22.08. 2023
item No.5
n.b.
ct. no. 551

**FMA 704 of 2009**

**National Insurance Co. Ltd.**
**Vs.**
**Manoj Sharma & Anr.**

Mr. Parimal Kumar Mandal,
... for the appellant.
Mr. Ashique Mondal
.....for the respondent no.1.

This appeal has been preferred by the Insurance Company against the judgment and award dated 30th August, 2008 passed by Judge, Motor Accident Claims Tribunal, 9th Fast Track Court, Alipore, South 24 Parganas in M.A.C. Case no.28 of 2007.

The brief fact of the case is that the present respondent suffered bodily injury in road traffic accident due to rash and negligent driving of the offending vehicle duly insured under the policy of the present appellant. The claimant has filed an application under Section 163A of the M.V. Act before the learned Tribunal. The matter was contested by the Insurance Company by filing written statement. Learned Tribunal after hearing both the parities has awarded a sum of Rs.1,34,600/- along with 9% per annum in favour of the claimant.

Being aggrieved by and dissatisfied with the said award, the Insurance Company has preferred this appeal.

Learned advocate for the Insurance Company submitted before this Court that the impugned award passed by the learned Tribunal is erroneous. The learned Tribunal has not considered the nature of injury sustained by the injured. The injured did not appeared before the Board of Doctors of government Hospital but a private Doctor issued a certificate of disablement to the extent of 35%. The disability certificate issued by the private Doctor is not according to the norm or the award passed on the basis of the certificate is erroneous.

He also argued the facts and circumstances of the case will prove that there is no less of income by the injured in this case. So, the compensation passed by the Tribunal is much higher.

Leaned advocate appearing on behalf of the claimant submitted before this Court that the impugned award passed by the learned Tribunal suffers no illegality. The permanent partial disability was assessed by the Doctor to be 35% but at the time of considering the case before the learned Tribunal. He calculated the compensation considering the disability to the extent of 20%.

Learned Tribunal has applied his mind in considering the facts and circumstances of the case, thus, the award passed by the learned Tribunal on the basis of the partial disablement of the claimant to be 20%. He also submits that it was specifically pleaded before the learned

Tribunal that the income of the deceased was Rs.3,500/- per month. But at the time of assessing the compensation, Learned Tribunal has considered the income of the claim to be Rs.3,000/- per month. There is no error in such finding, so , the impugned award cannot be set aside.

Heard the learned advocates. Perused the evidences placed in the paper book, it appears to me that he injured himself deposed as P.W.1. the Doctor who examined the P.W.1 has deposed as P.W.2. The P.W. 2 the Doctor is a retired medical practitioner of Eastern Railway, he opined in support of his certificate of partial disablement. During the cross-examination the evidence of doctor became unshaken.

I have perused the FIR and other police papers considered the entire materials before me, it appears to me that the learned Tribunal has perused the entire materials on record and after perusing the disability certificate, learned Tribunal has of the opinion that the partial disability of the claimant is 20%. I find no infirmity in the said finding. Moreover, the income of the claimant was assessed to Rs.3,000/- per month. Thus, at this juncture, I find no merit to entertain the instant appeal. Thus, the award of compensation passed by the learned Tribunal is sustained. However, the interest award of Rs.1,35,600/- shall carry a interest @ 6% per annum instead of 9% per annum from date of filing of the claim case i.e. February 10, 2004.

It appears that the Insurance Company has already deposited the entire amount of Rs.1,34,600/- which must have carry some interest. The claimant is at liberty to receive the amount along with accrued interest from the office of the Learned Registrar General, High Court, Calcutta.

The Insurance Company is directed to deposit the interest part within eight weeks from the date of this order with the office of the Learned Registrar General, High Court, Calcutta, on such deposit the claimant is at liberty to withdraw the same according to the prevalent rules.

Accordingly, FMA 704 of 2009 is disposed of.

Connected applications, if any, are also disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

**( Subhendu Samanta, J.)**