

03.08.2023
SL No.6
Court No. 551
Ali

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

FMA 673 of 2012

IA No.:CAN/3/2017 (Old No.:CAN/2704/2017)

**United Insurance Company Ltd.
Vs.
Suresh Sharma & Anr.**

Mr. Rajesh Singh

.....for the appellant.

Mr. Jayanta Kr. Mandal

.....for the respondents.

The instant appeal is preferred against the judgment dated 5th December, 2011 passed by the learned Judge, Motor Accident Claims Tribunal, 5th Fast Track Court, Barasat, 24-Parganas (North), in MAC Case No. 122 of 2004 (Old No. 1030 of 2001).

The insurance company has preferred this appeal against the judgment passed by the learned tribunal wherein a huge sum amounting to Rs. 40,03,000/- with interest @ 9% per annum was awarded in favour of the claimants without any specific document of income proof.

It is the case of the claimants that initially before the happening of accident the claimant was engaged in Singapore and after such accident his income was diminished. Thus the learned tribunal has assessed the compensation on the balance amount of Rs. 50,000/- per month to be loss of his

income. It appears from the record that the document of income was not proved or tendered before the learned tribunal. However, the insurance company has argued at length regarding the error caused by the learned tribunal.

Considering the entire aspect, it appears to me that some documents of income was filed alongwith examination-in-chief by the claimant but these were not tendered. In the instant case, the claimant would be at peril if the instant appeal is disposed of on the merit. However the M.V. Act is a beneficial legislation and it appears that the injury suffered by the claimant in a road traffic accident.

Considering the same, I am not dismissing the instant appeal on merit however I am remanding back the same to the learned tribunal with a specific direction that the claimants are at liberty to prove the documents whatever they wanted to prove which are already on record. No other extraneous document has to be filed by the claimant. The claimant is further directed to appear before the R.G. Kar Medical College & Hospital to have a present report regarding the percentage of his disablement. The disability certificate issued by the R.G. Kar Medical College & Hospital is to be considered by the tribunal afresh.

The learned tribunal is at liberty to decide the matter afresh on the basis of the observation

made above and on the basis of materials on record according to the law.

The claimant is at liberty to tender those documents which are already on the record and the insurance company is also at liberty to cross examine or to file any oral and documentary evidence as they wish.

I make it clear that the claimant has personally appeared before this court for which I think it necessary that he need be examined by the Board of Doctor to verify his percentage of disablement.

Accordingly, the instant FMA is disposed of.

The insurance company is at liberty to withdraw the deposit already made alongwith the accrued interest.

It appears that the instant accident happened on 26.01.2001; already 22 years has elapsed thus the learned tribunal is directed to dispose of the matter according to the direction given above as early as possible most preferable within four months from the date of filing specific application of the claimant alongwith the required document (certificate of disablement).

All connected applications, if any, stand disposed of.

Interim orders, if any, stand vacated.

LCR be send down immediately to the learned Tribunal.

Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)