

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 490 of 2013

Smt. Nupur Banik
Vs.
The Oriental Insurance Co. Ltd. & Anr.

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

Mr. Sanjay Paul
... For the respondent no.1/Insurance Co.

This appeal is directed against the judgment and award dated 23rd July, 2012 passed by the learned Judge, Motor Accident Claims Tribunal, 1st Court, Barasat, North 24-Parganas, in connection with MAC Case No.295 of 2007 (New)/1175 of 2007 (Old) under Section 166 of the Motor vehicles Act, 1988 whereby the learned Tribunal awarded compensation to the tune of Rs.3,50,000/- towards loss of income during treatment for 18 days and also expenditure towards treatment.

The claim petition was filed under Section 166 of the Motor vehicles Act, 1988 on account of injury sustained by one Biswajit Banik @ Liton Banik, aged about 32 years, having income of Rs.6,500/- per month from business, in a motor accident occurred on 7th May, 2007 at about 10.30 to 10.45 hours by the involvement of one Tata-407, bearing registration no.WB-25/8696, at

Jessore Road near Mondalgathi Petrol Pump, Barasat Police Station, which dashed the victim who sustained severe injury. The victim was immediately taken to Barasat District Hospital and thereafter shifted to Apollo Gleneagles Hospital. After the accident, Barasat Police Station Case No.285 of 2007 dated 8th May, 2007 under Sections 279/338 of the Indian Penal Code was started and ended with charge sheet.

The Oriental Insurance Company Limited contested the case by filing written statement denying all material averments of the claim petition contending, inter alia, that the claimant is not entitled to any compensation, as prayed for.

To prove the case, the claimant examined as many as six witnesses, namely, injured himself as PW-1 who corroborated the entire contents of the claim petition, including rash and negligent driving of the driver of Tata-407. One Dr. Prakash Mukherjee who examined the injured clinically and issued Disability Certificate was examined as PW-2. One Salauddin Mondal, claimed himself to be an eyewitness to the incident, has been examined as PW-3. He testified that on the alleged date of accident and time, he saw the injured Biswajit Banik along with another person was proceeding through extreme left side of the Jessore Road towards Bongaon from Barasat by driving a motor cycle, bearing registration no.WB-24G/0113, when they reached near Mandalgathi Petrol

Pump, all on a sudden the offending vehicle Tata-407, bearing registration no.WB-25/8696, proceeding with high and abnormal speed coming from Bongaon side lost its control and dashed the victim's motor cycle. As a result, the claimant sustained injury. One Indranil Ghosh examined as PW-4 produced the official hospital records, including discharge summary of the claimant Biswajit Banik who was admitted in Apollo Gleneagles Hospital from 7th May, 2007 to 25th May, 2007. One Ujjal Kumar Dutta, Accountant at Bhattacharya Orthopaedics & Related Research Centre (P) Limited, was examined as PW-5. He also proved the discharge certificate in favour of Biswajit Banik who was admitted in their Research Centre from 30th April, 2008 to 3rd May, 2008 and operated on 1st May, 2008. One Gobinda Karmakar, owner of Bishnupriya Medical & Sons, was examined as PW-6, who produced bills showing purchase of medicines. In course of their evidence, a good number of documents were admitted in evidence.

After analysing the evidence and documents on record, learned Tribunal did not rely on the Disability Certificate produced before the learned Tribunal but granted consolidated compensation of Rs.3,50,000/- in terms of pecuniary loss during treatment as well as towards medical expenses.

Mr. Jayanta Kumar Mandal, learned advocate, appearing on behalf of the appellant/claimant, submitted

that the evidence shows that the appellant/claimant was admitted in hospital for a considerable period and had to undergo operation, but the learned Tribunal did not consider any amount towards non-pecuniary damages, particularly, pain and suffering.

Mr. Sanjay Paul, learned advocate, appearing on behalf of the respondent no.1/Insurance Company, in his usual fairness, did not raise any objection regarding compensation towards pain and suffering, subject to amount decided by this Court.

After careful scrutiny of the entire evidence on record together with the documents exhibited, I find that after the accident appellant/claimant had to undergo operation and he was admitted in Apollo Gleneagles Hospital as well as Bhattacharya Orthopaedics & Related Research Centre (P) Limited for his treatment. Therefore, the appellant/claimant is entitled to compensation towards pain and suffering for a considerable period.

In the aforesaid view of the matter, I am of the humble view that the appellant/claimant is entitled to further compensation towards non-pecuniary damages, particularly, pain and suffering, a sum of Rs.1,00,000/-

It is submitted by Mr. Mandal that the appellant/claimant has already received awarded amount of Rs.3,50,000/- from the learned Tribunal along with interest.

Therefore, the appellant/claimant is entitled to the 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 30th July, 2007 till the deposit of the amount.

Accordingly, the respondent no.1/Oriental Insurance Company Limited is directed to deposit the Rs.1,00,000/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e. on 30th July, 2007 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 respondent no.1/Oriental Insurance Company Limited is at liberty to recover the entire awarded sum from the owner of the vehicle (Tata-407), bearing registration no.WB-25/8696, through execution proceeding in terms of the observations of the Hon'ble Apex Court in **Shamanna & Ors. v. The Divisional Manager, The Oriental Insurance Co. Ltd. & Ors.** reported in **AIR 2018 SC 3726** and **Oriental Insurance Co. Ltd. v. Nanjappan & Ors.** reported in **AIR 2004 SC 1630 : (2004) 13 SCC 244**.

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 and proof.

With the above observation, the appeal, being FMA 490 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.)