

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 676 of 2006

Kibria Sk.
Vs.
Asit Baran Kundu & Anr.

Mr. Subrata Bhattacharya
... For the appellant/claimant

Mr. Rajesh Singh
... For the respondent no.2/Insurance Co.

This appeal is filed challenging the judgment and order passed on 24th March, 2005 by the learned Judge, Motor Accident Claims Tribunal, 3rd Court, Burdwan, in connection with MAC Case No.28 of 2005 whereby the learned Judge awarded compensation to the tune of Rs.1,54,000/-.

The claim petition arose out of an application filed under Section 163A of the Motor vehicles Act, 1988 on account of injury sustained by the claimant Kibria Sk. on 10th November, 2003 at about 8.00 a.m. by the involvement of one Bus, bearing registration no.WGB-4275, which was proceeding towards Memari from Chuadanga and the accident took place at Madhamgram. The claimant sustained injury all over his body and admitted to hospital and finally his left leg was amputated. At the relevant point of time, the claimant used to earn

Rs.4,500/- per month through his fish business and he was aged about 32 years.

Owner of the offending vehicle did not contest the claim petition but the National Insurance Company Limited contested the case by filing written statement denying all contents of the claim petition contending, inter alia, that the claimant did not sustain any injury by the involvement of the bus.

In course of trial, only the claimant examined himself as PW-1 and in course of his evidence, Disability Certificate, Discharge Certificate of Burdwan Medical College and Hospital, Insurance Policy and Panchayat Certificate were filed.

Learned Tribunal after considering the evidence on record assessed notional income of Rs.15,000/- per annum as the claimant could not prove the income by adducing any substantive evidence. Learned Tribunal also did not consider the Disability Certificate as it was not substantiated by the evidence of doctor and finally the learned Tribunal awarded a lump sum amount of Rs.1,54,000/- towards compensation.

In this appeal the accidental injury sustained by the appellant/claimant by the involvement of the bus has not been disputed. In course of argument, learned advocate appearing on behalf of the appellant/claimant has submitted that left leg of the claimant was amputated

during treatment at Burdwan Medical College and Hospital and in support of his argument, he has referred to the Disability Certificate and Discharge Certificate issued by the Burdwan Medical College and Hospital.

From the entire record, I find that the documents relied on by the appellant/claimant were all filed before the learned Tribunal but the learned Tribunal neither admitted those documents in evidence nor returned those documents to the appellant/claimant. On the other hand, the documents filed on behalf of the claimant before the learned Tribunal were not produced and proved according to the procedure prescribed therefor.

In these circumstances, no option is left to this Court but to remand back the case to the concerned learned Tribunal for giving an opportunity to the appellant/claimant to prove those documents and dispose of the application under Section 163A of the Motor Vehicles Act, 1988 according to the procedure prescribed in the Second Schedule of the said Act as this is a case arose out of an accident which alleged to have taken place on 10th November, 2003.

With the aforesaid observation, the judgment and order passed by the learned Tribunal on 24th March, 2005 in connection with MAC Case No.28 of 2005 stands set aside.

The case is being remanded back to the learned Tribunal for disposal of the said MAC Case No.28 of 2005

under Section 163A of the Motor Vehicles Act, 1988 afresh after giving an opportunity to the parties with regard to prove all the documents filed on the record on behalf of the appellant/claimant.

Learned Tribunal is also requested to dispose of the claim case preferably within three months from date as it is pending since 2003.

With the above observation, the appeal, being FMA 676 of 2006, 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.)