

IN THE HIGH COURT AT CALCUTTA**Appellate Side****Present: - Hon'ble Mr. Justice Subhendu Samanta.****F.M.A No. – 1291 of 2010****IN THE MATTER OF****Sri Raj Kumar Das @ Raju Das****Vs.****United Insurance Company Ltd. & Anr.**

**For the Appellant : Mr. Krishanu Banik, Adv.,
Mr. Tathagata Banik, Adv.**

**For the Respondent no. 1. : Mr. D.B. Dutta, Adv.,
Mr. Chaterjee, Adv.**

Judgment on : 23.06.2023

Subhendu Samanta, J.

The instant appeal has been directed against the award dated 12th September 2006 passed by the Learned Judge, motor Accident Claims Tribunal, Fast Track 4th Court Paschim Medinipur in MAC Case No. 699 of 2004. The present appellant was the sole claimant before the Learned Tribunal who sustained a grievous injury in a road traffic accident. On the application u/s 166 of M.V. Act the Learned Tribunal has allowed the compensation in favour of the appellant amounting

to Rs. 5, 50,000/-against which the instant appeal is preferred on the ground of inadequacy.

The brief fact of the case is that on 18.04.2004 at about 5:30 p.m. the appellant was travelling in a bus no. WB33/5245 as its helper. While the said bus was on motion it was being driven by high speed as a result of which due to application of sudden break the rear wheel of the bus got detached and the foot board of the rear door was forcibly pressed, the petitioner who was standing on the foot board as a helper sustained grievous injury. He was admitted to hospital, recovered, but he became permanently disabled and lost his capacity of earning.

Learned Advocate for the appellant raised several points before this appellate court. it is the submission of the Learned Advocate for the appellant that the appellant was a Khalasi and he lost both his ankles. The disability certificate shows the disability as 60% but he actually could not walk without any crutch and it is not possible for him to join his job as Khalasi. In this case, his functional disability would be 100%. In support of his contention he cited a decision of Hon'ble Supreme Court passed in **Jagdish Vs. Mohan (2008) 4 SCC 571**, wherein the claimants both hands are become not functional due to a road traffic accident after observing the fact and scenario of that case the Hon'ble Supreme Court has held

that in this case the disability of the claimant should be calculated as total disability.

In **National Insurance Company Limited Vs. Subhasish Manna** the Hon'ble Division Bench of this court has held that

“10.5 Taking a cue from Govind Yadav (Supra), we hold that the claimant (who was 30 years old at the time of the accident) for the remaining period of his life would suffer the trauma of not being able to do his normal work. He was born healthy, and without any physical deformity. He had spent the initial 30 years of his life as a normal human being. The rest of his life has to be spent in grave uncertainty. It is doubtful whether any kind employer would pity the claimant and engage him, despite his 100% functional disability, for some desk work. This is apart from the pain and suffering that the accident might have caused to him and the serious injuries that he had sustained. We are not too sure whether the claimant was in the family way on the date of the accident, but Rs. 1,00,000/- awarded by the tribunal does not appear to us to be abnormal for any interference; on the contrary, such sum could increase having regard to Mr. Mondal's arguments in support of the cross-objection”.

It is the further point of the Learned Advocate for the appellant that the present appellant suffered an accident in a very tender age and apart from the compensation due to his loss of income and future income he is also entitled to get non pecuniary damages. He submitted that the principle of non-pecuniary damages was specifically discussed by the Hon'ble Supreme Court in the case of **[Mr. R.D Hattangadi Vs. M/S Pest Control (India) Pvt. Ltd.] AIR 1995 (SC) 755**

9. Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which is capable of being calculated in terms of money-, whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may, include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit upto the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e. on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.

Learned Advocate for the Insurance Company submitted before this court that the disability certificate issued by the competent Medical Board assessing the disability of the appellant to be 60%. The appellant appeared before the Learned Tribunal and deposed in his behalf. He is an able bodied person and he can easily earn something to maintain her living, so in this case the dependency that the disability cannot be assessed as 100%.

Moreover, it is the fact that the present appellant is not permanently disabled. It is the further argument of the Learned Advocate for the respondent that the victim being the helper of the bus has not taken proper care thus he sustained injury. Being the helper of the bus he should have taken more care

and occasion as it is his duty to stand in a running bus. Present appellant has contributory negligence for the said accident. Thus the Insurance Company cannot be liable to pay the entire compensation.

Heard the Learned Advocate, perused the materials on record and also perused the citation of Hon'ble Supreme Court and the High Court. It appears that the Hon'ble Supreme Court in **Jagdish Vs. Mohan** has calculated the disability of a person to be 100% while his two hands were become unable to work. In this particular case the appellant was engaged as a helper of the bus. Now after the accident it is not at all possible for the appellant to engage in such work or any of the hard work. It is noticed by the Learned Tribunal during the evidence of PW 1 that he is dependant by two hand crutches and it was also observed by the Learned Tribunal that both toes and the heels of the appellant are found imputed and it was not possible for him to stand without help of the crutches.

Considering the entire fact and scenario of this case and considering the nature of job the appellant was performed in my view the principle enshrined by the Hon'ble Supreme Court in **Jagdish Vs. Mohan** regarding the functional disability of the present appellant must be calculated to be 100%. In considering the decision of Hon'ble Supreme Court in **Mr. R.D Hattangadi** and the Hon'ble Division Bench of this court in

Subhasish Manna's case (supra). It would be justifiable for this Hon'ble Appellate Court to award the requisite compensation in favour of the appellant towards the head of non-pecuniary damages. It is obvious that the appellant suffered accident within the age group 21 to 25 years, at that time of age the prospects of youth and its prosperity has diminished. The entire expectation of life of the appellant must have suffered a lot.

Considering the entire circumstances and the fact just and proper compensation of this case would be:

1. Monthly Income be assessed as Rs.	Rs. 3,000/-
2. Annual income be assessed as (Rs. 3,000 X 12)	Rs.36,000/-
3. 40% Future Prospect	Rs. 14,400/-
(According to Hon'ble Supreme Court in ('Pranay Sethi'))	
4. Total	Rs. 50,400/-
5. 100% Loss of income	Rs. 50,400/-
6. Multiplier as per age of 18 (Rs. 50,400 X 18)	Rs. 9,07,200/-
(According to "Sarala Varma")	
7. Medical expenses	Rs. 20,000/-
8. Non-Pecuniary Damages	Rs. 5,00,000/-
9. Total	Rs. 14,27,200/-
10. Less awarded amount	Rs. 5,50,000/-
11. Total	Rs. 8,77,200/-

The Respondent Insurance Company is directed to pay compensation (Rs.-8,77,200/-) through the office of the Learned Tribunal along with 6% interest per annum from the date of filing of the claim application within 50 days from the date of passing of this order failing which the award shall carry further 9% of interest per annum till its actual realisation.

FMA is disposed of.

The award of the Learned Tribunal is hereby enhanced and modified as mentioned above.

The pending CAN applications, if any are also disposed of.

Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)