

16.08.2023
SL No.49
Court No. 551
Ali

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

F.M.A. 2191 of 2016

**Sri Goutam Roy
Vs.
The India Assurance Co. Ltd. & Anr.**

Mr. Krishanu Banik
...for the appellant-claimant.

Ms. Sayanti Santra
....for the respondent-Insurance Co.

The instant appeal has been preferred against the judgment and award dated 15th day of July, 2015 passed by learned Judge, Motor Accident Claims Tribunal, Dakshin Dinajpur at Balurghat in M.A.C. Case No. 197 of 2013.

The brief fact of the case is that the present claimant has sustained injury in a road traffic accident on 30th July, 2012. After such injury he was admitted to the Hospital and treated there for quite some time as an indoor patient. The disability certificate was issued by the Government Hospital with a finding that the claimant is suffering 40% disability. On the basis of such disability, the claim application was filed before the learned tribunal under Section 166 of the M.V. Act for getting compensation. The owner of the offending vehicle did not contest the claim application. The insurance company has contested the claim application by filing written statement. During the course of trial, the

claimant appeared as PW-1, the one eye witness appeared as PW-2, the staff of the Hospital appeared as PW-3 and two doctors appeared as PW-4 and PW-5. After considering the entire materials on record, the learned tribunal has awarded a sum of Rs. 50,000/- as compensation in favour of the claimant.

Being aggrieved by and dissatisfied with the said judgment the present claimant being the appellant preferred this appeal for enhancement of the award.

Learned advocate for the appellant submitted before this court that the learned tribunal has committed error in deciding the issues before him. The 40% disability has been clearly stated in the disability certificate but the learned tribunal has not considered the same and awarded a lumpsum amount of Rs.50,000/-. The learned tribunal should have awarded compensation on the basis of structure formula. He cited a decision of Hon'ble Supreme Court in ***R.D. Hattangadi*** reported in ***1995 ACJ 366***. He argued that the claimant has suffered immense mental pain and he is entitled to get the non pecuniary damages as observed by the Hon'ble Supreme court.

The learned advocate for the insurance company submitted that the impugned judgment passed by the learned tribunal suffered no illegality, the disability certificate issued in favour of the

present claimant is not beyond doubt the re-assessment of the Superintendent of the concerned Hospital also illegal. The disability certificate was not issued by following the proper procedure laid down in the law. The claimant can walk independently, now he is a fit person so he is not entitled to get any compensation according to the structure formula.

Heard the learned advocate perused the materials on record on perusing the impugned judgment it appears to me that the learned tribunal has not believed the re-examination and review by the Superintendent of the District Hospital, Dakshin Dinajpur at Balurghat. It is the observation of the learned tribunal that at the time of re-examination or review the claimant must have not appeared or no board of Doctors were formed to verify his disability after one year as observed in the Exhibit-10 itself.

Learned advocate for the insurance company argued that the Register which was exhibited at Exhibit-9 does not reflect the issuance of disability certificate or the name of the Doctor who was present at the Board.

The Exhibit-9 is the page of the Register of issuance of disability certificate. The page relates to the number of 198 which was appearing in the disability certificate. The number 198 dated 14.02.2014 is in respect of a disability certificate issued by Hospital to Goutam Roy. The Register is

only maintained to note the issuance of disability in respect of any person. I also perused the LCR wherein I find the Exhibit-10 in original it appears to me that the disability certificate issued in favour of the claimant Goutam Roy on 14.02.2014 cannot raise any doubt. The Register of such disability certificate i.e. Exhibit-9 also appears to me proper.

Considering the re-examination and review of the Superintendent, District Hospital it appears to me that the review and re-examination was itself create doubt by virtue of evidence of PW-5. Thus, I find no illegality in the observation of the learned tribunal to raise a doubt in respect of the review of the present appellant-claimant by the Superintendent on 27.02.2015. In this case Rs.50,000/- lumpsum amount was awarded in favour of the claimant. The claimant is suffering the disability which is partial in nature. The evidence of claimant itself shows he can walk independently without any physical hinderance.

Considering the same, I find the disability as appears to be partial is now must have cured. The dislocation of right angle may not create such disability which can prohibit the present claimant do his duties.

In considering the view of the Hon'ble Supreme Court in ***R.D. Hattangadi*** I think the claimant was suffered pain and suffering for more than 10 days. He must have faced numerous mental and physical

oppression throughout the period of his recovery. Considering the same, the claimant is also entitled to get compensation towards the non-pecuniary damages as observed by the Hon'ble Supreme Court in ***R.D. Hattangadi***. Thus in my view, the claimants are also entitled to get Rs. 50,000/- more towards the non pecuniary damages. The claimant has already received Rs. 50,000/- from the office of the learned tribunal. The insurance company is directed to pay the balance compensation amounting to Rs. 50,000/- to the claimant alongwith interest @ 6% per annum from the date filing of this application i.e. from 30.11.2013 through the office of the learned Registrar General, High Court, Calcutta within eight weeks from the date of passing of this order.

LCR are returned back immediately.

The instant FMA 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.)

