

**IN THE HIGH COURT, AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE BIVAS PATTANAYAK.

FMA 667 OF 2016

Dipak Kumar Sarkar

.....Appellant

Versus

ICICI Lombard General Insurance Co. Ltd and another

.....Respondents

For the Appellant: Mr Jayanta Kumar Mandal, Advocate.

Mr Sayantan Rakhit, Advocate.

For the Respondent no.1: Mr Parimal Kumar Pahari, Advocate.

Heard on: 16.11.2022.

Judgment on: 10.01.2023.

Bivas Pattanayak, J :-

1.This appeal is preferred against the judgment and award passed on 30th June 2015 by learned Additional District Judge cum Judge, Motor accident Claims Tribunal, 5th Court, Burdwan in MAC Case no. 9 of 2013/50 of 2013 granting compensation of Rs. 2,06,000/- favour of the claimant under Section 166 of the Motor Vehicles Act, 1988.

2. The brief fact of the case is that on 7 March 2010 at about 7 AM while the petitioner and his wife was waiting for a bus at police line bus stoppage at that time the offending vehicle bearing no. WB-41D/3432 (Tata 107 pickup van) which was coming from Shaktigarh side dashed the victim from behind in a rash and negligent manner as a result of which the victim sustained severe injuries on his left hand and was removed to Sharanya Hospital, Burdwan and on the subsequent morning he was shifted to Kolkata. During his medical treatment the injured-victim had to undergo several operations. On account of such injuries the claimant-injured filed application for compensation of Rs. 10,00,000/- under Section 166 of the Motor Vehicles Act, 1988.

3. The respondent no.1-insurance company contested the claim application before the learned tribunal. However respondent no.2-owner of the offending vehicle in spite of service of notice did not contest the claim application before the learned tribunal and the claim application was disposed of *exparte* against him. Accordingly, service of notice of appeal upon respondent no.2-owner of the offending vehicle is dispensed with.

4. The claimant in order to prove his case examined six witnesses and proved number of documents which have been marked as **Exhibit 1** to **8** respectively. The contesting opposite party no.2-insurance company (respondent no.1 herein) did not adduce any evidence on its behalf.

5. Upon considering the materials on record and the evidence produced on behalf of the claimants the learned tribunal allowed the claim application granting compensation of Rs. 2,06,000/- favour of the claimant under Section 166 of the Motor Vehicles Act, 1988.

6. Being aggrieved by and dissatisfied with the impugned judgment and award of the learned tribunal the claimant has preferred the present appeal.

7. Mr Jayanta Kumar Mandal, learned advocate for appellant-claimant submitted that the injured-claimant sustained 45% disablement resulting in loss of future earnings which should be quantified by applying multiplier method. He further submitted that the injured-claimant produced medical bills of Rs. 57,200/- (**Exhibit 8**) before the learned tribunal in relation to his treatment at Medica Superspeciality Hospital but the learned tribunal without any cogent reason disallowed the said medical bills. Furthermore he submitted that the learned tribunal erred in granting a very meagre amount towards non-pecuniary damages of Rs. 30,000/- only which requires to be increased keeping in mind the extent of injuries sustained by the injured-claimant. In support of his contention he relied on the following decisions of Hon'ble Supreme Court passed in **(i) M.D Jacob versus United India Insurance Co. Ltd and Another** reported in **2014 (1) T.A.C 735 (S.C)**; **(ii) Sanjay Verma versus Haryana Roadways** reported in **2014 (1) T.A.C 711 (S.C)**; **(iii) Karthik Subramanian versus B. Sarath Babu and Another** reported in

2021 (2) T.A.C 1 (S.C); (iv) Jithendran versus The New India Assurance Co. Ltd reported in **2022 SAR (Civ) 248; (v) G.Ravindranath @ R. Chowdary versus E. Srinivas & Anr.** reported in **2013 SAR (Civ) 979; (vi) Raj Kumar versus Ajay Kumar & Anr.** reported in **2011 SAR (Civ) 90; (vii) Kajal versus Jagdish Chand & Ors.** reported in **2020 SAR (Civ) 530.**

In the light of his aforesaid submissions he prayed for enhancement of compensation amount.

8. In reply to the aforesaid contention of appellant-claimant, Mr Parimal Kumar Pahari, learned advocate for respondent no.1-insurance company submitted that as per salary slips **(Exhibit C)** there is no loss of future earnings and therefore quantification of such amount towards loss of future earnings in the present facts and circumstances of the case do not arise at all. He further submitted that as per the evidence of injured-claimant he joined his regular duties in the same post after eight months of the incident and thus continued to draw salary in the same scale which he used to draw prior to the accident. Moreover with regard to claim of medical bills **(Exhibit 8)** he submitted that neither in the claim application nor in the evidence of the injured-claimant there is any whisper that the injured was treated in the said hospital for the period of his claim and thus the learned tribunal rightly dismissed the claim of the injured with regard to such medical bills. Furthermore he submitted that the propositions enunciated in the cited

decisions of the Hon'ble Supreme Court do not apply to the case at hand as the facts are dissimilar to the present case. In view of the above he submitted that the appeal is liable to be dismissed.

9. Having heard the learned advocates of respective parties, I now proceed to decide the issues involved in the present appeal. The appellant-injured has sought for enhancement of the compensation amount precisely on following grounds *firstly* the claimant-injured is entitled to loss of future earnings due to 45% disablement which should be quantified by applying multiplier method; *secondly* entitlement of the claimant in respect of medical bills of Rs. 57,200/- of Medica Superspeciality Hospital and *thirdly* increase of compensation towards non-pecuniary damages in respect of the extent of injuries sustained by the injured-claimant.

9.1. With regard to the first issue of quantification of future loss of earnings by adopting multiplier system it is found that the injured-claimant (PW1) deposed that for treatment of his injury on the left forearm he had to undergo several operative measures and he became permanently disabled to the extent of 45%. The disability certificate **(Exhibit 7)** shows post-traumatic deformity of left upper limb and the injured sustained disablement of 45% of permanent nature. Now it is to be seen whether such disablement affected the future earnings of the injured-victim. PW5, Dr Alok Kumar Samanta who was a member of the medical board which issued disablement certificate deposed in

cross-examination that there are two types of disability one is physical disability and another is functional disability and it is not possible for him to say that how far the injury of the injured affected his earning capacity. Though disablement of permanent nature to the extent of 45% has been noted in the disability certificate but nothing is placed on record to show that the deformity in the upper left limb of the injured has affected the earning capacity of the injured-victim. It is relevant in this context to note that the injured-claimant in his cross-examination has stated that he resumed his duties after 8 months of the accident and presently he is drawing salary in regular course. On comparative analysis of salary slips namely **Exhibit 6** and **Exhibit C** it is found that with the passage of time the gross pay of the injured claimant has got increased and there is no loss of future earnings. There is no case that due to injury to the left upper limb the grade in the service of the injured-claimant was lowered or he was demoted. The Hon'ble Supreme Court in ***Raj Kumar's Case (supra)*** observed in paragraph no.8 that where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings , would depend upon the effect and impact of such permanent disability on his earning capacity. The tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity and further held in the subsequent paragraph as follows:

“9. Therefore, the tribunal has to first decide whether there is any permanent disability and if so the extent of such permanent disability. This means that the tribunal should consider and decide with reference to the evidence: (i) whether the disablement is permanent or temporary; (ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement, (iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person. If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will it affect his earning capacity.”

Bearing in mind the aforesaid observation of the Hon’ble court and keeping in mind the materials as discussed above it is quite evident that in spite of such injury in the upper left limb of the injured there is no loss of future earnings.

9.1.1. In ***M.D Jacob’s Case*** the injured suffered amputation of complete left hand, severe injuries on head, dislocation of bones in hip and both knees and doctor assessed his disability at 100% and compensation was assessed by the

Hon'ble court considering the aforesaid aspects. The facts of the cited decision are dissimilar to the case at hand and thus stand distinguished.

9.1.2. In ***Sanjay Verma's Case*** the injured suffered a fracture of spinal cord resulting in paralysis of his whole body and he needed one person to look after him. The facts involved in the cited decision stands distinguished from the case at hand and is thus not applicable.

9.1.3. In ***Karthik Subramanian's Case*** the claimant could establish through documents of employment and bank statement that he got salary of Rs.37,500/- albeit for a short period. In the case at hand the injured resumed his duties after 8 months of the accident and presently he is drawing salary in regular course. Therefore the case before the Hon'ble court stands distinguished from the case at hand and is thus not applicable.

9.1.4. In ***Jithendran's Case*** the injured suffered 69% permanent disability and without assistance cannot perform everyday functions and affected with seriously impaired cognitive and physical capabilities and compensation was assessed by the Hon'ble court considering the aforesaid aspects. The facts of the cited decision are dissimilar to the case at hand and thus stand distinguished.

9.1.5. In ***G.Ravindranath @ R. Chowdary's Case*** the injured sustained pelvic and urethral injuries (total urethral rupture) and the compensation was

assessed considering such facts. It is found that the facts involved in the cited decision are distinct from the case at hand and is thus not applicable.

9.1.6. In **Kajal's Case** the injured suffered serious injuries resulting in damage to her brain and because of head injury the injured is left with very low IQ and severe weakness in all her four limbs with severe hysteria and urinary incontinence and her disability was assessed to the extent of 100%. It is found that the facts involved in the cited decision are dissimilar to the case at hand and is thus not applicable.

In light of the above discussion, it is found that the learned tribunal has rightly held that the injury of the claimant-injured does not affect his future earnings.

9.2. The second issue involved in the present appeal relates to claim of medical bills of Rs. 57,200/-. The claimant-injured filed the aforesaid medical bills pertaining to the period from 22.12.2010 to 25.12.2010 amounting to Rs. 57,200/- which is marked as **Exhibit 8**. From the four corners of the claim application nothing is stated regarding treatment of the injured during the aforesaid period in the concerned hospital. The injured-claimant (PW1) in his evidence has also not stated of any treatment during such period or claimed any such amount. The claimant has also not produced and proved any discharge certificate showing continuity of treatment. Though the bills were sought to be proved by PW6, Prem Kumar Srivastav yet the said witness stated

in cross-examination that he do not have any knowledge about the treatment undergone by the claimant. In the aforesaid backdrop, the learned tribunal has rightly disallowed such medical bills in the absence of pleadings and proper evidence.

9.3. With regard to non-pecuniary damages, is found that the learned tribunal granted Rs. 30,000/-on such head. Mr Mandal, learned advocate for appellant-claimant submitted that considering the extent of injuries the amount of compensation towards non-pecuniary damages requires to be increased. It is relevant to note that the injured-claimant has not produced a single discharge summary to establish the extent of his injuries. The disability certificate (**Exhibit 7**) shows post-traumatic deformity of left upper limb and the injured sustained disablement of 45% of permanent nature. As per the evidence of injured-claimant (PW1) for treatment of his injury on the left forearm he had to undergo several operative measures. Be that as it may, in his cross-examination the injured claimant (PW1) stated that he resumed his duties after eight months. The learned tribunal considering the period of confinement and injuries granted non-pecuniary damages of Rs. 30,000/-, which in the facts and circumstances of the case does not call for interference.

10. In view of the above discussion the appeal fails and stands dismissed. The impugned judgment and award passed by the learned tribunal is affirmed. No order as to cost.

11. With the aforesaid observation the appeal stands disposed.

12. All connected applications, if any, stands disposed of.

13. Interim order, if any, stands vacated.

14. Let a copy of this judgment along with the lower court records be sent to the learned tribunal for information.

15. Urgent photostat certified copy of the judgment if applied for be supplied to the parties after compliance of all legal formalities.

(Bivas Pattanayak,J.)