

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 916 of 2013

Abdul Bari Molla
Vs.
National Insurance Co. Ltd. & Anr.

Mr. Jayanta Kumar Mandal
... For the appellant/claimant

Mr. Afroze Alam
... For the respondent no.1/Insurance Co.

This appeal is directed against the judgment passed on 19th May, 2012 by the learned Judge, Motor Accident Claims Tribunal & Additional District Judge, 12th Court at Alipore, District – South 24-Parganas, in connection with MAC Case No.72 of 2003, whereby the learned Tribunal dismissed the claim petition under Section 166 of the Motor Vehicles Act, 1988.

The claim petition arose out of an injury sustained by the claimant Abdul Bari Molla who met with an accident on 9th November, 2002 at about 11.00 a.m. at 1 No.14 Rasi under Police Station Raidighi by the involvement of one Trekker, bearing registration no.WB-19/8883, which was duly insured with the National Insurance Company Limited. At the relevant point of time, the said Trekker where the injured was travelling overturned due to rash and negligent driving. After the accident, Raidighi Police Station Case No.96 dated 9th

December, 2002 under Sections 379/338 of the Indian Penal Code was started and ended with charge sheet against the driver of the said vehicle. That is why the claim petition was filed with a compensation to the tune of Rs.2,00,000/-.

Owner of the offending vehicle did not contest the claim petition but the National Insurance Company Limited entered appearance before the learned Tribunal by filing written statement denying all material averments in the claim petition.

To prove the case, the claimant/injured examined as many as four witnesses, namely, Dr. H.K. Mukherjee as PW-1 who issued the Disability Certificate. Claimant himself examined as PW-2 who corroborated the entire averments of the claim petition and in course of his evidence, a good number of documents, including copy of the First Information Report, insurance policy, seizure list, discharge certificate of Suryapur Life Care Nursing Home, Disablement Certificate and copy of the charge sheet were admitted in evidence. One Abdul Sattar Ghorami, claiming himself to be a receptionist of Suryapur Life Care Nursing Home, has been examined as PW-3. In course of his evidence, the Discharge Certificate of the claimant/injured was admitted in evidence. One Mohadeb Halder claiming himself to be an eyewitness to the incident has been examined as PW-4. He has stated in his evidence that at the relevant point of time he was waiting for bus near 1 No.14 Roshi and at that time one Trekker coming with

high speed from Mathurapur side suddenly overturned to avoid collision with a cycle rickshaw van. He further testified that the claimant Abdul Bari Molla sustained injury amongst others.

Learned Tribunal after considering the entire evidence on record found that PW-4 was untrustworthy as his name was not appearing in the list of the charge sheeted witnesses. That apart, learned Tribunal did not consider the Disability Certificate on the ground of insufficient evidence like paper showing medical treatment of the injured. Learned Tribunal also assailed the evidence of PW-1 who issued the Disablement Certificate on the ground that PW-1 did not consult any medical testimonial.

So far as the evidence of PW-4 is concerned, Mr. Jayanta Kumar Mandal, learned advocate for the appellant/claimant has relied on a case of **Kusum Lata & Ors. v. Satbir & Ors.** reported in **2011 (2) TAC 1 (SC)** wherein the Hon'ble Apex Court observed as follows:-

“9. There is no reason why the Tribunal and the High Court would ignore the otherwise reliable evidence of Dheeraj Kumar. In fact, no cogent reason has been assigned either by the Tribunal or by the High Court for discarding the evidence of Dheeraj Kumar. The so-called reason that as the name of Dheeraj Kumar was not mentioned in the FIR, so it was not possible for Dheeraj Kumar to see the incident, is not a proper assessment of the fact-situation in this case. It is well known that in a case relating to motor accident claims, the claimants are not required to prove the case as it is

required to be done in a criminal trial. The Court must keep this distinction in mind.”

Mr. Mandal also relied on another case of **Sunita & Ors. v. Rajasthan State Road Transport Corporation & Anr.** reported in **2019 (1) TAC 710 (SC)** where the Hon’ble Apex Court held as under:-

“It is thus well settled that in motor accident claim cases, once the foundational fact, namely, the actual occurrence of the accident, has been established, then the Tribunal’s role would be to calculate the quantum of just compensation if the accident had taken place by reason of negligence of the driver of a motor vehicle and, while doing so, the Tribunal would not be strictly bound by the pleadings of the parties. Notably, while deciding cases arising out of motor vehicle accidents, the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases.”

It is true that the name of the PW-4 does not appear in the list of the charge sheeted witnesses but in terms of aforesaid observation of the Hon’ble Apex Court, particularly, in **Kusum Lata** (supra), I do not find any reason to discard the entire evidence of PW-4 who had seen the accident while he was waiting for bus in the bus stand. That apart, from the First Information Report (Ext.-2) and charge sheet (Ext.-3), it is seen that after the accident the matter was investigated by the police of Raidighi Police Station and charge sheet was filed against the driver of the said Trekker and from the charge sheet it

is also seen that the appellant/claimant sustained injury in the accident. PW-3, being an employee of Suryapur Life Care Nursing Home duly authorised by the Proprietor of the Nursing Home, has proved the Discharge Certificate of the claimant and that goes to show that after the accident, the claimant was admitted in the Nursing Home for treatment.

Be that as it may, no medical paper, except Discharge Certificate, has been filed before the learned Tribunal from the side of the appellant/claimant. On careful scrutiny of the evidence of PW-1, Dr. H.K. Mukherjee, I find that he was not a doctor having knowledge of Orthopaedic and did not peruse any medical papers before issuing the Disablement Certificate, that too after two years of the accident.

In these circumstances, I am in full agreement with the learned Tribunal to discard the Disability Certificate in this case.

In the aforesaid view of the circumstances, it appears that though the appellant/claimant has succeeded to prove the accident and the injury sustained by him, but so far as the disablement is concerned, the appellant/claimant failed to substantiate the same by producing any evidence before the learned Tribunal.

In the aforesaid view of the matter, the appellant/claimant is not entitled to any pecuniary damages, but due to pain and suffering and medical treatment etc., I find it

justified to grant compensation to the tune of Rs.1,00,000/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e. on 28th March, 2003 till the deposit of the amount.

Accordingly, the respondent no.1/National Insurance Company Limited is directed to deposit Rs.1,00,000/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e. on 28th March, 2003 till the actual deposit of the amount before the office of the learned Registrar General of this Court, within six weeks from the date of this order.

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

The learned Registrar General is requested to disburse the amount to the appellant/claimant on proper identification.

With the above observation, the appeal, being FMA 916 of 2013, 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.)