

17.07. 2023
item No.1 & 2.
n.b.
ct. no. 551

FMA 1249 of 2015

with
IA No. CAN 3 of 2017(Old No. CAN 1117 of 2017)
+
CAN 4 of 2019(Old No. CAN 1620 of 2019)

National Insurance Co. Ltd.
Vs.

Uttam Mondal & Anr.

With
COT 56 of 2015

Sri Uttam Mondal

Vs.

National Insurance Co. Ltd. & Anr.

Mr. Parimal Kr. Pahari
.....for the appellants.
Mr. Saudur Rahaman
.... For the respondents.

The instant appeal has been preferred by the Insurance Company against the judgment and order dated November 5, 2014 passed by the Learned Judge, Motor Accident Claims Tribunal, Dakshin Dinajpur at Balurghat in M.A.C Case No. 218 of 2008.

The brief fact of the case is that on March 21, 2008 while the present petitioner along with one Chandan Sarkar was coming back to his home from Balurghat by road on the motorcycle, at that time, they suffered an accident by one Tractor/Trailer being no. WB 61-1629 and WB 61-1630 respectively. On such accident Chandan Sarkar died and the present petitioner sustained severe injury by which he was admitted to the hospital and one

of his leg was amputated. On the basis of that accident, the injured filed claim case before the learned Tribunal. Learned Tribunal after considering the evidence on record and on considering the police papers allowed the claim application and directed the Insurance Company to pay the compensation amounting to Rs.8,30,000/-.

The insurance company preferred the appeal on the ground that the impugned judgment and order suffers illegality. Learned Tribunal has failed to appreciate the contributory negligence as two vehicles were involved in this case and suffered head on collision. So, the another vehicle and insurer thereof must have apportionate compensation.

The another ground was raised by the Insurance Company that the vehicle in question i.e. Tractor and Trailer were not involved in the accident. The driver and the owner of the Tractor and Trailer appeared before the learned Tribunal as O.P.W. 1 and O.P.W. 2. They are specifically stated the incident happened on the date of Holi and the Tractor was on road up to 12 noon thereafter they parked the Tractor. The evidence of O.P.W. 1 and O.P. W. 2 was not considered by the learned Tribunal if it was considered the case of the claimant should not be believed.

The claimants preferred one cross appeal claiming for enhancement of the compensation on the ground that

the future prospects as directed by the Hon'ble Supreme Court in **Pranay Shetty** was not considered in this case.

Heard the learned advocates for the respective parties and perused the materials on record, it is true that the claimant along with one Chandan Sarkar was driving the motorcycle being no. WB 62A/2222 and there was head on collision. It is the case of FIR that right side head light of the Tractor was not functioning and the Tractor was run in a high speed in rash and negligent manner for which the accident happened. The written complaint of the accident was lodged by one Arup Kumar Sarkar on March 22, 2008. The FIR was lodged after seven days of the accident. The FIR contained the name of the offending vehicles. On the basis of the FIR, the police case being Balurghat P.S. case No. 72 of 2008 dated March 27, 2008 was started. The investigation of police is ended in charge-sheet against the driver of the offending vehicle. The investigation disclosed that the driver only of the offending vehicle i.e. Tractor and Trailer only responsible for the accident. Now, the Insurance Company is of plea that the offending vehicle was not at all involved in the accident. On the basis of their plea, they have produced the O.P.W. 1 and O.P.W. 2. The O.P.W. 1 i.e. the owner of the vehicle, who wrote a letter to the Superintendent of Police of concerned district regarding verification that his vehicle was falsely implicated in the accident. However, except this letter nothing was

produced by the Insurance Company to prove their plea. The accident happened prior to seven days of the lodging of FIR. One person has lost his life due to such accident. There must have an UD case registered with the concerned police station regarding the death of the person. After submissions of charge sheet, no “narazi petition” was filed by the driver before this concerned Magistrate. The driver of the offending Vehicle (accused) may have file an application for further investigation if he was not involved in the accident. However, the report of the Motor Vehicle Department was also not produced before the learned Tribunal or before this appellate Court to consider whether actually the Tractor/ Trailer were running at the time without right side head light. However, the evidence of O.P.W. 1 and O.P.W. 2 is specific regarding non-involvement of the vehicle but the police paper which is the prima facie evidence of the accident disclosed the involvement of the vehicle. Learned Court below did not consider the statement of the O.P.W. 1 and O.P.W. 2 on the basis of charge sheet submitted by the police. It appears that the learned tribunal has committed no error. In absence of any corroborative evidence or any convincing materials, it is not possible for the learned Tribunal to disbelieve the fact of the claimant, who himself suffered the accident and saw the accident for the first instance.

So, considering the materials on record the ground raised by the Insurance Company regarding the non-involvement of the vehicle has no leg to stand upon.

In considering the income of the injured the learned Tribunal has considered the yearly income of the injured to be Rs.50,000/-. Admittedly, P.W.2 appeared before the learned Tribunal, who is the officer of Income Tax Department and stated that the insurer used to earn Rs.1,19,216/- for the assessment year 2008-2009. The assessment year 2008-2009 is the particular income of the financial year of 2007-2008, more specifically income for April, 2007 to March 2008. The accident happened on 21.03.2008, thus for the assessment of compensation, the income of the injured in the Income Tax Return for the assessment year 2008-2009 i.e. Rs.1,19,216/- has to be considered. It is also proved that the present appellant used to earn through his partnership business and he has no other independent income and it also admitted that there are three persons in the partnership firm. Accordingly, after considering the income of the injured to be rounded up Rs.1,20,000/- per year.

The cross-appeal is filed by the claimant for getting benefit of order of Hon'ble Apex Court in **Pranay Sethi**, I find justification in the cross-appeal

Accordingly, the order of Tribunal is hereby modified are recasted hereunder:-

- | | |
|---------------------------------|---------------------|
| 1. Annual Income be assessed as | Rs. 40,000/- |
| 2. Add : Future Prospect(40%) | Rs. <u>16,000/-</u> |

	Rs. 56,000/-
3. Multiplier 18	<u>Rs. 10,08,000/-</u>
4. Loss in income 60%	Rs. 6,04,800/-
5. Add Medical Exp.	Rs. 1,00,000/-
6. Pain & Suffering	Rs. 1,50,000/-
7. Future Discomfort	<u>Rs. 1,00,000/-</u>
Total Compensation	<u>Rs. 9,54,800/-</u>
Already paid by the Insurance Company	<u>Rs. 8,30,000/-</u>
Total Due	Rs. 1,24,000/-

The Insurance Company has already deposited the entire amounts Rs.8,30,000/-. Thus, the Insurance Company is directed to pay the balance amount of Rs.1,24,000/- alongwith 6% interest per annum from the date of filing of claim application. The Insurance Company is directed to pay the balance amount to the claimants through the office of the Learned Registrar General, High Court Calcutta.

The Insurance Company is directed to pay the balance compensation amount within eight weeks from the date of the passing of this order. The award shall carry 6% interest per annum from the date of filing of this order.

The appeal is disposed of.

All connected applications, if any, are also disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Subhendu Samanta, J.)

