

22.9.2023
SL No.35
Court No. 551
Ali

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

**FMA 791 of 2016
IA No.:CAN/2/2018 (Old No.:CAN/1377/2018)**

**Palton Hansda
Vs.
Anil Murmu**

Ms. Sima Ghosh
Ms. Sabina Khatun.
....for the Appellant-claimant.

Ms. Anita Khatri
...for the respondent.

The instant appeal has been preferred against the judgment and award dated 19th of March, 2010 passed by learned Judge, Motor Accident Claims Tribunal, 2nd Court, Suri, Birbhum in M.A.C. Case No. 206 of 2005.

The brief fact of the case is that the present appellant has preferred an application before the learned tribunal for getting compensation on the ground that he suffered severe injuries by an accident on 30th December, 2002 due to rash and negligent driving of the driver of the offending vehicle bearing No.WB-53/3380 (Tractor) alongwith Tractor being No. WB-53/3441. Admittedly, the offending Tractor including the Tractor was not insured under the policy of the insurance company. Thus the owner of the Tractor and the Tractor was made party before the learned tribunal. The owner did not contest the claim case. After hearing the claimant, the learned tribunal

has proceeded to hear the matter ex-parte and dismissed the claim case ex-parte.

Being aggrieved by and dissatisfied with the said order/judgment, the present appeal has been preferred.

The owner is made party as respondent to this appeal. The notice of appeal was served upon the respondent but he did not turn up. Thus before hearing the argument Administrative Notice was issued upon the respondent. The respondent received the notice but did not turn up. Consequently, the Calcutta High Court, Legal Services Committee was requested to appoint one advocate. Ms. Anita Khatri, learned advocate appointed by the Calcutta High Court, Legal Services Committee to represent the respondent before this appellate court.

Heard the learned advocate for the appellant also heard the learned advocate for the respondent duly appointed by the Calcutta High Court, Legal Services Committee. Perused the impugned judgment it was stated in the judgment that the petitioner/appellant was the cleaner-cm Khalasi of the offending vehicle. On 30th December, 2000 when the said vehicle was proceeding towards Sitasol from Lijuri. The driver of the vehicle was driving very rash and negligent manner, as a result the Tractor including the Trolley were capsized. By such accident

the appellant sustained severe injuries and he was initially referred to the Suri Sadar Hospital. Therefrom he was shifted to Burdwan Medical College and Hospital and thereafter to N.R.S. Medical College and Hospital. Furthermore, the NRS Medical College and Hospital also referred the present appellant to S.S.K.M. Hospital, Kolkata. In S.S.K.M. Hospital his leg is amputated to save his life. It is the case of the claimant that he became permanent disabled due to such accident. The owner of the vehicle did not pay any compensation to the claimant. Moreso, he also did not inform the matter to the police. Consequently, after discharge from the hospital he could able to manage to file an application before the learned Magistrate under Section 156 of Clause 3 CrPC. On the basis of which one police case was started against the driver of the offending vehicle and it was ended in charge-sheet. On the basis of the self-same fact the claimant/appellant appeared before the learned tribunal. The disability certificate issued by the Suri Sadar Hospital was filed including the medical papers and police papers. All of the documents are marked before the learned tribunal. The learned tribunal heard the matter and dismissed the same ex-parte on the ground that the referral medical papers of Suri medical College and Hospital including the Burdwan Medical College and Hospital

mentioned the injuries to be a road traffic accident with lacerated injury over the back on lower 1/3rd of thigh and upper 1/3rd of right leg. The learned tribunal has dismissed the claim case on the ground that no document was filed by the claimant to prove that how his leg was amputated due to such lacerated injuries. On that score, learned tribunal has disbelieved the claimant and dismissed the same.

Learned advocate for the appellant submits that the tribunal has committed error for dismissing the claim case. The appellant is a very poor person and was a cleaner –cum Khalasi of the offending Tractor and Tractor. He was solely dependent upon the owner of the vehicle who did not file any FIR before the police and also not paid any compensation. He further argued that the claimant was a Khalasi whose leg was amputated by such accident. Learned tribunal has erroneously disbelieved the fact so in this case the claimant is entitled to get just and proper compensation. He further argued that in considering the ratio of the judgment of Hon'ble Apex Court passed in **Raj Kumar Vs. Ajoy Kumar** the functional disability of the claimant is required to be calculated 100%.

Learned advocate for the respondent submits that the learned tribunal has discussed the entire materials on record and the finding of the

learned tribunal is very much correct. The lacerated injury of a person cannot result to the amputation. No documentary evidences were produced before the learned tribunal regarding the cause of amputation of the claimant. Thus, the impugned award passed by the learned tribunal is sustainable.

Heard the learned advocates perused the paper book including the LCR. It appears from the LCR that the Medical papers were filed by the claimant. The Referral Court of Burdwan Medical College and Hospital indicated the lacerated injury over the right leg and it has been specifically mentioned that gross skin and flesh has been lost. The so called lacerated injury over the right leg of the petitioner was so severe that the Burdwan Medical College and Hospital referred the patient to the N.R.S. Medical College and Hospital. N.R.S. Medical College and Hospital after receiving the patient has mentioned it is a RTA case and lacerated injury has been noted. The injury was very serious thus the patient was shifted again to the S.S.K.M. Hospital after referring from N.R.S.N.C.H. The patient was placed before the S.S.K.M. Hospital and Xerox was done at the right leg and it was advised that the patient may be admitted to the Hospital. It is the case of the appellant that after his admission to the S.S.K.M. Hospital to save his life his right leg

was amputated. It is true that the record of amputation of the leg is not placed on the record but the simple lacerated injury which can be repaired by any hospital could not possible to cure the claimant and he was referred to the highest Hospital of the State that too referred by another super specialist Hospital i.e.; N.R.S. Considering the entire medical papers it appears to me that the lacerated injury though appear to be lacerated but it was not so simple and he ultimately admitted to the S.S.K.M. Hospital and his leg was amputated. I find no justification to disbelieve the fact of the claimant in this case. Moreover, the final report of the police disclosed that the claimant has lost his leg by amputation due to the injury sustained by him in the accident. Accordingly, I find that the observation of the learned tribunal regarding the disbelieve ability of the case of the claimant is erroneous. Claimant should have awarded the just compensation.

In this case, in considering the just and proper compensation of the claimant it is pleaded by the claimant that he was a Khalasi and he used to earn Rs. 1,500/- per month. In this case, he is entitled to get the future prospects which would be added 40% of his establish income. The claimant was within the age group of 31-35 at the time of accident, thus, the applicable multiplier of this case

1. Yearly Income	Rs.18,000/-
Add 40% Future Prospect.....	<u>Rs.7,200/-</u>
	Rs. 25,200/-
2. Multiplier 16	
(Rs.25,200/-X 16).....	Rs.4,03,200/-
3. Add: Loss of amenities,	
(non pecuniary) pain and suffering ..	Rs. 2,00,000/-

4. Future Treatment.....Rs. 1,00,000/-

Total compensation..... Rs. 7,03,200/-

So the just compensation of this case comes to
Rs. 7,03,200/-

The owner of the vehicle i.e. the respondent is directed to pay the compensation along with interest @ 6% per annum from the date of filing of the claim case. The owner is not represented before this tribunal. Accordingly, the appellant is directed to recover the same compensation amount from the owner by filing an execution proceeding before the learned tribunal by adopting the required formalities. The alleged accident happened in the year 2000, now we have already passed 23 years: considering the same situation the learned tribunal is directed to act promptly in disposing of the execution proceeding.

Let a copy of this order alongwith LCR be sent down to the learned tribunal immediately for compliance.

The instant FMA 791 of 2016 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.)