

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 148 of 2005

Master Indrajit Sardar
Vs.
The New India Assurance Company Ltd. & Anr.

Mr. Krishanu Banik
... For the appellant/claimant

Mr. Parimal Kumar Pahari
... For the respondent no.1/Insurance Co.

This appeal is directed against the judgment and award dated 20th April, 2004 passed by the learned Judge, Motor Accident Claims Tribunal, 12th Additional District Judge, South 24-Parganas, Alipore, in connection with MAC Case No.35 of 2001 under Section 163A of the Motor Vehicles Act, 1988 whereby the learned Judge awarded compensation to the tune of Rs.95,000/-.

The claim petition was filed on account of injury sustained by one Indrajit Sardar, aged about 8 years, being a school student, in a motor accident occurred on 8th March, 2001 at about 10.30 hours by the involvement of one Mini Bus, bearing registration no.WB-19/6460. After the accident, he was treated in the NRS Medical College and Hospital. After the accident, Mathurapur Police Station Case No.17 under Sections 279/338 of the Indian Penal Code was started. That is why the claim petition has been filed with a prayer for compensation to the tune of Rs.3,00,000/-.

Owner of the offending vehicle did not contest the claim petition but the New India Assurance Company Limited contested the claim petition by filing written statement denying all claim contending, inter alia, that the claimant/injured did not sustain any injury due to motor accident and the Insurance Company is not liable to pay any compensation at all.

To prove the case, the claimants examined as many as four witnesses, namely, Tarun Sardar, being the father of the injured/claimant, as PW-1 who corroborated the entire claim petition. One Sankar Bhattacharya was the doctor who issued the Disability Certificate to the extent of 40% was examined as PW-2. In his examination, he testified that on 17th January, 2004 he examined the patient and he consulted with all the paper of the NRS Medical College and Hospital, Discharge Certificate etc. and after perusing all the materials/documents, he issued the permanent partial Disability Certificate to the extent of 40%.

One Dipasom Sardar, an eyewitness to the accident, has testified that he saw the accident when Indrajit Sardar sustained injury by the involvement of one Mini Bus, bearing registration no.WB-19/6460, which was running rashly and in negligent manner. PW-4, mother of the injured, also deposed that on 8th March, 2001 at about 10.30 a.m., she was taken her son to school, a Mini Bus, bearing registration no.WB-19/6460, dashed her son and

herself near Jalghata Bus Stop. As a result, her son sustained injury and treated at Satyajit Nursing Home as well as NRS Medical College and Hospital for three months.

In course of evidence, a good number of documents, including First Information Report, Discharge Certificate, Disability Certificate and all documents relating to the offending vehicle were admitted in evidence.

In course of argument, Mr. Krishanu Banik, learned advocate appearing on behalf of the appellant/claimant/injured has relied on a case of **Kurvan Ansari alias Kurvan Ali & Anr. v. Shyam Kishore Murmu & Anr.** reported in **2022 ACJ 166** wherein the Hon’ble Apex Court assessed notional income of Rs.25,000/- and in that case the Hon’ble Apex Court dealt with an accident of a boy of 7 years in the year 2018 unlike our case where accident took place in the year 2001.

Considering the facts and circumstances, I find it would be proper to assess the notional income of the boy at Rs.20,000/- per annum.

From that point of view, I determine the compensation as follows:-

Annual Income	Rs. 20,000/-
Less: Deduction 60% (since the claimant was disabled to the extent of 40%)	Rs. 12,000/- ----- Rs. 8,000/-
Multiplier by 15 (as per age of the victim)	X 15 ----- -----

	Rs.1,20,000/-
Add: Non-Pecuniary Damages	Rs. 15,000/-

Total	Rs.1,35,000/-
Less – Awarded by ld. Tribunal	Rs. 95,000/-

ENHANCEMENT	Rs. 40,000/-

It is reported that at the time of accident the injured was aged about eight years. Now, he has become major by lapse of time. Mr. Banik, learned advocate, has also relied on a photocopy of the Aadhaar Card issued in favour of the injured/claimant showing his attainment of majority.

In these circumstances, it is seen that the appellant/claimant/injured is entitled to the total compensation to the tune of Rs.1,35,000/-. It is reported that the appellant/claimant/injured has already received Rs.95,000/- as awarded by the learned Tribunal without any interest.

Therefore, the appellant/claimant/injured is entitled to the balance amount of Rs.40,000/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e., on 11th May, 2001 till the deposit of the amount as well as interest @ 6% per annum on the amount of Rs.95,000/- from the date of filing of the claim petition, i.e., on 11th May, 2001 till the date of receipt of the amount of Rs.95,000/-.

Accordingly, the respondent no.1/New India Assurance Company Limited is directed to deposit the

enhanced amount of Rs.40,000/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e. on 11th May, 2001 till the actual deposit of the amount before the office of the learned Registrar General of this Court, within six weeks from the date of this order.

The respondent no.1/Insurance Company is also directed to deposit interest @ 6% per annum on the amount of Rs.95,000/-, which was deposited by the Insurance Company and already withdrawn by the claimant/injured, before the office of the learned Registrar General of this Court from the date of filing of the claim petition, i.e., on 11th May, 2001 till the date of receipt of the amount on behalf of the claimant/injured.

The learned Registrar General is requested to disburse the amount with interest to the appellant/claimant/injured on proper identification.

With the above observation, the appeal, being FMA 148 of 2005, 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.)