

19.07. 2023
item No.7
n.b.
ct. no. 551

FMA 245 of 2012

**Poly Poddar @ Paly Poddar
Vs.
Divisional Manager, United Insurance
Co. Ltd. & Anr.**

Mr. Saidur Rahaman,
..... for the appellant.
Mr. Arabinda Kundu,
.... For the respondent.

The instant appeal has been preferred against the order dated 24.5.2011 passed by the learned Judge, Motor Accident Claims Tribunal, 2nd Court, Dakshin Dinajpur at Balurghat in M.A. C. Case No. 181 of 2008 under Section 166 of the Motor Vehicles Act, 1988.

The present appellant is the lady, who alleged to have been suffered an accident and she filed the claim case for getting compensation.

The brief fact of the case is that on December 20, 2007 at about 6.30 hours the victim/claimant was boarded on a Auto Rikshaw bearing WB-61/3463 which was proceeding towards the Gangarampur at very high speed in a rash and negligent manner when it reached at Kalitala near Chunabhati, the driver lost his control over the vehicle and capsized by the side of the road. In the said accident, claimants sustained severe injuries on her

person and he was admitted to the hospital. Due of such accident, she sustained fracture injury of her pelvish and shaft femur (left). Thus, the lady was admitted to the hospital for more than six months. The lady filed the claim application for getting compensation. The claim case was contested by the Insurance Company by filing written statement.

After hearing the parties, the learned Tribunal has awarded Rs.15,000/- only towards compensation. The claimant/appellant is before this Appellate Court for enhancement of the awarded amount.

Learned advocate for the appellant submitted before this Court that the impugned award of compensation is very meager. He pointed out that the lady was aged about 45 years suffered the injuries in a road traffic accident. She was admitted to the hospital for more than six months due to fracture injury of her pelvish and shaft femur (left). Consequently, it can be presumed that it is not possible for the lady to carry out his normal living. He submitted the learned Tribunal has committed mistake by not awarding sufficient compensation.

He prayed for enhancement of the compensation.

Learned advocate appearing on behalf of the Insurance Company submitted before this court that the impugned award was passed by the learned Tribunal out of generosity. The alleged accident was never proved before the learned Tribunal. No police case was registered

on the basis of the accident. Consequently, there were no police investigation. Copy of the FIR, charge-sheet were not produced before that learned Tribunal. One witness appeared before the learned Tribunal alleged to have saw the accident, but the person having residence more than forty kms. away from the place of accident. So the evidence of P.W. 2 cannot be believed. He further pointed out that the lady may have suffered a fracture injury but it is not possible to ascertain that such injury was caused due to rash and negligent driving of the offending vehicle. The impugned award passed by the learned Tribunal on the basis of the presumption and the award passed by the learned Tribunal out of generality cannot be enhanced at this stage.

Hared the learned advocates, perused the materials on record and perused the evidence of P.W. 1 and P.W.2. It is true that no document of police investigation or police case was filed to prove the accident; only the statement of P.W. 1 and P.W. 2 is there. The P.W. 1 stated in her cross-examination in chief that there was a prior police case against the said offending vehicle. However, no such FIR of the police case was produced before the Learned Tribunal. On observing the view of the learned Tribunal, it appears to me that the learned Tribunal has placed the burden upon the Insurance Company that the Insurance Company could not disprove the factum of rash and negligent driving.

This is the case under Section 166 of the M.V. Act wherein the claimant has the liability to prove the negligent driving of the offending vehicle of this case. The evidence of P.W. 1 and P.W.2 are if read out conjointly then also the rash and negligent driver of the offending vehicle could not be proved. The observation of the learned Tribunal regarding liability of the insurance company to disprove the fact of the claimant is not the proper prospective of law.

Considering the same, I find that the award has been already passed by the learned Tribunal which was received by the claimant. At this juncture, I find no merit to further extent the award. I make it clear that the accident as alleged by the offending Auto Rikshaw bearing WB-61/3463 was not specifically proved by the claimant before the learned Tribunal.

However, considering the entire facts and circumstances of the case, I find no merit to entertain the instant appeal.

Thus, the appeal appears not meritorious and it is rejected.

Accordingly, FMA 245 of 2012 is disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Subhendu Samanta, J.)