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Ct. No.237
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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 1507 of 2011
with
IA No. CAN 2 of 2013 (CAN 3562 of 2013)

Abdul Rashid
Vs.
The Branch Manager,
Oriental Insurance Co. Ltd. & Anr.

Mr. Saidur Rahaman
… For the appellant/claimant

Mr. Parimal Kumar Pahari
… For the respondent no.1/Insurance Co.

This appeal has been preferred against the judgment and award dated 23rd June, 2010 passed by the learned Judge, Motor Accident Claims Tribunal, 2nd Court, Raiganj, Uttar Dinajpur, in connection with MAC Case No.47 of 2007 under Section 166 of the Motor Vehicles Act, 1988 whereby the learned Tribunal awarded compensation to the tune of Rs.1,65,750/-.

The claim petition under Section 166 of the Motor Vehicles Act, 1988 arose out of a motor accident which took place on 19th September, 2006 at about 10.00 p.m. by the involvement of a vehicle, bearing registration no.WB-59/X-7829 (Auto Van), which was duly insured with the Oriental Insurance Company Limited.

The brief fact of this case is that on 19th September, 2006 at about 10.00 p.m. while Abdul Rashid, the claimant of this case, along with one Mostafa Alam was returning from Raiganj with his business materials of plastic chair with the offending vehicle, bearing registration no.WB-59/X-7829 (Auto Van), to Harirampur. The said vehicle was plying with abnormal speed. When the vehicle reached near Pathakbari, one truck was also coming from opposite side and the offending vehicle lost its balance and as a result the claimant/Abdul Rashid sustained injury in his left hand. He was taken to Raiganj Upasham Nursing Home wherefrom he was referred to Kolkata. He was admitted at New Life Nursing Home, Kolkata, where his left hand was amputated by the doctor. It is alleged that the accident took place due to rash and negligent driving of the offending vehicle, bearing registration no.WB-59/X-7829. At the time of injury, the claimant being a man of 23 years and having income of Rs.6,000/- per month from his business.

Oriental Insurance Company Limited contested the case by filing written objection denying all material averments of the claim petition contending, inter alia, that claimant is not entitled to any compensation, as prayed for.

To prove the case, two witnesses were examined on behalf of the claimant. The claimant himself examined as PW-1. In course of his evidence, he corroborated the entire contents of the claim petition regarding the income from his business as well as expenditure incurred for the purpose of treatment and accordingly he prayed for compensation to the tune of Rs.3,00,000/-. In cross-examination, a specific suggestion was thrown to him that he was not travelling with the offending vehicle along with his furniture and he denied the suggestion. He also did not file any bill or voucher of those furniture said to have been carried at the time of accident. In course of his evidence, a good number of documents were examined and admitted in evidence as Exhibit 1 to 26, including First Information Report, charge sheet, seizure list, insurance policy, disability certificate etc.

PW-2 Mostafa Alam has testified that on the alleged date of accident at about 10.00 p.m. he was going to Harirampur with the PW-1 in a three-wheeler, bearing registration no.WB-59/X-7829, and the driver of the vehicle was driving the vehicle with high speed. They requested him to slow down the speed. At Rajbari Gate, the three-wheeler hit against a lorry and the vehicle turned upside down. The three-wheeler ran over PW-1. As a result, the claimant sustained injury in his left hand. In the cross-examination, he testified that he saw the vehicle from behind.

Learned advocate appearing on behalf of the claimant/injured has submitted that the learned Tribunal applied notional income of Rs.15,000/- per annum instead of Rs.36,000/- per annum. It has been further submitted that the learned Tribunal did not grant any compensation towards non-pecuniary loss like pain and suffering and on other heads.

From the claim petition, I find that the appellant/ claimant used to deal in furniture and according the appellant/claimant, on the alleged date of accident, he was travelling with his furniture by the offending vehicle. In course of evidence of PW-1, specific suggestion was thrown to him regarding his furniture business. In course of entire proceeding of this case before the learned Tribunal on behalf of the claimant, no single scrap of paper was ever produced in support of his business and PW-1/claimant himself in his examination-in-chief has stated in his evidence that he was travelling with the offending goods vehicle with his furniture purchased from Raiganj and at the time of returning from Raiganj, he met an accident alleged in this case. Taking the risk of repetition, it is found that the appellant/claimant never produced any scrap of paper in support of his business far to speak of carrying furniture by a goods vehicle after purchasing the same from Raiganj.

Therefore, it can easily be presumed that on the alleged date of accident, the appellant/claimant/injured was not travelling with his furniture from Raiganj to Harirampur. However, in course of traveling, the appellant /claimant met with an accident by the involvement of the vehicle, bearing registration no.WB-59/X-7829 and he sustained injury and finally his left hand was amputated as it appears from the disability certificate issued by the Raiganj District Hospital showing 65% disability. The alleged accident has also been proved by the documents admitted in evidence in the case before the learned Tribunal.

Considering all facts and circumstances, it is found that the appellant/claimant is entitled to compensation because of his injury, i.e., amputation of left hand in an accident by the involvement of the vehicle, bearing registration no.WB-59/X-7829, which was duly insured with the Oriental Insurance Company Limited.

Learned Tribunal assessed annual income of the appellant/claimant as Rs.15,000/-. Considering the documents, particularly, the trade licence (Ext.-7), I am not agreeable with the learned Tribunal with regard to the assessment of income of Rs.15,000/- per annum. Considering the evidence on record, I find it justified to assess the income of the claimant/injured as Rs.36,000/- per annum.

Learned Tribunal also did not consider any amount of compensation towards non-pecuniary heads, like pain and suffering, loss of future amenities, etc.

In the aforesaid view of the matter, I would like to re-assess the compensation as follows:-

Annual Income	Rs. 36,000/-
Add: Future prospect (40%)	Rs. 14,400/-

	Rs. 50,400/-
Multiplier by 18 (as per Second Schedule)	X 18
	Rs.9,07,200/-
Less: Deduction 35% (since the claimant was disabled to the extent of 65%)	Rs.3,17,520/-
	Rs.5,89,680/-
Add: Non-pecuniary damages including Medical expenses	Rs.3,00,000/-
Total compensation	Rs.8,89,680/-
Less: Awarded by ld. Tribunal & received	Rs.1,65,750/-
ENHANCEMENT	Rs.7,23,930/-

For the reasons, it is seen that the appellant/claimant is entitled to the total compensation to the tune of Rs.8,89,680/-. It is reported that the appellant/claimant has already received Rs.1,65,750/- as awarded by the learned Tribunal with interest.

Therefore, the appellant/claimant is entitled to the balance compensation amount of Rs.7,23,930/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e., on 12th March, 2007 till the deposit of the amount.

I have discussed hereinabove that the appellant/ claimant would not prove the fact of carrying furniture at the time of travelling by a goods vehicle (offending vehicle). From that point of view, the appellant/claimant cannot be said to be a valid passenger in respect of a commercial vehicle and rather he was a gratuitous passenger of the vehicle. According to the conditions of policy, the

Insurance Company is not liable to pay any compensation in absence of any premium in respect of the passengers of any commercial vehicle.

In this case though the Insurance Company is liable to pay the entire compensation to the appellant/claimant but is entitled to realise the entire amount with interest from the owner of the vehicle, bearing registration no. WB-59/X-7829 (Auto Van), through execution proceeding directly in terms of the observations of the Hon'ble Apex Court in **Shamanna & Ors. v. The Divisional Manager, The Oriental Insurance Co. Ltd. & Ors.** reported in **AIR 2018 SC 3726** and **Oriental Insurance Co. Ltd. v. Nanjappan & Ors.** AIR 2004 SC 1630 : (2004) 13 SCC 244.

Accordingly, the respondent no.1/Oriental Insurance Company Limited is directed to deposit the enhanced compensation amount of Rs.7,23,930/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e., on 12th March, 2007 till the actual deposit of the amount before the office of the learned Registrar General of this Court, within six weeks from the date of this order.

The appellant/claimant is entitled to withdraw the balance compensation amount with interest.

The learned Registrar General is requested to disburse the amount with interest to the appellant/ claimant on proper identification and proof.

With the above observations, the appeal, being FMA 1507 of 2011, is disposed of along with the application, being CAN 2 of 2013 (CAN 3562 of 2013).

All pending applications, if there be any, stand disposed of.

Records of the learned Tribunal along with a copy of this order be transmitted back immediately.

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

(Bibhas Ranjan De, J.)