

30.08. 2023
item No.3
n.b.
ct. no. 551

FMA 480 of 2007
with
IA No. CAN 1 of 2018(Old No. CAN 6682 of 2018)

Sri Pintu Mohanta.
Vs.
Divisional Manager, Oriental Insurance Co. Ltd.

Mr. Saidur Rehaman,
.....for the appellant.
Ms. Sayanti Santra,
.... For the respondent.

This appeal has been preferred against the judgment and award dated 29.7.3006 passed by the learned Judge, 2nd Court, Dakshin Dinajpur at Balurghat in M.A.C. case No.314 of 2003 under Section 166 of the Motor Vehicles Act.

The brief fact of the case is that the present appellant being the claimant filed an application under Section 166 of the M.V. Act before the learned Tribunal for getting compensation on the ground that he sustained severe injury and he became permanent disable by an accident happened due to rash and negligent driving of the driver of the offending vehicle duly insured under the policy of the Insurance Company. The Insurance Company contested the matter before the learned Tribunal

After hearing the parties and after receiving the evidences from the claimants, the learned Tribunal has awarded a sum of Rs.20,000/- towards the mental pain

and agony suffered by the claimant during his stay at hospital.

Being aggrieved by and dissatisfied with the impugned award, the claimant has preferred this appeal.

Learned advocate for the appellant submitted before this Court that the learned Tribunal has committed an error in passing the impugned award. Learned Tribunal must have considered the injuries sustained by the claimant/appellant during such accident. He also argued that the claimant was admitted to the Government hospital for more than three months after such accident. The Board of doctors in government hospital issued a certificate of disablement in favour of the claimant to be 50%. The learned Tribunal has not considered the disability certificate. The observation of the learned Tribunal regarding the physical disability of the present appellant is erroneous. He also argued that the present appellant has suffered severe bodily injury by the accident. The income of the present appellant has been diminished by such accident. So, he prayed for just and proper compensation according to the structure.

Learned advocate appearing on behalf of the Insurance Company submitted before this Court that the learned Tribunal has committed an error in passing the impugned award. It was observed by the learned Tribunal correctly that the claimant appeared before this Court through a bus without any assistance of any person or

without the help of stick on crutch. Learned Tribunal has personally observed that claimant is not suffering any permanent disability. He also argued that the disability certificate issued by the concerned doctors, who deposed as P.W. 2 before the learned Tribunal and has specifically stated that there were no circular to hold such camp to issue handicapped certificate wherein the certificate was issued in favour of the claimant. He argued that the certificate issued by the doctors is not beyond doubt. Learned Tribunal is categorically observed that such findings regarding the loopholes of issuance of the said certificate and the award was passed in favour of the claimant only for his long stay at the government hospital. On such submissions he prayed for dismissal of the appeal.

Heard the learned advocates. Perused the impugned award and also perused the LCR and the exhibited document therein. It appears to me that the accident was happened on December 10, 2002. The discharge certificate issued by the North Bengal Medical College and Hospital. The claimant was admitted hospital after such accident from 13.12.2002 to 4.4.2003. It was mentioned in the discharge certificate; the nature of injury, which was specifically mentioned therein that suffering from fracture(H) at Left Femur shaft and left tibial shaft & subluxation and hip joint. The X-ray was held at the said hospital on 30.3.2012 wherein the fracture was

located. The X-ray requisition of the hospital is marked as exhibit 3. For his long stay at hospital, he had paid to the government different amount which was calculated to be Rs.2,934/-. So, the injury sustained by the appellant for such accident is not simple injury. The both leg including the Left femur shaft and tibial shaft were broken and recovered after four months and discharge from the hospital. He was advised to consult on OPD but there is no document that he had consulted. In perusing the disability certificate, it appears to me that the P.W. 2 has identified his signature over the disability certificate including the signature of Superintendent and other doctors. He is of opinion that they hold a camp and such camp the person of disability appears and the certificate was issued. It is true that the P.W. 2 never examined or treated the appellant. In the disability certificate they observed the disability to be weakness of shoulder and lower limbs. On the basis of such observation, they issued a certificate of 50% disability. The learned Tribunal who hold the trial of this case is the person who observes that the appellant appeared at court through the bus and without any assistance. On such observation, learned Tribunal is of the view that the appellant is not suffering any permanent disability. In considering the discharge certificate including the disability certificate, it appears to me that the person is suffering shorten left lower limb. If the accident was not happened the

appellant would not have suffered such disability. Let me considered whether the percentage of disability is sufficient to assess the functional disability of a person. It appears to me that the claimant/appellant was engage in a business of betel leaves and betel nuts. No document of income or his business was produced. No income proof certificate was produced. However, considering the nature of job, he is performing, it appears to me that the permanent functional disability of a person would be 25%. The income of the claimant was stated Rs.3,000/- per month but as there is no certificate. So, at this juncture, the income of the deceased is taken to be Rs.2,000/- per month.

Considering the entire facts and circumstances of the case, it appears to me that the impugned award passed by the learned Tribunal is liable to modified.

For just and proper compensation of this case, the income of the claimant was assessed to Rs.2,000/- per month. The yearly income comes to Rs.24,000/-. The claimant is entitled to get the future prospect of 40% of his established income according to the Hon'ble Supreme Court passed in **Pranay Shetty**. After adding the 40%, the yearly income comes to Rs.24,000/-+9,600/- =Rs.33,600/-. The applicable multiplier is 17. Considering the age of the claimant to be 26 to 30 years at the time of accident. After multiplying the multiplier the total compensation is Rs.5,71,200/-. The claimant is 25%

permanent functional disable, so, he is entitled to get 25% of the said compensation. Therefore, he is entitled to get 1,42,800/-. Claimant is also entitled to get of Rs.20,000/- towards the pain sufferings which was already awarded by the learned Tribunal. The claimant has already received the awarded amount of Rs.20,000/- from the learned Tribunal, so, the balance amount comes to Rs.1,42,800/-.

The Insurance Company is directed to pay the compensation to the claimant along with 6% interest per annum from the date of filing of this case i.e. 28th August, 2003 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 is at liberty to receive the same from the officer of the learned Registrar General, High Court, Calcutta on usual terms and condition.

Accordingly, FMA 480 of 2007 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.)