

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 201 of 2007

Sujit Khetua @ Khatua
Vs.
National Insurance Company Ltd. & Anr.

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

Mr. Rajesh Singh
... For the respondent no.1/Insurance Co.

This appeal is directed against the judgment and award dated 23rd June, 2006 passed by the learned Judge, Motor Accident Claims Tribunal, Paschim Medinipur, in connection with MAC Case No.157 of 2005 under Section 166 of the Motor Vehicles Act, 1988, whereby the learned Judge awarded a sum of Rs.1,00,000/- as compensation.

The claim petition was filed by Mantu Khatua, the father of the injured, under Section 166 of the Motor Vehicles Act, on account of injury sustained by his son, Sujit Khatua, by the involvement of vehicle bearing registration no.WB-33/2261 (Bus).

On 29th October, 2004, the claimant, sujit Khatua, was coming from Negui to Midinipore by the offending bus bearing registration no.WB-33/2261. The driver of the vehicle was driving in excessive speed endangering the human life and safety. As a result, the drive lost control over the bus and it capsized. The claimant, sujit Khatua sustained injury all over his person, especially, on both his

hands. He was taken to Jhargram Hospital wherefrom he was shifted to NRS Medical College and Hospital, Kolkata, for treatment. At the time of accident, injured Sujit Khatua was a student and aged about 17 years.

The Insurance Company contested this application by filing written statement, denying material averments of the claim petition contending, inter alia, that the claimant is not entitled to any compensation as prayed for.

In course of hearing of the case four (4) witnesses were examined. Smt. Pratima Khatua, the mother of the injured as PW-1, Sri Rabindra Khatua, as PW-2, Sri Bejoy Singha, as PW-3 and Sri Abhijit Biswas, S.I. of Police, as PW-4.

PW-1 has corroborated the entire contents of the claim petition though she did not witness the incident. She testified about the accidental injury sustained by her son and age of her son.

PW-2 is a relative of the injured has testified about the accident by the involvement of the bus bearing No.WB-33/2261, though in his cross-examination he stated that he was not travelling with the bus. He only received information about the accident and had been to Jhargram Hospital.

PW-3, testified that he was the passenger of the offending bus at the relevant point of time which was driving with high and excessive speed and as a result the driver lost control over the bus and the same capsized. He

also testified that Sujit Khatua, being the passenger of the same bus, sustained injury.

PW-4, Abhijit Biswas, S. I. has proved the initiation of Jhargram Police Station Case No. 184 of 2004 dated 29th October, 2004 under Sections 279/337/338 of the Indian Penal Code, on receipt of FIR.

In course of evidence, a good number of document was admitted in evidence as Exhibit 1 to 7, including the certified copy of the FIR, charge-sheet, discharge certificate from NRS Hospital, injury report, assessment report, disability certificate etc. That apart, bed-head ticket is also admitted as exhibit-A series. In course of hearing huge number of medical papers including bill vouchers and insurance police were placed before the Tribunal.

After analyzing the entire evidence on record, the learned Tribunal recorded as follows:-

“It has appeared from Exts. 3 and 3/1 that Sujit Khatua was admitted at N.R.S. Medical College & Hospital on 30.10.04 and on 4.1.05 he was discharged. It has also appeared that he underwent an operation there on 27.1.05 and for undergoing operation he was again admitted on 25.1.05 and to repair would over left elbow there has bee skin grafting and having considered all these it is quite apparent that the petitioner-Sujit Khatua received grievous injury and was under medical treatment more than two months. Ext. 7 is the handicapped certificate and it was marked as

exhibit under the provision of Section 32 of the Evidence Act and the decision reported in AIR 1989 SC 702. The doctors of the medical board did not adduce evidence to prove the certificate. The medical evidence available on record of the petitioner does inspire confidence to hold that the petitioner sustained permanent partial disablement which arose due to motor vehicular accident”.

I failed to make me understand that what prevented the learned Tribunal from assessing the compensation in terms of pecuniary loss. The learned Tribunal took the disability of the injured into consideration but did not assess the compensation accordingly.

So far as the disability certificate is concerned, it is seen that it was filed on behalf of the injured and it was admitted in evidence as Exhibit-7, but I do not find any contrary evidence on behalf of the Insurance Company to disregard the said certificate.

From Exhibit-7, it is found that the disability certificate was issued by board of doctors including orthopaedic surgeon of S.D. Hospital, Jhargram and it was admitted in evidence. On careful scrutiny of the disability certificate further I find that the disability certificate was issued as purely temporary certificate, subject to review after two years. From the evidence I do not find any such review on behalf of the injured ever done after two years as the learned Tribunal passed the judgment and award in

the year 2006. However, considering the nature of beneficial legislation and the huge expenditure towards the treatment as well as the evidence of PW-1, the mother of the injured to the effect that her son was still under medical treatment, I am of the opinion that though no review was done after two years, that percentage of disability may be considered as 30 per cent.

In the aforesaid view of the matter, keeping an eye to the date of accident and other circumstances, I propose to determine compensation as follows:-

Annual Income (Rs.2500/-x 12)	Rs. 30,000/-
Less: Deduction 70% (since the claimant was disabled to the extent of 30%)	Rs. 21,000/- ----- Rs. 9,000/-
Multiplier by 18 (as per age of the victim)	X 18 ----- Rs.1,62,000/-
Add: Non-Pecuniary Damages	Rs. 1,00,000/- -----
Total	Rs.2,62,000/-
Less – Awarded by ld. Tribunal	Rs. 1,00,000/- -----
ENHANCEMENT	Rs. 1,62,000/- -----

Therefore, appellant/claimant Sujit Khatua is entitled to the total compensation to the tune of Rs.2,62,000/-. It is reported that the appellant/claimant has already received Rs.1,00,000/- as awarded by the learned Tribunal.

Therefore, the appellant/claimant is entitled to the enhanced compensation to the tune of Rs.1,62,000/- along with interest 6 per cent per annum from the date of

filing of the application till deposit of the amount before the office of the learned Registrar General.

The respondent/National Insurance Company Limited is directed to deposit a sum of Rs.1,62,000/- along with interest @ 6 per cent per annum from the date of filing of the application i.e, from 5th February, 2005 till the deposit of the same before the office of the learned Registrar General of this Court, within six weeks from date.

The appellant/claimant is entitled to withdraw the amount with interest.

The learned Registrar General is requested to disburse the total amount with interest to the appellant/claimant, Sujit Khatua, who has already attained the age of majority in the meantime, on proper identification.

With the above observation, the appeal, being FMA 201 of 2007, 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.)