

28.8. 2023
item No.2
n.b.
ct. no. 551

with

FMA 1340 of 2008

CAN 2 of 2022

Sarwan @ Sarban Kumar Roy
Vs.
National Insurance Co. Ltd. & Anr.

Mr. Krishanu Banik,
Mr. Uday Sankar Chattopadhyay,
Ms. Trisha Rakshit,
Ms. Aishwarya Datta,
.....for the appellant.

Mr. Rejesh Singh,
.... For the respondent.

In Re. CAN 2 of 2022

This is an application for substitution filed by the claimants. It is the submission of the learned advocate for the appellant that the sole appellant has expired during the pendency of the instant appeal. The present claimants being the son and daughter of the appellant filed this application for substitution.

Heard the learned advocate for the appellant. Accordingly, the application being CAN 2 of 2022 is disposed of with a direction that the applicant of CAN 2 of 2022 be made party as appellant at the place of sole appellant of this appeal.

Department to do the necessary correction for Memo of the Cause Title of the appeal accordingly.

FMA 1340 of 2008

This instant appeal has been preferred against the judgment and award dated 5th day of December 2007 passed by the learned judge, Motor Accident Claims Tribunal, 14th Court, Alipore, South 24 Parganas in M.A.C. case no.49 of 2006.

The brief fact of the case is that the present appellant being the claimant has suffered the accident on September 21, 2005 whereby a Taxi dashed him near Kala Mandir at Santoshpur Budge Budge Road. After such accident, he admitted to the hospital for two days. The fracture was repaired by plastering at the Medical College and Hospital and after two days he was discharged from the hospital.

The insurance Company contested the case by filing the written statement. Learned Tribunal after hearing the parties has awarded a sum Rs.5000/- only in favour of the claimant.

Being aggrieved by and dissatisfied with the said award, the present appeal has been preferred.

Learned advocate for the appellant submitted before this Court that the impugned award passed by the learned advocate is erroneous. Learned Tribunal has failed to appreciate the facts and circumstances of the case and come to an erroneous finding.

He argued that the disability certificate was issued by the Doctor, who deposed before the learned Tribunal as P.W.2. The disability as assessed by the Doctor (P.W.2) to

be 36%. Learned Tribunal has not considered the fact but only allowed a sum of Rs.5000/- for the grievous injury as sustained by the appellant. He again argued that the claimant has suffered huge mental pain and agony due to such accident. Thus, the impugned award need be modified and enhanced.

Learned advocate appearing on behalf of the Insurance Company submitted before this Court that the learned Tribunal has considered the facts and circumstances of this case and passed the reasonable order. He argued that the observation of learned Tribunal has very many specifics to the effect that the injured sustained no financial loss. The claimant has also not produced any document for his medical treatment. The injured was treated before the Government Hospital, so, no medical expense was incurred to that effect. There is no loss of income. It is the deposition of the appellant before the learned Tribunal that he used to perform his duty naturally without any assistance. Thus, actually, there is no disability of the present claimant. The impugned award passed by the learned Tribunal is not at all perverse. Thus, there are no points to entertain the instant appeal. He prayed the appeal be dismissed.

Heard the learned advocate and perused the materials on record, learned Tribunal is of the opinion that the injured/appellant is not suffered any loss of income. Learned Tribunal has considered the evidence of

P.W. 1 i.e. claimant wherein he has deposed that his income was regularly enhanced and he suffered no loss of income during his duty as peon of this Hon'ble Court. It is also the decision of Learned Tribunal that the medical treatment which the victim was received for two days in the Government Hospital. There is no sufficient medical document to substantiate his claim to the tune of Rs.20,000/- towards the Medical expenses. Thus, the learned Tribunal on the basis of such observation only awarded Rs.5,000/- for the injury of grievous hurt. It is true, that the observation of learned Tribunal suffered no illegality but it appears to me that due to such accident the insured must have suffered some mental pain and agony, which was not actually considered by the learned Tribunal.

According, to the direction of the Hon'ble Supreme Court in **Ajoy Kumar Vs. Raj Kumar** the non-pecuniary damages has to be awarded in favour of the appellants.

Considering the two days admission of the present appellant in the hospital, I think it necessary that the claimant is entertained to get Rs.10,000/-more towards the pain and suffering.

Accordingly, the Insurance Company is directed to pay the rest amount of Rs.10,000/- in favour of the appellants along with 6% interest per annum from the date of filing of this case within eight weeks from the date of passing of this order with the office of the Learned

Registrar General, High Court, Calcutta. On such deposit, the claimants are at liberty to withdraw the same in equal shares subject to the ascertainment of payment of requisite Court Fees.

Connected all applications, if any, are also disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Subhendu Samanta, J.)