18.01.2023
Item No.8
Ct. No.237
CHC
(disposed of)

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

F.M.A.2507 of 2005

Sri Ranjit Mondal
Vs.
United India Insurance Company Ltd. & anr.

Mr. Krishanu Banik
...for the appellant/claimant

Mr. Rajesh Singh
...for the Insurance Company/
respondent no.1

This appeal has been directed against the judgement and award passed by learned Motor Accident Claims Tribunal, IVth Court, at Barasat, North 24 Parganas, in connection with Motor Accident Claim Case No.116 of 2002, whereby learned Tribunal awarded compensation of Rs.25,000/-.

This claim petition arose out of an application filed by the injured/appellant on account of his injuries sustained in a motor accident by the involvement of one Auto Rickshaw bearing no. W.B.R./3679 while he was travelling by that Auto on 19.03.2001 at about 5:30 p.m. At that point of time, when the offending vehicle was proceeding with high speed and in a rash and negligent manner dashed a stationary Tata 407 near Kamarthuba Ambagan under Habra Police Station. As a result claimant sustained injury and permanently disabled. After the accident, he was removed to Habra S. G. Hospital, wherefrom he was referred to R.G. Kar Medical College and Hospital for better treatment.

It is alleged that accident took place due to rash and negligent driving of the said Auto and after accident Habra Police Station Case No.80 dated 25.03.2001 under Sections 279 & 338 of the Indian Penal Code was started. Hence this claim petition was filed with prayer for compensation of Rs.3 Lakh.

Owner of the Auto Rickshaw did not contest the case but United India Insurance Company Limited contested the claim petition by filing written statement denying all material averments in the claim petition contending *inter alia*, that claimant did not sustain any injury due to motor accident and Insurance Company is not liable to pay any compensation.

To prove the case, claimant examined two witnesses i.e. one Samir Dey as P.W.1, who claimed himself to be eye witness of the accident happened on 19.03.2001 at about 5:30 p.m. when he was coming to Habra by the same Auto Rickshaw bearing No. W.B.R./3679 along with injured Ranjit Mondal, the said Auto Rickshaw was driven in a high speed and in a rash and negligent manner and ultimately dashed one stationary vehicle Tata 407. As a result Ranjit Mondal sustained injuries on his right leg and right hand. The cross-examination was not so significant to be mentioned except the suggestion of no accident.

Claimant himself examined as P.W.2. He corroborated the entire statement made in the claim petition. He stated that accident took place due to rash driving of Auto Rickshaw and he sustained injury on his right leg and during such accident his right had has been fractured and bent. He also sustained injury on his right leg. He was taken to the hospital. An iron plate was fixed on his leg. He had to undergo operation thrice. He has stated that he was dealing in business in rice and he was a graduate having income of Rs.4,000/- per month.

He has further stated that he was unable to carry on the said business owing to the accident.

In course of trial, some documents were admitted in evidence. Good number of documents showing treatment in different medical institution were filed.

Learned Tribunal after assessing all the evidence along with documents assessed lump sum compensation of Rs.25,000/- ignoring the disability certificate on the ground that none of the Doctor of the

Medical Board adduced evidence giving opportunity to the other side for cross-examination.

In course of argument of this appeal, Mr. Banik, learned advocate appearing for the appellant, has referred to the evidence along with exhibited documents and other unexhibited documents filed in the record showing prolonged treatment of the claimant after the accident.

Mr. Banik also relied on the disability certificate which was admitted in evidence without any objection.

Per contra, Mr. Rajesh Singh, learned appearing on behalf of the respondent no.1/Insurance Company Limited has submitted that the claimant only sustained fracture injury and for which permanent disability to the extent of 57% cannot be considered as claimant could not prove his functional disability in terms of any cogent evidence.

On careful perusal of the evidence of P.W.1 and 2 together with certified copy of F.I.R, I have no hesitation to hold that accident took place due to rash and negligent driving on the part of the Auto Rickshaw being no. W.B.R./3679 and it also cannot be denied that claimant after the accident had to undergo treatment in different hospitals including nursing homes and he had to undergo operation and finally the Medical Board of Nadia District Hospital at Krishnagar issued disability certificate, which was admitted in an evidence as Exbt.2.

In this regard, I am not agreeable with the learned Tribunal on the issue of proof of disability certificate by any of the Doctor of the Board. It is now become a trite law that disability certificate may be taken into account even Member of the Board is not examined in support the disability certificate.

However, on careful perusal of the disability certificate, I find that claimant suffered serious injuries in his hand and leg also and accordingly, Board of Doctors assessed the permanent disability to the extent of 57%.

After considering the evidence of P.W.2 together with disability certificate, I am unable to ignore the disability certificate in absence of any contrary evidence on record. Moreover, P.W.2/claimant has deposed that he could not carry on with the said business owing to this accident.

So far as the income of claimant is concerned, I do not find any evidence on record to show the income of Rs.4,000/- per month. Therefore, it would be proper to assess the pecuniary damage on the notional income of Rs.3,000/- per month.

It is pertinent to mention here that at the relevant point of time the said Auto Rickshaw being no.

W.B.R./3679 was duly insured by the United India Insurance Company Limited.

In view of the aforesaid fact of the matter, I determine the compensation as follows:_

1. Monthly Income be assessed as Rs.3,000/-	
2. Annual Income be assessed as (Rs.3,000 X 12)	Rs.36,000/-
3. Future Prospect be assessed 40% i.e.	Rs.14,400/-
	Rs.50,400/-
4. 57% Loss of Income	Rs.28,728/-
5. Multiplier as per age of 17 (Rs.28,728 X 17)	Rs.4,88,376/-
6. Non pecuniary damages Rs.25,000/- (Rs.4,88,376/- + Rs.25,000/-)	Rs.5,13,376/-
7. Less awarded amount (already received Rs.25,000/-) **(-)**	Rs.25,000/-
Total Amount	**Rs.4,88,376/-**

Accordingly, the claimant is entitled to compensation of Rs.5,13,376/- with interest @ 6% per annum from the date of filing of the application.

It is reported that claimant has already received Rs.25,000/- awarded by the learned Tribunal and therefore, claimant is entitled to balance of Rs.4,88,376/- along with interest.

The United India Insurance Company Limited is directed to deposit the amount of Rs.4,88,376/- along with interest @ 6% per annum from the date of filing of the claim application till deposit thereof before office of the learned Registrar General, High Court, subject to payment of *ad valorem* court fees on Rs.1,88,376/- before the Tribunal.

Respondent no.1/Insurance Company is also directed to deposit amount with the interest, within six (06) weeks from the date of this order.

Learned Registrar General is requested to disburse the amount to the claimant on proper identification and proof.

With the aforesaid observation, the instant appeal being FMA 2507 of 2005 stands disposed of.

Pending application, if there be any, stands disposed of.

Let copy of this order along with the tribunal record be transmitted back immediately.

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

(Bibhas Ranjan De, J.)