

S/L No.12
02.02.2023
Ct-237
(PA.RD)

FMA 641 of 2011
in
IA No. CAN/3/2015 (Old No: CAN/6193/2015)

Jayanta Jash
Vs
New India Assurance Co. Ltd & Anr.

Mr. Uday Sankar Chattopadhyay, Adv.
Mr. Suman Sankar Chattopadhyay, Adv.
Mr. Santanu Maj, Adv.
Ms. Singdha Saha, Adv.
Mr. Rajashree Tah, Adv.
Mr. Gourab Das, Adv.

... for the Appellant

Mr. Saibalendu Bhowmik, Adv.
Mr. Rajsekhar Basu, Adv.

.....for the Respondent

This appeal is directed against the judgment and award passed by the Ld. Motor Accident Claims Tribunal, 2nd Court, Burdwan in connection with Motor Accident Claim Case no.77 of 2009 previously registered as 7 of 2006 and 15 of 2006 under Section 166 of the Motor Vehicles Act, whereby, Ld. Tribunal awarded compensation to the tune of Rs. 25,000/- along with interest @ 6% per annum from the date of filing of the application till payment.

The claim petition under Section 166 of the Motor vehicles Act, filed by Jayanta Jash/ injured/ claimant on account of injury sustained in a Motor Accident on

28.09.2005 by the involvement of one bus bearing no. WMH-1886. On that day at about 8.30 hours claimant was proceeding towards Katwa through S.T.K.K. Road and the said bus made an accident near Pachghara More while driving with high speed and in negligent manner. As a result said bus capsized and passengers including the claimant of this case sustained injury and admitted in Katwa Sub Divisional Hospital. At the time of accident, the injured appellant /injured being a Secretary under 'Maa Engineers' Co-operative & construction society limited and also contractor, civil, mechanical and electrical contractors and general order supplier, used to earn Rs. 7,000/- per month. That is why the claim petition under Section 166 of the Motor Vehicles Act, was filed with a prayer for compensation to the tune of Rs. 5,00,000/-.

Respondent/Insurance Company contested the claim petition by filing a written statement denying all averments of the claim petition contending, inter alia, that the claimant is not entitled to any compensation as prayed for.

Ld. Tribunal framed 8 (eight) issues and took up all the issues conjointly for decision. Ld. Tribunal did not consider the disability certificate on the ground that disability certificate was issued without doing any clinical test or taking a fresh X-ray. Ld. Tribunal also did not consider the document showing expenditures

towards treatment as those documents were not proved according to the Rule of Evidence Act *albeit* Ld. Tribunal could not ignore the injury sustained by the claimant in a motor accident claimed to have been occurred on 28.09.2005 by the involvement of a bus bearing no. WMH-1886 which was insured with the New India Assurance Company at the relevant point of time. That is why Ld. Tribunal awarded a lump sum amount of Rs. 25,000/-.

To prove the case, claimant examined himself as PW-1, one Doctor Prabhas Nath Mitra as PW-2, member of the Medical Board issuing disability certificate & one Bipattaran Bandhu as PW-3 Secretary of 'Maa Engineers' Co-operative & Constriction Society limited. In course of evidence a good number of documents including FIR, charge sheet, seizure lists, salary certificate & disability certificate were admitted in evidence.

In course of argument, Ld. Advocate Uday Sankar Chattopadhyay appearing on behalf of the appellant / claimant has submitted that PW-2 one of the Doctor of the Medical Board testified in this case that all five doctors examined the injured and issued the disability certificate and therefore, that disability certificate issued by the medical Board can not be ignored.

Mr. Chattopadhyay also referred to the evidence of the claimant himself and that of the PW-3 and

submitted that after the accident claimant lost his ability to work. He also referred to the bunches of medical bills kept in the record in support of prolonged treatment of the claimant.

Ld. Advocate, Mr. Saibalendu Bhowmik, appearing on behalf of the respondent/ Insurance Company, has supported the judgment passed by the Ld. Tribunal and contended that the evidence of doctor (PW-2) clearly reflects that disability certificate was issued by the Board of Doctors without examining the claimant clinically and also without taking any fresh X-ray of the claimant and therefore, Ld. Tribunal rightly ignored the disability certificate.

In fact, no argument has been advanced before this Court by either of the parties to this appeal with regard to accident by the involvement of the bus bearing reg. no.WMH-1886 on 28.09.2005 wherein claimant/Jayanta Jash sustained injury. Be that as it may, I have gone through the claim petition together with the evidence of PW-1/ claimant, First Information Report, seizure list and charge sheet and I find hardly any scope to re-enter into the issue of injury sustained by the claimant on account of a motor accident.

Dr. Prabhas Nath Mitra attached to Katwa Sub-Divisional Hospital as Medical Officer testified in this case. He deposed that Medical Board consists of the five doctors of the hospital issued the disability certificate in

the name of Jayanta Jash. Doctors found disability to the extent of 53%. He further testified that they examined his wrist and joint, stable and also found no motion of movement of his hand and that is why they found 53% disability. After careful perusal of the evidence of doctor (PW-2) together with the disability certificate, I find that before issuing disability certificate surely Medical Board consists of five doctors examined the injured/ claimant albeit not clinically or by taking fresh X-ray. That apart, I find discrepancy in respect of percentage of disability. Doctor (PW-2) testified 53% but disability certificate shows 56% in figure and 55% in words. However, I am not oblivious to the object behind the enactment of the beneficial legislation i.e. Motor Vehicles Act, 1988 and also to the settled principle that in dealing with a case under this Act strict rule of evidence should not be applied at the time analyzing the evidence.

In this case, disability certificate was proved by the doctor, who was the member of the Medical Board and I am not inclined to ignore the disability of the claimant only on the ground of few discrepancies but, considering the injury on the left hand, I am not agreeable with the percentage of disability in terms of certificate issued by the Board.

Considering the evidence on record including the evidence of losing job corroborated by the PW-3, who

has been substituted in place of claimant in the 'Maa Engineers' Co-operative & Construction Society Limited, after the accident alleged in this case, I am of the view that 30% disability may be taken into account for assessing compensation.

With regard to income claimant himself has deposed that he used to earn Rs. 7,000/- per month from that society as secretary and to substantiate his evidence claimant examined one Bipttaran Bandhu, Secretary of that Society, who testified that claimant used to earn Rs. 7,000/- per month. PW-3 himself issued the certificate showing income of claimant. But, I am not inclined to rely on the evidence in support of salary of the claimant of Rs. 7,000/- as no document like salary register/ attendant register has been produced before the Tribunal to prove the income. It is a Co-operative Society having employees working therein for which society is expected to maintain salary register at least. Therefore, I find no other option but to go for notional income of Rs. 3,000/- per month.

It appears from the record that claimant filed a good number of medical vouchers in support of expenditure towards treatment. Therefore, claimant is also entitled to compensation towards non-pecuniary heads.

In the aforesaid view of the matter, I proposed to assess the compensation as follows:-

Monthly income	Rs. 3000/-
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Annual income (3000X12)	Rs. 36,000/-
40% future prospect of the income	Rs. 14,400/-
Total	<u>Rs. 50,400/-</u>
30% of income	Rs. 15,120/-
Use of multiplier as per injured person 37 (15,120X15)	Rs. 2,26,800/-
Non pecuniary damage	
Medical expenses (Rs. 50,000/-)	
Pain and Suffering (Rs. 50,000/-)	Rs. 1,00,000
Total	Rs. 3,26,800/-
Less awarded amount	Rs. 25,000/-

It is reported that, claimant has already received 25,000/- and therefore, claimant is entitled to balance amount of Rs. 3,01,800/- along with interest @ 6% per annum from the date of the filing of the application till the deposit of the amount.

Respondent/ Insurance Company is directed to deposit balance amount of Rs. 3,01,800/- along with interest @ 6% per annum from the date of the filing of the application till the deposit of the sum before the office of the Ld. Registrar General, within 6 weeks from date.

Ld. Registrar General is requested to disburse the amount to the claimant on proper identification.

With the aforesaid observation the appeal being no. FMA 641 of 2011 stands disposed of.

All pending application, if there be any, stand disposed of.

The Tribunal Record along with a copy of this order be transmitted back immediately.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Bibhas Ranjan De)