

28.08.2023
SL No.1
Court No. 551
Ali

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

**FMA 1248 of 2008
IA No.:CAN/1/2014 (Old No.:CAN/8028/2014)**

**Ashok Kumar Gami @ Ashok Gami
Vs.
National Insurance Co. Ltd. & Anr.**

Mr. Subir Banerjee,
Mr. Sandip Bandyopadhyay,
Ms. Ruksmini Basu Roy
...for the appellant-claimant.

Mr. Arabinda Kundu
...for the Insurance Co.

The instant appeal is preferred against the judgment dated 7th September, 2007 passed by the learned Judge, Motor Accident Claims Tribunal, Fast Track, 1st Court, Islampur, Uttar Dinajpur in M.A.C. Case no. 76 of 2005 under Section 166 of the M.V. Act.

The brief fact of the case is that the present appellant filed an application Section 166 of the M.V. Act before the learned tribunal for getting compensation from the insurance company on the ground that the claimant had sustained severe bodily injury due to rash and negligent driving of the driver of the offending vehicle duly insured under the policy of the respondent-insurance company.

The owner of the offending vehicle did not contest the matter but the insurance company has contested the claim case by filing written statement.

The learned tribunal after hearing both the parties and after receiving the evidences has passed the impugned award in favour of the claimant directing the insurance company to pay the compensation amounting to Rs. 40,000/- in favour of the claimant.

Being aggrieved by and dissatisfied with the impugned award the instant appeal is preferred by the claimant for enhancement of the award.

Learned advocate for the appellant submitted before this court that the impugned award passed by the learned tribunal is erroneous. The learned tribunal has not considered the materials on record and passed an improper order which is beyond the structure formula. He also pointed out that the insurance company has contested the claim case by filing written statement. From the pleading of the insurance company it would be reveal that the accident was not disputed. He also argued that the alleged accident was happened on 19.12.2004. After the said accident, initially the claimant including the other three persons, (among them one was died) admitted to the Raiganj Hospital and thereafter they were shifted to the Siliguri, Anandaloke Hospital. One of the injured of the said accident deposed as PW-2 in this case as eye witness. But the learned tribunal has erroneously awarded a lump sum amount of Rs. 40,000/-. Learned tribunal has not considered the

disability certificate issued by the Government Hospital also did not consider the medical bills and vouchers incurred by the present appellant during his treatment at the Anandaloke Hospital, Siliguri. He submitted before this court that the income of the injured was accepted by the learned tribunal to be Rs. 3,000/- per month which is also erroneous. Being the driver the appellant earned at least Rs.5,000/- per month so he prayed for just and proper compensation after setting aside the impugned award.

Learned advocate appearing on behalf of the insurance company submitted before this court that the impugned award passed by the learned tribunal suffers no illegality. There is no perversity in the order impugned. He argued that the observation of the learned tribunal is very much specified. Learned tribunal is of view that the disability certificate was not issued by the Islampur. S.D. Hospital; it is a fake document. The learned tribunal has categorically observed regarding such documents that the name of medical officer were not mentioned, that dates were different and the document was itself written by different person in different ink.

Learned advocate for the insurance company is also of view that the Doctor was not called for to prove the documents. Thus the document has correctly observed to be a fake document. Learned

advocate for the insurance company further argued that the bills and vouchers as submitted before the learned tribunal are the bills of private Hospital or Nurshing Home which can easily available in the market. The bills and vouchers should have been proved according to the law unless which nothing can be awarded towards medical expenses on the basis of such bills and vouchers.

Learned advocate for the insurance company is of argument that there is no merit in the instant appeal. So it need be dismissed.

Heard the learned advocates; perused the materials on record. It appears that the accident was happened by the head on collision of a Ambassador Car and a Truck. The four persons were injured among them, one was died. The accident was sufficiently proved by submitting police papers. It further appears that other claim applications were also satisfied by the insurance company which was arising out of the said accident in respect of other claimants. Consequently, it is true that the injury of the present claimant in such accident is not disputed. The learned tribunal in observing the entire facts and circumstances of this case is of opinion that the appellant being a driver may earn Rs. 3,000/- per month. The learned tribunal has not assessed the compensation on structure formula.

Whether the observation of the learned tribunal on the ground that the exhibit-2 i.e. the disability certificate to be a fake document, is the question to be determined in this appeal.

I have perused the paper book more specifically; I have perused the exhibit-2 in the LCR. The exhibit-2 is a handicap certificate issued by the Islampu,. S.D. Hospital, Uttar Dinajpur on 22nd November, 2005. The certificate Registration number was mentioned in the said certificate to be 557 dated 22.11.2005.

It is true that the name of the Doctor was not mentioned in the disability certificate. But the name of the Doctor is not required to be written in the disability certificate. Moreover, the designation of Doctors was mentioned there. One of the signatory of the said certificate is the Superintendent and one is the Medical Officer of Islampur, S.D. Hospital. It is true that the document was written in two pens but the assessment of disability was duly signed by the Superintendent of the said Hospital by putting initially therein. In pursuing the entire exhibit-2 it appears to me that the learned tribunal has made error by declaring this document is to be a fake one. The document issued by a Government Authority on observing the required process cannot be declared to be fake without any materials inherent therein. Merely,

writing document by other persons is not ipso facto made it be a fake as the document was duly signed by the issuing authority i.e. the Superintendent of Islampur. S.D. Hospital.

Considering the same, I am of the view that the observation of learned tribunal regarding the exhibit-2 is not correct. However, the bills and vouchers appears in the LCR is issued by the different medical shops of different nature the documents are dated and signed by the different persons conjointly i.e. the medical vouchers and the bills cannot be taken to be considered to be the medical expenses of the present claimant. Thus, in my view, in instant claim case the compensation had to be awarded under the structure formula.

For the just and proper compensation of this case. The income of the claimant is calculated Rs. 3,000/- per month. The yearly income comes to Rs. 36,000/-. The functional disability appears to be 60% according to the exhibit-2 thus the 60% of Rs.36,000/- appears to be Rs. 21,600/-. Considering the age of the appellant at the time of accident within the age group of 26-30 years, the applicable multiplier is 17. So after multiplying the multiplier the award comes to Rs.3,67,200/-. According to the observation of the Hon'ble Supreme Court passed in **Pranay Sethi**, the claimant/appellant is entitled to get the 40% of his

establish income towards the future prospects so after adding the future prospects of Rs.1,46,880/- it appears to be Rs.5,14,080/-. The claimant has already given the pain and suffering Rs. 40,000/- that would be added with the instant award so after adding Rs.40,000/- the total award appears to Rs. 5,54,080/-. The claimant has already received Rs. 40,000/- so after deducting Rs.40,000/- the award comes to Rs. 5,14,080/-

The insurance company is directed to pay the balance compensation to the claimant alongwith interest @ 6% per annum from the date of filing of the claim application i.e. from 01.03.2005 with the office of the learned Registrar General, High Court, Calcutta within eight weeks from the date of passing of this order. On such deposit the claimant-appellant is at liberty to receive the same from the office of the learned Registrar General, High Court Calcutta subject to the ascertainment of payment of requisite court fees.

The instant FMA 1248 of 2008 is disposed of.

All connected applications, if any, stand disposed of.

Interim orders, if any, stand vacated.

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

(Subhendu Samanta, J.)