23.08.2023
Ct. 654
Supplementary
List Nos.1 to 2
KB

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURIDICTION
APPELLATE SIDE

F.M.A.T. 435 of 2021
Shriram General General Insurance Co. Ltd.
-Vs-
Debanjan Banerjee & Another
with
C.O.T. 12 of 2022
Debanjan Banerjee
-Vs-
Shriram General General Insurance Co. Ltd. & Anr.

Mr. Rajesh Singh
… for the appellant-Insurance Company

Mr. Jayanta Banerjee
Mr. Sandip Bandyopadhyay
… for the respondents-claimants and
Cross Objector in COT 12 of 2022.

This appeal is preferred against the judgement and award dated 10th March, 2021 passed by Learned Additional District Judge cum Judge, Motor Accident Claims Tribunal, Fast Track 2nd Court, Paschim Medinipur in M.A.C. Case No. 137 of 2014 granting compensation of Rs.11,81,000/- together with interest in favour of the claimant-injured under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of this case is that on 7th December, 2013 at about 1.05 P.M. while the victim along with his colleague Mitul Das was proceeding to Chandipur from his office at Tamluk on a motor cycle bearing registration no. WB-34S/9723 through the Digha-Mechada Road and when they reached near Brindabanpur Bus stoppage at that time offending vehicle bearing registration no. WB-11A/5930 (Bus) dashed the said motor cycle in a rash and negligent manner from the opposite direction, as a result of which the victim and her colleague Mitul Das received fracture injuries. Immediately the victim was admitted to local hospital wherefrom he was referred to District Hospital at Tamluk. Due to his serious injuries he was taken to Sanjiban Hospital, Phuleswar, Uluberia, District - Howrah. Further the victim was shifted to Bellevue Clinic, Kolkata and thereafter to Apollo Gleneagles Hospital, Kolkata. The victim due to the injuries received in the said accident sustained disablement. On account of injuries sustained and the subsequent disablement the victim filed application for compensation of Rs. 15,00,000/- together with interest under section 166 of the Motor Vehicles Act, 1988.

The claimant-injured in order to establish his case examined five witnesses and produced document which have been marked as **Exhibit 1 to 14** series respectively.

The appellant-insurance company did not adduce any evidence.

Since the respondent No.2-owner of the offending vehicle did not contest the claim application, service of notice of appeal upon the said respondent stands dispensed with.

Upon considering the materials on record and evidence adduced on behalf of the claimant-injured, the learned tribunal granted compensation of Rs.11,81,000/- together with interest in favour of the claimant-injured under Section 166 of the Motor Vehicles Act, 1988.

Being aggrieved by and dissatisfied with the impugned judgement and award of the learned tribunal, the insurance company has preferred the present appeal.

Challenging the impugned judgement and award of the learned tribunal, the claimant-injured also filed a Cross Objection, being C.O.T. 12 of 2022.

At the time of hearing of the appeal, Mr. Jayanta Banerjee, learned advocate for the respondent no.1-claimant submits for withdrawal of the Cross-Objection.

Accordingly, the Cross-Objection being C.O.T. 12 of 2022 stands dismissed as withdrawn.

Mr. Rajesh Singh, learned advocate for appellant-insurance company submits that the learned tribunal has allowed an amount of Rs. 9,06,000/- towards medical expenses. However, it failed to take into account that such medical expenses have been already reimbursed through mediclaim and therefore allowing such medical expenses amounts to double benefit which should not be extended to the claimant. He also challenges the amount granted towards non-pecuniary damages. In the light of his aforesaid submission, he prays for modification of the impugned judgement and award.

Mr. Jayanta Banerjee, learned advocate for respondent no.1-claimant (injured) in reply submits that the mediclaim is the money received by a victim of an accident as a return of money invested by him and such amount cannot be comprehended as a benefit received and therefore the question of deduction of mediclaim received by claimant does not and cannot arise at all. To buttress his contention he relies on the decision of this Court passed in ***New India Assurance Company Ltd. vs. Bimal Kumar Shah and Another*** reported in ***2018 (4) T.A.C. 226 (Cal.)***

Upon hearing the leaned advocates for respective parties, following issues have fallen for consideration. *Firstly,* whether the money received by the victim upon settlement of his mediclaim policy, prior to the passing the impugned award, should be deducted from the compensation determined to be payable to him under the head of reimbursement of medical expenses and *secondly,* whether the learned Tribunal erred in granting non-pecuniary damages.

Admittedly, the reimbursement of the medical expenses of Rs.9,06,000/- has been made under the mediclaim. This Court in *Bimal Kumar Shah (supra)* has held that the money received by the victim as return for money invested by him cannot be considered as a benefit received and therefore question of victim being doubly benefited does not and cannot arise. Following the aforesaid proposition, the argument advanced in this regard by the insurance company fall short of merit.

So far as non-pecuniary damages are concerned, it is found that the victim due to injuries in the accident was admitted to the hospital for a considerable period. Considering the extent of hospitalisation and the injuries sustained, the amount granted under the head of non-pecuniary damages does not call for interference.

Accordingly, the appeal stands dismissed. The impugned judgment and award of the learned tribunal is affirmed. No order as to costs.

It is found that the insurance company has already deposited an amount of Rs.17,59,139/- vide OD Challan No. 487 dated 18th May, 2022 and also statutory amount of Rs.25,000/-has been made to the Registry of this Court vide OD Challan No. 709 dated 1st October, 2021. Both the aforesaid deposits along with accrued interest be released in favour of the claimant-injured.

Claimant-injured is directed to deposit *ad valorem* court fees on the compensation amount, if not already paid.

Learned Registrar General, High Court, Calcutta shall release the aforesaid amount together with accrued interest in favour of the claimant-injured upon satisfaction of his identity and payment of *ad valorem* court fees, if not already paid.

Upon full satisfaction of the award, if any amount is left over, the same shall be refunded to the insurance company.

With the aforesaid observations, the present appeal and cross objection stand disposed of.

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

Interim order, if any, stands vacated.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously upon compliance of usual legal formalities.

(**Bivas Pattanayak, J**.)