.50 p.m. the injured (sic) handed over to me medical papers including disability certificate. I investigate into the matter and found the disability certificate as genuine.....” The report of the investigator was admitted as exhibit 13.

11. PW-7, Samir Mukherji, claimed himself to be an upper division assistant attached to Asansol SD Hospital, testified

that on 28.12.2006 one Medical Board was constituted to issue handicapped certificate which was filed and marked as exhibit 14.

12. In course of their evidence a good number of documents were marked as exhibit 1 to 14 including FIR, Charge sheet, seizure list, treatment sheet, injury report, investigation report of, panel investigator by Insurance Company, disability certificate etc.

13. Ld. Tribunal after considering all evidence on record, assessed monthly income of the injured as Rs. 3,500/- i.e. 42,000/- per annum. After applying multiplier 11 he assessed compensation at Rs. 2,34,800/- after reducing the percentage of disability from 70% to 40%, including Rs. 50,000/- as non-pecuniary damages.

14. Not satisfied with the quantum of compensation, claimant has filed the present appeal.

15. Both the Ld. Advocates appearing on behalf of the contesting parties to this appeal were *adi dem* with the observation of the Ld. Tribunal regarding following issues:-

A. Accident occurred on 04.03.2006 due to rash and negligent driving of the bus bearing no. WB37A/6666

B. Income of the injured

C. Age of the injured

16. Therefore, I find hardly any scope to discuss on the aforementioned issues. In this appeal entire argument was revolving around the disability certificate and authority of the tribunal to reduce the percentage of disability.

17. Ld. Advocate, Mr. Subrata Bhattacharjya, appearing on behalf of the appellant has submitted that Ld. Tribunal reduced the percentage of disability without any reason. Mr. Bhattacharjya referred to the observation of the Ld. Tribunal on that issue.

18. In opposition to that, Ld. Advocate Mr. Rajesh Singh, appearing on behalf of the respondent has contended that there is no evidence on record that claimant was too unable to do any other work. Mr. Singh also referred to cross-examination of the injured wherefrom it would reveal that claimant undertook a journey of 30 kms to attend Court to depose. According to Mr. Singh it was not possible for a person having 70 % disability to undertake a journey of 30 kms that too by a mini bus.

19. However, before going into the contention of the parties, I find it profitable to reproduce the observation of the Ld. Tribunal on this issues, as follows:-

“Immediately after the accident the claimant, victim was taken to Dubrajpur B.P.H.C P.W. 4 treated the claimant on 4.3.06 at about 3.00 P.M. and on examination he found injury on the right chest wall including ribs and

including ribs and right shoulder of the claimant. Ext. 10 is the ticket of such treatment and ext. 10/1 is a Certificate as to injury of the claimant. It is articulated by the claimant that after first aid treatment at Dubrajpur B.P.H.c he was taken to S.D. Hospital at Asansol and therefrom was shifted to Kedarnathji Memorial Hospital, Raniganj and therefrom to New Florance Nurshing Home, Asansol and therefrom he was shifted to Nightingale Diagnostic Centre Pvt. Ltd., Kolkata and also so many Hospitals and Doctors. Excepting the Doctor of Dubrajpur B.P.H.C no doctor of any Hospital has come forward to substantiate the nature of the injuries sustained by the claimant. P.W. 7 is a U.D. Assistant of Asansol S.D. Hospital has proved the physical Handicapped Certificate issued by the Medical Board of Asansol Sub-Division Hospital. The said

certificate (Ext. 14) speaks that the claimant sustained multiple fracture of 6th 7th and 8th ribs of right chest wall injuries and has become a permanently disabled person to the extent of 70% Ld. Advocate appearing the Insurance Company has drawn my attention to a decision of our parent High Court reported in 2005 (1) T.A.C. 66 (Sudhir Bhuiya vs. National Insurance Co. Ltd.) and submitted that when neither of the Doctor of Medical Board have come forward to substantiate the nature of disability, the contents of the document (Ext. 14) has become a worst piece of hear-say evidence. According to the observation of the Hon'ble Court, Handicapped Certificate cannot be considered as sacrosanct because the Insurance Company did not get opportunity to cross-examine the Doctor to ascertain the nature of disability whether due to such disability the claimant being driver

would not be able to drive the vehicle. Ld. Advocate for the claimant has placed reliance to a decision reported in AIR 1976 S.C. 222 (P.N. Singh Deo- vs. Sri Nivas Subata and another) and submitted that when in that decision the loss of left hand of the carpenter was considered as 100% loss of his earning capacity such principle may also be applied here. The decision referred by the Ld. Advocate for the claimant could not inspite me because in case of carpenter loss of one hand means, loss of his earning capacity because a carpenter cannot perform his job any single hand. But in our case hands and legs of the claimant were not affected in any way and, therefore, being a driver it cannot be said that both the case are identical in nature. There is no evidence whatsoever that due to such injuries suffered by the claimant in the

said accident, he is not position to continue his profession as driver.

Therefore, percentage of disability assessed by the Medical Board showing disability of the claimant to the extent of 70% appears to be exaggerated. However, taking into consideration of the fact that the claimant had sustained injuries of fracture of 3 ribs of his right of his right chest wall, I assess the disability to the extent of 40% for the purpose of this case.”

20. The entire evidence on record together with the observation of the Ld. Tribunal boils down to the following results:-

A. appellant injured was treated in different medical institutions. Immediately after the accident injured was taken to Dubrajpur Primary Health Centre and the doctor attached to the said Health Centre (PW-4) treated him on the alleged

date of accident. He testified before the Tribunal and explained the injury on the right chest wall and right shoulder. He referred the injured to Asansol, Sub Divisional Hospital for better management. Unfortunately, claimant/injured failed to examine any other doctor from any other hospital or nursing home to prove the severity of the injury.

B. Disability certificate was proved by one UD Assistant of Asansol SD Hospital. Naturally, no doctor of the Medical Board was examined by the Tribunal with a view to provide an opportunity to the respondent/ Insurance Company to cross examine any of the doctors of the Medical Board to ascertain the ability of the claimant to continue with his job of driving.

In this regard, Ld. Tribunal rightly relied on the authority of

Sudhir Bhuiya v. National Insurance Company Ltd.

Reported in **2005 (1) TAC 66** where Hon'ble Court held that handicap certificate can not be considered as sacrosanct as

Insurance Company did not get opportunity to cross-examine the doctor to ascertain the nature of disability.

C. Admittedly, claimants did not receive any injury on his hands and legs.

D. From the cross examination claimant/injured it appears that he undertook a journey of 30 kms. by a mini bus to attend Court to depose.

21. In terms of aforesaid reasons, I am unable to disagree with the Ld. Tribunal with regard to reduction of percentage of disability from 70% to 40%.

22. In the result appeal fails. The judgement and award passed in MAC Case No. 45 of 2007 stands affirmed.

23. All pending applications, if any, stand disposed of.

24. Let a copy of this judgement along with the Tribunal record be transmitted back at once.

- 25.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]