

21.09.2023
SL No.12
Court No. 551
Ali

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

**FMA 470 of 2009
IA No: CAN/1/2015 (Old No:CAN/8674/2015)**

**Sri Bikash Chandra Gupta
Vs.
National Insurance Co. Ltd. & Anr.**

Mr. Krishanu Banik
..... for the appellant-claimant.

Mr. Rajesh Singh
...for the respondent No. 1 insurance Co.

The instant appeal is preferred against the judgment dated 16th June, 2008 passed by learned Judge, Motor Accident Claims Tribunal, 2nd Court, Burdwan in M.A.C. Case no. 94/201 of 2007.

The brief fact of the case is that the present appellant has preferred an application under Section 166 of the MV Act before the learned tribunal for getting compensation on the ground that he sustained a severe injuries on his person due to rash and negligent driving of the driver of the offending vehicle and he became permanently disabled to the tune of Rs. 60%.

On considering the claim before the learned tribunal and the objection filed by the insurance company; the learned tribunal has awarded a lump sum amount of Rs.55,000/- towards the compensation in favour of the claimant alongwith 6% interest from the date of filing of the claim application.

Being aggrieved by and dissatisfied with the said award the present appeal has been preferred.

The learned advocate for the appellant submits that the learned tribunal has committed error for not awarding the compensation on the basis of structure formula as guided by the Hon'ble Apex Court in several judgments including the judgment of **Sarla Verma**. He also argued that the learned tribunal has committed error for not assessing the monthly income of the deceased. Several documents were filed before the learned tribunal which was not considered at all. He specifically argued that the documents were placed before the learned tribunal but they were not at all exhibited. He again argued that the learned tribunal also not considered the exhibit-1 i.e. the disability certificate issued by a doctor, instead of fact that the doctor appeared before the learned tribunal as PW-2 to prove the disability certificate. During the argument, learned advocate for the appellant has cited decisions of Hon'ble Supreme Court passed in **R.D. Hattangadi** regarding the principle that in all cases of compensation, the two types of damages has to be calculated by the tribunal i.e. pecuniary damages and non pecuniary damages. He also cited the decision of Hon'ble Apex Court passed in **D. Sampath** and **B. Lakshmana Etc** wherein the Hon'ble Apex Court has specifically guided that the percentage of disability certificate assessed by a

doctor cannot be disputed by the tribunal. The tribunal has to assess the compensation on the basis of the disability certificate. He also submitted a judgment of the Co-ordinate Bench of this court wherein the direction of Hon'ble Supreme Court passed in **D. Sampath** was followed in deciding the disability of a claimant.

Learned advocate appearing on behalf of the insurance company submits that the learned tribunal has not committed any error. The learned tribunal has perused the entire case properly and the impugned judgment itself. The view of the learned tribunal has been correctly discussed by speaking order. He submits that the learned tribunal is of opinion that the disability certificate and the injuries as stated by the claimant during his examination-in-chief are not at all identical or same. On that score, the learned tribunal had no opportunity to proceed to assess the compensation according to the structure formula. However, learned tribunal has also considered the income of the claimant and documents thereof. The learned tribunal only after perusing the injuries sustained by the present claimant, the award was passed on the lump sum basis. There is no error in the impugned judgment.

Heard the learned advocate perused the materials on record.

In considering the impugned judgment as well as the LCR it appears to me that the several documents were placed before the learned tribunal to assess the income of the present appellant. It appears from the inner pages 4, 5 and 6 of the impugned judgment that the learned tribunal has considered the documents filed by the claimant though they were not properly exhibited. It further appears that the learned tribunal in the impugned order has placed his reliance upon the validity and correctness of the documents and their signature and indication thereof has also been specifically noted. So, considering the aspects it appears to me that it is not a good argument that the documents filed by the appellant before the learned tribunal was not considered. Rather, the learned tribunal has considered all the materials and documents assessed their probative value though they are not exhibited according to the Law.

However, I find there is no justification or any point to differ the view of the learned tribunal in respect of the income of the claimant. In considering the evidence of PW-1 alongwith the exhibit-1 i.e. the disability certificate, it appears that during the examination-in-chief the PW-1 has stated that after such accident he sustained severe injuries in his hand and leg. Furthermore, he stated that he was in a supposition that his leg and hand may be amputated due to the injuries of such accident but

in perusing the exhibit-1 i.e. the disability certificate, it appears that the injury was sustained by the claimant at neck. The certificate and the note was done by the doctor himself and it was admitted by the PW-2/doctor, who appeared before the learned tribunal.

Let me consider the view of the Hon'ble Apex Court passed in **D. Sampath**. In paragraph 5 it has been specifically directed by the Hon'ble Apex Court ***"We hastened to add that we are not saying that under all circumstances, the Court has to blindly accept the Disability Certificate produced by the claimant. The Court has the discretion to accept either totally or partially or reject the Certificate so produced and marked in the trial but, that, can be done only by assigning cogent and acceptable reasons"***.

In considering the direction of the Hon'ble Apex Court **D. Sampath** and also in perusing the disability certificate issued by the Board of doctor and the PW-1. It appears to me that the disability certificate issued by the doctor to that of the injuries sustained by the injured in the alleged accident is not at all acceptable. Appellant may have suffered injuries as his neck which is not due to the result of alleged accident.

It is true, that in all cases under Section 166 of MV. Act or under Section 163-A of MV. Act the compensation has to be awarded on the basis of

structure formula. The structure formula can only be adopted if there is any specific loss of income by the injured or the deceased in this case. The loss of income was not at all proved by the claimant before the learned tribunal. More so, the learned tribunal is of view that the business of the claimant was not hampered due to such accident; the view of the learned tribunal is on the basis of documents as filed before him. The observation of the learned tribunal appears to me justified and cogent. Considering the same I find no justification to entertain the instant appeal.

Thus, I find no merit.

Hence, it is liable to be dismissed.

Accordingly, the instant FMA 470 of 2009 is dismissed.

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.)

