

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Bibhas Ranjan De

F.M.A 1160 of 2009

With

Senjuti Roy (nee Sengupta)

Vs.

New India Assurance Co. Ltd. & Ors.

For the Appellant/
Claimant :Mr. Ashique Mondal, Advocate

For the Respondent no.1/
New India Assurance Co. Ltd. :Mr. Parimal Kumar Pahari, Advocate

For the Respondent no. 2/
Oriental Insurance Co. Ltd. :Mr. Sanjay Paul, Advocate

Heard on : February 20, 2023
Judgment on : March 09 , 2023

Bibhas Ranjan De, J.

1. This appeal is directed against the judgement and award passed by

Learned Motor Accident Claims Tribunal, Additional District Judge, Fast

Track Court whereby Ld. Judge awarded a sum of Rs. 60,000/- towards pain and suffering and also Rs. 20,000/- towards medical expenses in favour of the claimant /appellant.

- 2.** The claim petition under Section 163A of the Motor Vehicles Act, 1988 arose out of injury sustained by Senjuti Roy in an accident alleged to have been occurred on 24.12.2001 at about 9.40 hours while drivers of the two vehicles bearing no. WBU-1567 (mini bus) and WBS-2743 (bus) were driving in rash and negligent manner through GR road coming from opposite direction and collided with each other. As a result, claimant Senjuti Roy sustained severe injuries and removed to hospital. Both the drivers of the vehicles were responsible for the accident. That is why, claimant filed the claim petition with a prayer for compensation to the tune of Rs. 3,20,000/-along with medical expenses and interest. Both the Insurance Companies namely New India Assurance Company and Oriental Insurance Company Limited contested the claim petition by filing their respective written objection denying all material averments of the claim petition contending, inter alia, that claimant is not entitled to any compensation.
- 3.** To prove the case, claimant himself examined as PW-1, who corroborated the contents of the claim application. In cross-examination, claimant

testified that at the relevant point of time he was sitting in the cabin of the mini bus. He denied all suggestions thrown at him in course of her cross-examination.

- 4.** One Dr. A Chowdury was examined as PW-2. In his examination-in-chief he testified that on 22.03.2004 he examined claimant Senjuti Roy who had no sensation on lateral aspect of her right hand. Dr. issued a certificate of permanent disablement to the extent of 55% and that report was admitted in evidence as exhibit 10. In cross-examination doctor testified that he did not make any medical treatment or clinical treatment of the claimant Senjuti Roy prior to 22.03.2004. He further testified that he was not attached to either Howrah General Hospital or S.S.K.M Hospital during that period. He had no knowledge about any accident met by the claimant.
- 5.** In course of evidence of witness a good number of documents were admitted in evidence as exhibit 1 to 10.
- 6.** Ld. Judge after analyzing the evidence on record returned his finding that none of the doctors of the hospitals where claimant was treated, was not examined to substantiate the treatment of the claimant after the accident. Ld. Judge did not rely on the disability certificate of the doctor who, admittedly, never treated the claimant. However, considering the

medical expenses and pain and suffering. Ld. Judge awarded compensation to the tune of Rs. 80,000/- in all.

7. Mr. Asquie Mondal, Ld. Advocate, appearing on behalf of the Claimant has referred to the evidence on record particularly the evidence on the issue of disability. It is submitted by Mr. Mondal, referring to Employees Compensation Act, 1923, that percentage of disability can be assessed by the qualified medical practitioner. Therefore, according to Mr. Mondal, the disability certificate issued by Dr. A Chowdhury can't be thrown out of Court also in view of the Provision of Section 45 of the Indian Evidence Act. Mr. Mondal has referred to discharge certificate issued by S.S.K.M hospital which proved the admission of the claimant in the hospital for 21 days. Accordingly, under Section 320 of the Indian Penal Code claimant suffered a grievous hurt.

8. Mr. Mondal alternatively claimed for Rs. 2,50,000/- under Section 164 of the Motor vehicles Act.

9. In support of his contention, Mr. Mondal relied on the following Cases:-

- ***Rammurti and others Vs. Punjab State Electricity Board*** reported in ***2022 (4) PAC 738 (SC)***
- ***Golla Rajana and other Vs. Divisional Manager and another*** reported in ***(2017) 1 Supreme Court cases 45.***

- ***B Laxmana Vs. Divisional manager, New Indian Assurance Company limited etc.*** reported in ***2014 SAR civil 781***.

10. Ld. Advocate, Mr. Parimal Kumar Pahari, appearing on behalf of the New India Assurance Company has supported the judgment assailed in this appeal. Mr. Pahari has contended that Hon'ble Apex Court in ***Rammurti*** (supra) allowed Rs. 5,00,000/- compensation in view of Section 164 of the Motor Vehicles (amendment) Act, 2019 on the ground that claim under Section 140 was allowed up to Rs. 50,000/- but, in our case claim petition was filed under Section 163A leaving no scope for no fault liability under Section 140 of Motor Vehicles Act, 1988 prior to amendment act, 2019. Mr. Pahari has contended that the Hon'ble Apex Court did not interfere with the concurrent finding of the tribunal and as well as by the High Court.

11. No argument has been advanced in this Case regarding injury sustained by the claimant in an accident alleged to have been take place on 24.12.2001 by the involvement of two vehicles i.e mini bus and bus due to rash and negligent driving of both the vehicles. However, from the evidence of injured/claimant together with the F.I.R and seizure list I do not find any reason to disbelieve the factum of injury sustained by the claimant in the accident alleged in this case.

12. It is also not disputed that injured had to undergone treatment in S.S.K.M Hospital for a considerable period i.e from 24.12.2001 to 14.01.2002. Ld. Tribunal did not rely on the certificate of permanent disability to the extent of 55% issued by Dr. A Chowdhury (PW-2) on the basis of medical documents with bed-head tickets and discharge certificate issued by the S.S.K.M Hospital. Ld. Tribunal also disbelieved the disability certificate for non-examination of doctors who treated the claimant/ injured at Howrah General Hospital and S.S.K.M Hospital.
13. With regard to the issue of disability certificate, Mr. Mondal relied on **Golla Rajanna** (supra) and **B. Laxmana** (supra) and tried to make this court understand that the disability certificate (exhibit- 10) duly proved by the qualified medical practitioner (PW-2) cannot be disregarded.
14. In **Golla Ranjnna** (supra) Hon'ble Apex Court dealt with a case decided by workmen's compensation commissioner in respect of an accident in course of employment invoking the Provision of Workmen's Compensation Act, 1923. In that case Hon'ble Apex Court accepted the disability certificate in view of the Provision of Section 4(1)(c)(ii) of the Workmen's Compensation Act, 1923 wherein assessment of disability certificate can be made only by a qualified medical practitioner. But, in

our case we are dealing with an accident by the involvement of two vehicles while the claimant/injured was travelling by one of the two vehicles.

15. In **B. Laxmana** (supra) Hon'ble Supreme Court dealt with a disability certificate issued by one Orthopedic Surgeon (PW-7) and the claim was also under the workmen's Compensation Act, 1923 unlike the case before this court.

16. In our case, the appellant/claimant sustained injury in an accident by the involvement of one mini bus and one bus while he was travelling by the minibus. Disability certificate was issued by one Dr. A Chowdhury (PW-2), who was not an orthopedic surgeon. Doctor treated the appellant/ claimant on 22.03.2004 after three (3) years of accident which occurred on 24.12.2001 doctor never treated the injured before 22.03.2004.

17. Appellant/claimant was treated in the Howrah State General Hospital and thereafter, SSKM Hospital where he was admitted from 24.12.2001 to 14.01.2002. From the discharge certificate (exhibit 4) it appears that he got admitted in the SSKM Hospital for cut injury of right arm. From the OPD ticket of SSKM Hospital available on record it appears that the claimant was advised to do normal activities and

nothing abnormal was found by the SSKM Hospital lastly on 01.02.2003, whereas Dr. Chowdhury, (PW-2) issued disability certificate (exhibit-10) assessing 55% disability that too on 22.03.2004. It is also not disputed that none of the doctors of SSKM Hospital treated appellant/ claimant was examined in support of injury of the claimant.

18. Mr. Mondal contended that disability certificate is an expert opinion within the meaning of Section 45 of the Indian Evidence Act, 1872 and for that reason the document can not be disregarded.

19. Section 45 of the Indian Evidence Act deals with acceptability of the expert opinion. But, it is trite law that opinion of an expert should be received with great caution. The Court must have the jurisdiction to evaluate the opinion of a doctor in background of any particular facts and circumstances. More so, Provision of Section 45 of the Indian Evidence Act, 1872 does not stand in the way of doing so.

20. In the aforesaid view of the matter, I am also unable to rely on the disability certificate.

21. Alternatively, Mr. Mondal claimed 2.5 lakhs within the meaning of Provision of Section 164 of the Motor Vehicles (amendment) Act, 2019. In support of his contention, he relied on a case of **Rammurti** (supra) wherein Hon'ble Court recorded as follows:-

“ 2. The appeal has arisen from a judgment of a Single Judge of the High Court of Punjab & Haryana dated 10 March 2009 in FAO No 1461 of 1994.

3. The High Court was considering an appeal arising from an award of the Motor Accident Claims Tribunal, Bhatinda dated 12 April 1994. The Tribunal dismissed the application file by the appellants under Section 166 of the Motor Vehicles Act 1988. However, the claim under Section 140 was allowed and the appellants were held entitled to receive an amount of Rs 25,000 on account of the death of Ved Parkash.

4. The High Court has affirmed the judgment of the Tribunal in regard to the dismissal of the claim under Section 166 of the Motor Vehicles Act 1988. However, having due regard to the amendment of the Provisions of Section 140 in 1994, the amount payable has been enhanced from Rs 25,000/- to Rs. 50,000/-.

5. There is no cogent basis for this Court to entertain the challenge against the findings of fact which have been recorded concurrently by the Tribunal and by the High Court while dismissing the claim under Section 166 of the Motor Vehicles Act, 1988.

7. The Provisions of Section 140 which formed a part of Chapter 10 of the Motor Vehicles Act 1988 were omitted by Act 32 of 2019. Simultaneously, Chapter 11 was substituted of which Section 164 provides for payment of compensation in the case of death in the amount of Rs 5 lakhs and in the case of grievous hurt of Rs. 2.5 lakhs.

8. We are inclined to give the appellants the benefit of the beneficial provisions which have been enacted by Parliament. Hence, in modification of the order of the High Court, we direct that the appellants shall be entitled to an amount of Rs 5 lakhs as compensation. However, if the amount of Rs. 50,000 which has been

awarded by the High Court has already been paid over, the balance (or the entirety of Rs 5 lakhs if no mount has been paid) shall be paid over to the appellants by 30 November 2022.

9.The appeal is accordingly disposed of.

10. Pending applications, if any, stand disposed of.”

22. Here Hon’ble Apex Court dealt with a case under Section 166 of the Motor Vehicles Act, 1988 where the claim tribunal allowed 25,000/- under the Provision of no fault liability i.e Section 140 of the Motor Vehicles Act, 1988. High Court affirmed the judgment of the Ld. Tribunal but, enhanced the amount of Rs, 25,000/- to Rs. 50,000/- under Section 140 of the Motor Vehicles Act, 1988 due to amendment of that provision in the year 1994. Hon’ble Apex Court did not interfere with the dismissal order of Ld. Tribunal as well as High Court but, granted benefit of the beneficial Provisions of Section 164 under the Motor Vehicles (amendment) Act, 2019 in exercising plenary power.

23. By the Amendment Act, 2019 Section 140 to 144 under chapter X of the Motor Vehicles Act, 1988 were omitted. The scheme of no fault liability under Section 140 was incorporated in Section 164 of the Motor

Vehicles Act, after the Amendment Act, 2019. If we read Section 149, 164 & Second Proviso of Sub Section 1 of Section 166 of the Motor Vehicles Act, 1988 after the Amendment Act, 2019, it comes to view that a claimant who filed a claim under Section 166 of the Motor Vehicles Act, 1988 can claim compensation under Section 164 i.e. no fault liability at the initial stage within the procedure provided under Section 149 of the Motor Vehicles Act, 1988.

24. We are dealing with an application under Section 163A of the Motor Vehicles Act, 1988 which has already been adjudicated by the Ld. Tribunal awarding compensation of Rs. 80,000/-. In that view of the matter, appellant/ claimant of this case can not claim any compensation under Section 164 of the Motor Vehicles Act, 1988.

25. However, from the evidence and documents available on record, I find that Appellant/ claimant had to suffer for a considerable period for his injury and during that period he had to incur expenditure towards medicine etc.

26. Considering the pain and suffering of the appellant/claimant, I find it justified to award compensation of Rs. 1,50,000/- towards pain and suffering together with medical expenses.

27. From the record, it appears that claimant has already received the total awarded amount of Rs. 80,000/- along with interest from both the Insurance Company. Therefore, balance amount of Rs. 70,000/- shall have to paid by the Insurance Companies i.e. New India Assurance Company and Oriental Insurance Company & other in equal share along with interest @ 6% per annum from the date of filing of the claim petition till deposit of the sum before the office of the Ld. Register General of this Court.
28. Insurance companies are directed to pay their respective share with interest within 6 weeks from date.
29. Learned Registrar General is requested to disburse the amount, in favour of the appellant/claimant on proper verification and identification.
30. With the aforesaid observation the appeal being FMA 1160 of 2009 stands disposed of.
31. Pending application, if there be any, stands disposed of.
32. Let the records of Tribunal along with copy of the judgement be transmitted back immediately.
33. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.