

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 1622 of 2008

Tarun Halder
Vs.
The New India Assurance Co. Ltd. & Anr.

Mr. Prabir Maji
... For the appellant/claimant

Mr. Animesh Das
... For the respondent no.1/Insurance Co.

This appeal is directed against the judgment and award dated 19th October, 2006 passed by the learned Judge, Motor Accident Claims Tribunal, Additional District Judge, Alipore, South 24-Parganas, in connection with MAC Case No.159 of 2005 whereby the learned Judge awarded compensation to the tune of Rs.20,000/-.

The claim petition arose out of an application filed under Section 166 of the Motor vehicles Act, 1988 on account of injury sustained by the claimant in a motor accident occurred on 24th February, 2003 by the involvement of a vehicle, bearing registration no.WBR-4901 (Luxury Bus), by which the injured was travelling at the relevant point of time. The accident took place due to rash and negligent driving of the said bus. On the alleged date of accident, the offending vehicle collided with one Ambassador, bearing registration no.WB-02N/6783, at about 2.30 p.m. on Diamond Harbour Road at Kalitala

Sirakil area. After the accident, claimant was treated at Maa Sarada Nursing Home and thereafter at Swiss Park Nursing Home. At the time of alleged accident, the injured/claimant was aged about 28 years having income of Rs.2,200/- per month. Accordingly, the injured claimed compensation to the tune of Rs.1,65,000/-.

Owner of the offending vehicle did not contest the claim petition but the New India Assurance Company Limited contested the case by filing written statement denying all material averments contending, inter alia, that the claimant is not entitled to any compensation as prayed for.

In course of trial, three witnesses were examined, namely, Dr. S. Bhattacharyya as PW-1, the claimant himself as PW-2 and one Ashoke Roy as PW-3, who claimed himself as employee of Swiss Park Nursing Home, Kolkata.

In course of their evidence, a good number of documents were admitted in evidence as Exhibit 1 to 9, including First Information Report, seizure list, insurance policy, driving licence and discharge certificate of Swiss Park Nursing Home etc.

Learned Tribunal after assessing all the evidence on record, awarded non-pecuniary damages towards pain and suffering and medical expenses of Rs.10,000/- each but did not consider the pecuniary damages on the ground

of non-acceptability of the Disability Certificate issued by PW-1 (Dr. S. Bhattacharyya). Learned Tribunal did not consider the Disability Certificate on the ground that it was issued after two years of the accident and the doctor who issued the certificate never treated the said patient. Learned Tribunal opined in this regard as follows:-

“... Moreover, I have noticed that in most of the cases Dr. S. Bhattacharjee issued this type of disablement certificate of clinical examination and to me he is a stock witness and the disablement certificate issued by him can not be relied upon....”

The factual position of this appeal is that on 12th September, 2013 the Hon’ble Division Bench of this Court recorded an order of fresh examination of the claimant by a Medical Board of SSKM Hospital. However, that order was not complied with and ultimately after an order of this Court on 21st November, 2022, the appellant/claimant appeared before the Medical Board of SSKM Hospital and SSKM Hospital submitted a report holding, inter alia, as follows:-

“The patient namely Sri Tarun Halder has a surgically placed scars on his left forearm and no functional deficit of the limb. According to him, he has not received any orthopaedic consultation post surgery. The board is also of the opinion that he should undergo a **fresh X-ray of his left forearm – AP & Lateral including elbow & wrist joint** and should review with the reports.”

In course of argument, Mr. Prabir Maji, learned advocate, appearing on behalf of the appellant/claimant

has submitted that the Board constituted at the SSKM Hospital could not form any opinion regarding disability because of lapse of more than 20 years presumably. It has been further submitted on behalf of the appellant/claimant that the Disability Certificate issued by Dr. S. Bhattacharyya (PW-1) cannot be discarded on the reasons assigned by the learned Judge of the Tribunal in his judgment.

In opposition to that, Mr. Animesh Das, learned advocate, appearing on behalf of the respondent no.1/ Insurance Company has submitted that the Disability Certificate issued by Dr. S. Bhattacharyya (PW-1) cannot be relied upon in view of the report submitted by the Medical Board of SSKM Hospital.

Be that as it may, this case arose out of a motor accident whereby the appellant/claimant sustained injury. On that issue, no argument has been advanced. From the evidence on record, particularly, the evidence of PW-2/claimant together with FIR, charge sheet and seizure list, I find no reason to discuss further on the happening of the accident and the injury sustained by the appellant/claimant.

From the evidence and exhibited documents, I find that the appellant/claimant was treated by two nursing homes one after another and at the time of accident he sustained severe injury in his left forearm as it appears from the report of the SSKM Hospital submitted before this

Court. But, unfortunately, after careful scrutiny of the Disability Certificate issued by PW-1 and the report submitted by the Medical Board of SSKM Hospital in terms of the order of this Court, I am unable to come to any conclusion that the appellant/claimant suffered any **permanent** disability due to injury sustained in the motor accident.

In that view of the matter, though the appellant/claimant is not entitled to any pecuniary damages, but he is entitled to non-pecuniary damages on different heads like pain and suffering, medical expenses including future medical expenses and loss of income during his admission for treatment for five days.

In the aforesaid view of the matter, I find it justified to determine the non-pecuniary damages in the following heads:-

Loss of income during treatment	Rs. 6,000/-
Pain and suffering	Rs.1,00,000/-
Medical Expenses, including future medical Expenses	Rs.1,00,000/-
Total	<u>Rs.2,06,000/-</u>

Accordingly, the appellant/claimant is entitled to the compensation towards non-pecuniary damages to the tune of Rs.2,06,000/- along with interest @ 4% per annum from the date of filing of the claim petition, i.e. on 8th July, 2003 till the deposit of the amount.

It is reported that the appellant/claimant has already received Rs.20,000/- as awarded by the learned Tribunal.

Therefore, the appellant/claimant is entitled to the balance amount of Rs.1,86,000/- along with interest @ 4% per annum from the date of filing of the claim petition, i.e., on 8th July, 2003 till the deposit of the amount.

Accordingly, the respondent no.1/New India Assurance Company Limited is directed to deposit the balance amount of Rs.1,86,000/- along with interest @ 4% per annum from the date of filing of the claim petition, i.e. on 8th July, 2003 till the actual deposit of the amount before the office of the learned Registrar General of this Court, within six weeks from the date of this order.

The appellant/claimant is entitled to withdraw the balance award amount with interest.

The learned Registrar General is requested to disburse the amount to the appellant/claimant on proper identification.

With the above observation, the appeal, being FMA 1622 of 2008, is disposed of.

All pending applications, if there be any, stand disposed of.

Records of the learned Tribunal along with a copy of this order be transmitted back immediately.

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

(Bibhas Ranjan De, J.)