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Ct. 654
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**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

FMA 1126 of 2021

With

CAN 1 of 2021

With

CAN 2 of 2023

The National Insurance Co. Ltd.

-Vs-

Shasanka Roy & Anr.

Mr. Sanjoy Paul

... for the appellant-insurance company

Mr. Jayanta Kumar Mondal,

Mr. S. Rakshit

... for the respondent No. 1 –claimant

This appeal is preferred against the judgment and award dated 5th January, 2021 passed by the learned Additional District Judge–cum–Judge, Motor Accident Claims Tribunal, Special Court at Burdwan, Purba Bardhaman in MAC Case No. 67 of 2010 (Old No. 330 of 2010) granting compensation of Rs. 6,35,600/- together with interest in favour of the claimant-injured under Section 163A of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 2nd January, 2018 at about 17.30 hours while the victim was travelling as a “*Khalasi*” in the vehicle bearing registration No. WB-15A/0425 (truck) through

Moregram-Panagarh road and when the said truck reached near Gopalnagar at that time another truck bearing registration No. WB-41A/6115 in an excessive high speed and in rash and negligent manner dashed the truck from front side in which the victim was travelling, as a result on which the victim sustained injuries on his person. Immediately, the victim was taken to Suri Sadar Hospital and thereafter, he was transferred to Burdwan Medical College and Hospital for better treatment. On account of injuries sustained and the subsequent disablement, the victim-injured filed application for compensation of Rs. 3,00,000/- under Section 163A of the Motor Vehicles Act, 1988.

The respondent no. 1-claimant in order to establish his case examined himself and produced documents, which have been marked as **Exhibits 1 to 5** respectively.

The appellant-insurance company did not adduce any evidence.

By order dated 17th November, 2022, service of notice of appeal upon the respondent no. 2 owner of the offending vehicle has been dispensed with.

Upon considering the materials on record and the evidence adduced on behalf of the claimant, the learned Tribunal granted compensation of Rs. 6,35,600/- together with interest in favour of the claimant under Section 163A of the Motor Vehicles Act, 1988.

Being aggrieved by and dissatisfied with the impugned judgment and award, the appellant-insurance company has preferred the present appeal.

Mr. Sanjoy Paul, learned advocate for the appellant-insurance company submits that the learned Tribunal erred in holding that the victim suffered 100% functional disabilities. Referring to the 2nd Schedule of the Act, he submits that as per Clause 5(b), percentage of loss of earning capacity is to be assessed as per the Schedule-I under the Workmen's Compensation Act, 1923. He submits as per the Schedule-I of the Workmen's Compensation Act, 1923, the injury sustained by the victim is a non-schedule injury and, therefore, the percentage of loss of earning capacity in no stretch can be 100%. He further submits that the disability certificate should have been proved by the author of the said certificate and unless and until, the author is examined, the said certificate is not admissible in evidence and in support of his contention, he relies on a decision of the Hon'ble Supreme Court passed in ***Rajesh Kumar Alias Raju versus Yudhvir Singh And Another*** reported in ***(2008) 7 SCC 305***. Further more, he submits that the learned Tribunal erred in granting compensation under general damages of Rs. 2,00,000/- which ought to have been Rs. 5,000/- in terms of the 2nd Schedule of the Act. In the light of

the aforesaid submissions, he prays for modification of the impugned judgment and award.

In reply to the contentions raised on behalf of the appellant-insurance company, Mr. Jayanta Kumar Mondal, learned advocate for respondent no. 1-claimant submits that at the time of accident the victim was working as a “*Khalasi*” in the truck and due to the injuries sustained, he could not resume his duties and the learned Tribunal taking into consideration such aspect has held that the victim sustained 100% functional disability. The findings arrived at by the learned Tribunal are reasonable and should not be interfered with. To buttress his contention, he relies on the following decisions of the Hon’ble Supreme Court:-

- (1) *Pratap Narain Singh Deo versus Srinivas Sabata and Ors.* reported in (1976) 1 SCC 289;**
- (2) *Parminder Singh versus New India Assurance Co. Ltd. and others* reported in 2019 (3) T.A.C. 353 (S.C.);**
- (3) *Gurdev Singh versus Reliance General Insurance Company Ltd.* reported in 2023 (2) T.A.C. 721 (S.C.).**

He further submits that the disability certificate produced by the claimant-injured has never been challenged and/or objected to by the insurance company and therefore, the veracity and contents of the said document should be taken to be admitted and in

support of his contentions, he relies on the decision of this Court passed in ***Kuntal Kundu versus National Insurance Company Limited & Anr.*** reported in ***(2008) 3 WBLR (Cal) 717***. In light of his aforesaid submissions, he prays that the impugned award of the learned Tribunal should be affirmed.

Having heard the learned advocates for the respective parties, following issues have fallen for consideration. *Firstly*, whether the disability certificate can be considered without the examination of the person who issued the same; *secondly*, whether the victim sustained functional disability of 100% and *lastly*, whether the victim is entitled to general damages of Rs. 5,000/- only.

With regard to the first issue, it is found that the claimant-injured produced the disability certificate issued by the Burdwan Medical College Hospital, Burdwan which is marked as **Exhibit-5**. Mr. Paul, learned advocate for the appellant-insurance company relying on the decision of the Hon'ble Supreme Court in *Rajesh Kumar Alias Raju (supra)* has argued that without examination of the author, such document of disability is inadmissible. *Per contra*, Mr. Mondal, learned advocate for the respondent no. 1-claimant relying on *Kuntal Kundu (supra)* has argued that such document once admitted into evidence without objection, its veracity and admissibility cannot be

challenged at this stage. It is true that the disability certificate produced by the claimant-injured has been marked exhibit without any objection from the side of the insurance company. That apart, upon going through the cross-examination of P.W. 1, there is nothing in the evidence to suggest that such document of disability was ever challenged or objected to at the time of examination of P.W. 1 by the insurance company. To be precise, no suggestion whatsoever has been given to the witness challenging the veracity of the said document. In *Rajesh Kumar Alias Raju (supra)*, the certificate of Civil Surgeon, Faridabad was relied upon by the claimant. However, fact of the case does not reveal that the document was tendered into evidence without objection. Thus, the fact of the aforesaid case is distinguishable with the case in hand where it is found that the disability certificate has been tendered into evidence and exhibited on behalf of the claimant without any objection from the side of the insurance company. Since the document is marked as exhibit on consent without reservation, the contents are taken as admitted. I find substance in the submissions of Mr. Mondal in this regard relying on *Kuntal Kundu (supra)*.

With regard to the second issue, it is found that the learned Tribunal has held 100% functional disability of the victim. Disability Certificate produced by the claimant shows that the victim sustained

deformity of his right leg and the extent of disablement is 50%. It is relevant to note from the disability certificate that he can travel without assistance of an escort. There is no evidence led from the side of the claimant to prove the extent of disability to precisely suggest that such injury has made the victim 100% functionally disabled. The victim, as it appears from Discharge Certificate (**Exhibit-3**), was treated at Burdwan Medical College and Hospital. However, no such endeavour was taken by the claimant to secure medical evidence of doctor to establish the extent of injury. Such being the position, I am of the opinion that the injury sustained by the victim has affected his earning capacity upto 50%. The decisions of Hon'ble Supreme Court in *Pratap Narain Singh Deo (supra)*, *Parminder Singh (supra)* and *Gurdev Singh (supra)* cited on behalf of respondent no.1-claimant are factually distinguishable and thus are not applicable to the present case.

With regard to the last issue, it is found that the learned Tribunal has allowed Rs.2,00,000/- towards general damages. However, following the 2nd Schedule to the Act, claimant is entitled to general damages of Rs.5,000/-.

The other aspects have not been challenged in this appeal.

Bearing in mind the above, the calculation of compensation is made hereunder:

Calculation of Compensation

Monthly income	Rs.3,300/-
Annual income (Rs.3,300/- x 12)	Rs.39,600/-
50% loss of income due to disablement of 50%	Rs.19,800/-
Multiplier 11 (Rs.19,800/- x 11)	Rs. 2,17,800/-
Add: Pain and sufferings	Rs.5,000/-
Total amount	Rs.2,22,800/-

Thus, the claimant is entitled to compensation of Rs.2,22,800/- together with interest @ 6% per annum from the date of filing of the claim application till payment. It is found that the appellant-Insurance Company has deposited Rs.12,88,011/- vide OD Challan No.2965 dated 16th December, 2022 and statutory deposit of Rs.25,000/- was made vide OD Challan No.19 dated 6th April, 2021 with the registry of this Court. Both the aforesaid deposits together with accrued interest shall be adjusted against the entire compensation amount.

The respondent no.1-claimant is directed to deposit *ad valorem* court fees on the compensation amount assessed, if not already paid.

Learned Registrar General, High Court, Calcutta, shall release the compensation amount together with interest in favour of the respondent no.1/claimant upon satisfaction of his identity and payment of *ad valorem* court fees, if not already paid.

After satisfaction of the award, if any amount is left over, the same shall be refunded to the appellant-Insurance Company.

With the aforesaid observations, the appeal stands disposed of. The impugned judgment and award of the learned Tribunal stands modified to the above extent. No order as to costs.

All connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

Urgent photostat copy of this order, if applied for, be given to the parties upon compliance of necessary legal formalities.

(**Bivas Pattanayak, J.**)