

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Bibhas Ranjan De

F.M.A 915 of 2015

With

CAN 3 of 2016 (CAN 7346 of 2016)

(Application not in the file)

National Insurance Company Limited

Vs.

Sarbeswar Ghosh alias Noton Ghosh & Anr.

For the Appellant/
Insurance Company :Mr. Parimal Kumar Pahari, Advocate

For the Respondent :Mr. Uday Sankar Chattoadhyay, Advocate
no. 1/ Claimant Ms. Trisha Rakshit, Advocate
Ms. Rajashree Tah, Advocate
Mr. Gourab Das, Advocate

Heard on : January 10, 2023
Judgment on : January 17, 2023

Bibhas Ranjan De, J.

1. In this appeal, I am dealing with an application under Section 166 of the Motor Vehicles Act, which was filed by the claimant/ injured on account of injury sustained by him in a motor accident on 08.11.2009 at about 19.00 hours over National Highway Number 2 near Chandulmore under PS Burdwan. On the relevant date injured was travelling by a Tata Indica Car bearing no. WB-42J /2752 and at that time a truck bearing no. WB-61/2177 coming with high speed and in rash and negligent manner dashed against the said Tata Indica Car. In effect, claimants sustained severe injuries on his head and face and one of the passenger died on spot. Said truck was duly insured with Naitonal Insurnace Company Ltd. Claimant was shifted to Burdwan Medical College and Hospital and thereafter to Apolo Gleneagles at Kolkata. Ultimately he suffered 50% disability.
2. Owner did not contest this case but National Insurance Company contested this case by filing written statement denying all averments of the claim petition contending, inter alia, that alleged vehicle was not responsible for the accident and the claim petition was bad for non joinder of said Tata Indica Car bearing no. WB42J/2752 and accordingly claimant

is not entitled to any compensation from the National Insurance Company Ltd.

- 3.** To prove the case claimant examined himself as PW-1. He corroborated the entire case of the claim petition. In course of his cross –examination, several suggestions were thrown to him by the Insurance Company. He has further stated in cross-examination that he was a 20% partner of a Rice Mill and earned Rs. 30,000/- per month.
- 4.** One Tritha Pati Roy, being executive Medical records of Apolo gleneglans Hospital, was examined as PW-2. He was authorized by Dr. Pratha Bhattacharya, Medical Superintendent (Clinical). He testified that patient Sarbeswar Ghosh was admitted in their hospital on two occasions 8th November 2009 to 24th December 2009 and 3rd March 2010 to 12th March 2010. Through his evidence discharge certificate were admitted in evidence as exhibit 10 and 11 and bill raised for said treatment for the 1st round admission was admitted in evidence as exhibit 12 and also a bill for 2nd round treatment was admitted as exhibit 13. Cross-examination of this witness was not so significant to be mentioned.

- 5.** Subhasis Bhattacharjee, an employee of Calcutta Institute of Maxillofacial surgery & Research, was examined as PW-3. He was authorized by Dr. Sujan Mukherjee, director of the Institution. He testified that Sarbeswar Ghosh was admitted in their hospital. He proved discharge certificate and bill for the treatment as exhibit 15 and 16. In cross-examination he said that the patient was admitted for correction of pain, bleeding, fractures and other problems.
- 6.** Dr. Kamalesh Das the then Professor of Neurology attached to Burdwan Medical College and Hospital was examined as PW-4. He treated the patient at O.P.D. He proved the O.P.D Card dated 25.11.2010 marked as exhibit 17 and 17/1. In cross-examination he deposed that injury was due to road traffic accident.
- 7.** Dr. Shankar Prosad Mallick, attached to Neurology Department of Burdwan Medical College and Hospital has stated that Sarbeswar Ghosh/claimant appeared before the Medical Board constituted of several doctors including he himself. Medical Board after analysis issued a disablement certificate. Though he identified his signature marked as exhibit18/1 but he was not aware of other signature. Disability certificate was admitted as

exhibit 18. In cross-examination he denied the suggestion that assessment of 50% disability was not proper.

- 8.** That apart, a good number of document was also admitted in evidence viz. FIR, charge sheet, seizure list, Insurance Policy, Driving Licence, Voter ID Card of claimant, school living certificate, document of partnership deed etc.
- 9.** Learned Tribunal after considering all oral and documentary evidence returned his findings with the award of Rs. 25,52,320/- towards pecuniary and non pecuniary damages.
- 10.** Insurance Company challenged the award passed by the Tribunal by filing the instant appeal on the ground that injured being a partner of a Rice Mill business did not suffer any pecuniary loss.
- 11.** In course of hearing, Ld. Advocate Mr. Parmal Kr. Pahari, appearing on behalf of the Insurance Company did not raise any issue regarding injury sustained by the claimant in the accident by the involvement of the truck bearing no. WB 61/2177. However, on careful scrutiny of the evidence of PW-1 together with the admitted documents like certified copy of FIR, charge sheet and seizure list, I find hardly any scope to disbelieve the factum of accident whereby claimant sustained severe injury for

which he had to undergo prolong treatment in different medical institutions.

12. Only issue in this appeal whether claimant suffered any pecuniary loss after the accident.

13. Ld. Advocate, Mr. Uday Shankar Chattopadhyay appearing on behalf of the claimants/ respondent has contended that after the accident he was not supposed to work as partner with full vigoure and energy and he has further contended that such issue was neither taken in the written statement filed by the Insurance Company nor any specific cross-examination was made at the time of deposition of claimant (PW-1).

14. In support of his contention, Mr. Pahari relied on the following authorities:-

A. *Jagdish Vs Mohon and other Reported in AIR 2018 Supreme Court 1347*

B. *Syed Sadiq Vs Divisional Manger United India Insurance Company reported in AIR 2014 SC (Civil) 840*

15. Ratio of ***Jagdish*** (supra) and ***Syed Sadiq*** (supra) is not at all applicable in our case as I am dealing with an appeal preferred on behalf of the Insurance Company.

16. Coming to the issue of this appeal, I find that Mr. Pahari has tried to focus on 'no pecuniary loss' after the accident by referring to few lines of cross-examination of claimant which runs as follows:-

“ Haripada Ghosh, Dhaneswar Ghosh, Biswanath Ghosh and I are the partners of Kalimata Modern Rice Mill. I am 20% partner from the inception of the rice mill. In that partnership business I earn Rs. 30,000/- per month from the said rice mill.”

17. The aforesaid evidence, in my humble opinion, can not lead to any inference as to 'no loss of income' even after the accident. Nowhere, in those lines a word 'still' is missing. From the entire evidence on record, I find that after the accident claimant has to suffer a lot through prolong treatment in different medical institutions and finally suffered disability to the extent of 50%. Therefore, by no stretch of imagination, I can hold that claimant was able to earn as before. It is needless to mention that a partner of a business is able to receive his share in every month without any participation. That being so, I am unable to agree with Mr. Pahari that claimant did not suffer any pecuniary loss

even after the accident wherein claimant suffered severe bodily injury.

18. With the aforesaid observation, I find no other option but to affirm the judgment and award passed by the Ld. Tribunal in Motor Accident Claim Case No. 32 of 2010.

19. Accordingly, the appeal being FMA 915 of 2015 stands dismissed.

20. Claimant is at liberty to withdraw the entire awarded amount deposited by the appellant/ Insurance Company on 06.01.2014 vide OD Challan no. 2666 with all accrued interest.

21. Learned Registrar General is requested to disburse the amount to the claimant on proper verification and identification.

22. Let a copy of this judgment along with Tribunal record be transmitted back immediately.

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

[BIBHAS RANJAN DE, J.]