

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Bibhas Ranjan De

F.M.A 1191 of 2007

Sk. Jiarul

Vs.

New India Assurance Company Ltd. & Anr.

For the Claimant/Appellant :Mr. Krishanu Banik, Advocate

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

Heard on : January 31, 2023
Judgment on : February 09, 2023

Bibhas Ranjan De, J.

1. Claim petition under Section 166 of the Motor Vehicles Act was filed by one Sk. Jiarul, who reported to have sustained injury in an accident happened on 17.03.2005 at about 7.00 a.m. by the

involvement of one truck bearing no. WB 41B/5536 proceeding towards Burdwan through Burdwan-Arambagh Road, near Uchalan Amtala said truck dashed another stationary truck due to break fail. As a result, victim sustained severe injury on his right leg, he was admitted in Burdwan Hospital for treatment and became unemployed. At the time of accident, he was Khalashi of truck and aged about 19 years.

- 2.** After the accident Madhabdihi Police Station Case No. 17 of 2005 dated 17.03.2005 under Section 279/338/427 IPC was started and ended with Charge sheet.
- 3.** Owner of the truck contested the claim petition by filing a written statement admitting the accident alleged in this case contending, inter alia, that amount of claim is excessive. Insurance Company also contested the case by filing written statement denying all material averments of the claim petition contending, inter alia, that injured did not sustain injury in any accident by the involvement of the truck being no. WB 412B/5536 on the alleged date and time and claimant is not entitled to any compensation.

- 4.** In course of hearing, claimant himself examined as PW-1. He claimed compensation of Rs. 3,00,000/- and corroborated the claim petition. In cross examination he has stated that one Doctor Dulal Chowdhury treated him and he filed prescription and other documents. He specifically stated that he has not filed any document regarding his psychological disability.
- 5.** In course of his evidence, certified copy of FIR, charge sheet, handicapped certificate issued by the Medical Board, Insurance Policy and a good number of medical vouchers etc., were filed.
- 6.** Ld. Tribunal did not rely on the disability certificate on the ground of that it was not admitted in evidence and that is why did not allow any compensation as per second schedule of the Motor vehicles Act. Ld. Tribunal allowed compensation to the tune of Rs. 28,975/- only towards expenditure for treatment.
- 7.** Not satisfied with the award claimant preferred this appeal on the ground that injured being a khalashi of the offending truck is entitled to compensation toward pecuniary loss which was not assessed by the Ld. Tribunal.
- 8.** In course of argument, Ld. Advocate, Mr. Krishanu Banik, appearing on behalf of the claimant has submitted that evidence

of this case clearly reflected that claimant being a khalashi by profession, sustained pecuniary loss which was not assessed by the Id. Tribunal. He relied on a case of Bajaj Allianz General Insurance Company Pvt. Lt. Vs. Union of India and other reported in 2021(4) TAC667(SC).

9. Per contra, Ld. Advocate, Mr. Parimal Kumar Pahari, relied on a case of ***Rajkuma Vs. Ajay Kumar and another*** reported in ***(2011) 1 Supreme Court Cases 343*** and submitted that disability certificate was not proved even by any employee of the Hospital let alone by the member of the Medical Board.
10. From the evidence of injured himself together with the certified copy of Charge Sheet and FIR, I find no scope to disbelieve the accidental injury sustained by the claimant on 17.03.2005 at about 7.00 a.m. by the involvement of one truck bearing no. WB 41B/5536 insured with New India Assurance Company Limited.
11. Now, I propose to come to the disability certificate issued by the Medical Board constituted in Burdwan Medical College & Hospital.

12. From the report, I find that the disability certificate was filed on behalf of the claimant but claimant did not take any effort by summoning any witness to prove the disability certificate, for the reason best known to him.

13. In Bajaj Alliance General Insurance Company Ltd. (supra)

Hon'ble Apex Court held in Para IV:-

“ IV. As far as the aspect of the issuance of certificate on disability of victim is concerned, it is reiterated that the guidelines laid down by this Court in Raj kumar V. Ajay Kumar and Anr. (2011) 1 SCC 343 mandatorily must be followed by the Macts, in respect of loss of income due to injury/disablement. The District Medical Board is also directed to follow the guideliens issued by the Ministry of Social Justice and Empowerment, Government of India vide Gazette Notification s. No. 61, dated 05.01.2018, for issuance of disability certificate in order to bring Pan India Uniformity. The consequence is that the MACT would ascertain that permanent disability certificate issued

by the District Medical Board or body authorized by it is in accordance with the Gazette Notification alone. Once the certificate is issued in this manner, the same can be marked for purposes of being taken into consideration as evidence without the necessity of summoning the concerned witness to give formal proof of the documents unless there is some reason for suspicion on the document:”

14. Therefore, considering the entire materials on record, I can not rely on the disability certificate on the following two grounds:-

a. Disability certificate was not even admitted in evidence as exhibit with or without objection.

b. No Gazette Notification was ever filed in view of the guideline prescribed in ***Bajaj Alliance General Insurance Company PVT. Ltd.*** (supra).

15. But, from the evidence of the claimant himself together with a good number of medical vouchers and also sufferings for a prolonged period, I am of the view that claimant is entitled to

compensation to the tune of Rs. 1,50,000/- towards non-pecuniary loss.

- 16.** It is found from the Tribunal record that claimant already received Rs. 28,975/- from the Tribunal. Therefore, claimant/appellant is entitled to balance compensation of Rs. 1,21,025/- along with interest @ 6% per annum from the date of filing (28.04.2005) till the date of deposit of the sum before the office of the Ld. Registrar General.
- 17.** Respondent/ Insurance Company is directed to deposit the balance amount of Rs. 1,21,025/- along with interest as stated above, before the office of the Ld. Registrar General, within 6(six) weeks from date.
- 18.** Ld. Registrar General is requested to disburse the amount in favour of appellant/ claimant on proper identification and proof.
- 19.** With the aforesaid observation this appeal being FMA 1191 of 2007 stands disposed of.
- 20.** Let the records of Tribunal along with copy of the judgement be transmitted back immediately.
- 21.** Pending applications, if there be any, stand disposed of.

22. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]