

31.08.2023
SL No.32
Court No. 551
Ali

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

**FMA 2194 of 2016
IA No.:CAN/1/2016 (Old No.:CAN/8999/2016)**

**Prafulla Mondal
Vs.
The United India Assurance Co. Ltd. & Anr.**

Mr. Amit Ranjan Roy
...for the appellant-claimant.

Mr. Rajesh Singh
...for the Insurance Co.

The instant appeal is preferred against the judgment and award dated 23rd June, 2015 passed by the learned Judge, Motor Accident Claims Tribunal, 2nd Court, Krishnagar, Nadia in M.A.C. Case no. 436 of 2011 under Section 166 of the M.V. Act before the learned for getting compensation 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 matter was heard by the learned tribunal. The insurance company contested the claim case by filing written statement. After hearing both the parties and the learned tribunal has allowed the compensation to the tune of Rs. 2,49,600/- in favour of the claimant

Being aggrieved by and dissatisfied with the impugned award the present appeal has been

preferred by the claimant for enhancement of the award.

Learned advocate for the appellant submitted before this court that the Doctor of Government Hospital has formed a Board and issued a disability certificate in favour of the claimant which is 60%. The Doctor has deposed before the learned tribunal and proved the disability certificate. The learned tribunal was erroneous in considering such certificate and assessed the disability of the claimant to be 10%. He argued that the observation of the learned tribunal is very much erroneous so the disability of the person can be assessed according to the disability certificate i.e. 60%.

The learned advocate appearing on behalf of the insurance company has submitted before this court that one Doctor has appeared before the learned tribunal as PW-3 who specifically deposed that the disability certificate was given in respect of the particular limb which is 60%. It is the positive deposition of the Doctor that the other part of the body was intact and disablement was issued on the particular area of the body. On such basis the learned tribunal has personally seen the claimant as PW-1. During his examination, he appeared before the learned Tribunal; his movement was specifically noticed by the learned tribunal. After assessing the

physical fitness of the claimant and the disability certificate, the assessment was given by the learned tribunal by himself. Consideration of the learned tribunal on the basis of his particular observation cannot be challenged here. In reply, the learned advocate for the claimant submitted before this court that the claimant was a mason who lost his job for his shortened limb. So at this juncture, the disability of the claimant cannot be assessed to be 10%.

Heard the learned advocate perused the disability certificate also perused the evidence of PW-3 i.e. the Doctor. The learned tribunal after perusing the entire evidence of PW-3 and disability certificate, is of view that the disability of the claimant would be only 10% instead of 60%. It is ordered that the claimant is entitled to get the compensation on the calculation of 10% permanent disability.

It is true that the opinion of the Doctor, more specifically the explanation of Doctor regarding the disability certificate is very much clear. It is crystal clear that the 60% disability is in respect of the particular limb only. It is also true that the learned tribunal has noticed the claimant during his appearance before the learned tribunal as PW-1. The observation of the learned tribunal in respect of permanent disability of the claimant is 10%.

The submission of the learned advocate for the appellant regarding the functional disability of the present appellant, the appellant is a mason. The mason used to work of pulling or carrying load which requires the body strength. It is true that the body strength of the present appellant must have lost which he had prior to the accident. Considering the observation of the Hon'ble Supreme Court passed in ***Raj Kumr Vs. Ajoy Kumar***, it appears to me that the functional disability of the present appellant would be not less than 20%. It is observed that the occupation of the claimant is a mason which is need heard bodily strength and the body strength of the claimant must have lost considerably due to such accident in the old age. Thus, in this case, I think it is necessary to consider the permanent disability of the appellant to be 20% instead of 10%.

Considering the notional income of the claimant it appears to me that the accident happened in the year 2011 so it is the regular practice of this court that one person who suffered a road traffic accident and when there is no reliable document of his income, the income of the claimant who suffered accident in the year 2011. The notional income would be Rs.4,000/- so in this case the notional income should be considered Rs. 4,000/- per month. In considering the non-pecuniary

damages according to the direction of Hon'ble Apex Court passed in ***R.D. Hatangardri*** it is observed that the appellant was admitted to the Nursing home for more than one month. Several multiple fracture was held at the lower part of his body however these fractures were operated and treated properly so the claimant must have suffered immense mental pain and agony during his treatment. Considering the Hon'ble Supreme Court passed in ***R.D. Hatangardri*** I observed the claimant is entitled to get Rs.30,000 towards the non-pecuniary damages.

In considering the other medical expenses of the present appellant it appears to me that after discharge of the said Nursing home. He had to administer several medicine and for that reason there are some bills and vouchers in original in the LCR. On perusing the LCR, I think it necessary the appellant is entitled to get an amount of Rs. 10,000/- towards the future medical expenses.

According to the ratio of the Hon'ble Supreme Court passed in ***Pranay Sethi*** the present appellant is entitled to get the future prospects which would be added to 10% of his establish income. Considering the age of the appellant at the time of accident was 50-60 years; so after adding all heads and after considering the entire matter, I

think it necessary that the just and proper compensation of this case is as follows:-

Calculation of compensation

1. Monthly IncomeRs.4,000/-
2. After adding 10% future prospect.....Rs.4,400/-
(Rs.400)
3. Annual Income (Rs.4,400 X 12)..... Rs. 52,800/-
4. 20% Loss of IncomeRs.10,560/-
5. Multiplier apply 11Rs.1,16,160/-
6. Add: Medical Expenses.....Rs.2,20,000/-
7. Add: Non-Pecuniary Expenses.....Rs. 30,000/-
Rs.3,66,160/-
- Less already paid..... Rs. 2,49,600/-
- Total Enhanced amount..Rs. 1,16,560/-**

The insurance company is directed to pay the enhanced amount of Rs.1,16,560/ to the claimant alongwith interest @ 6% per annum from the date of filing of the claim application i.e. from 7.12.2011 with the office of the learned Registrar General, High Court, Calcutta within eight weeks from the date of passing of this order. The claimant is also entitled to get the interest @ 6% per annum from the date of filing of this case upon already awarded amount to the date of its payment, if they have already not received. On such deposit the claimant-appellant is at liberty to receive the same from the office of the learned Registrar General, High Court Calcutta on usual terms and conditions.

The instant FMA 2194 of 2016 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.)