

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction

Present: -Hon'ble Mr. Justice Subhendu Samanta

F.M.A.T (MV) 1 of 2024

With

IA No.: CAN 1 of 2024

Sri Biren Hansda

Vs.

Oriental Insurance Co. Ltd. & Ors.

**For the Appellant/
Claimant**

**: Mr. Krishanu Banik, Adv.,
Mr. Tathagata Banik Adv.**

**For the Respondent
Insurance Co.**

: Rajesh Singh Adv.

Reserved on

: 07.03.2024

Judgment on

: 19.03.2024

Subhendu Samanta, J.:-

CAN -1 2024

1. Instant appeal has been preferred against the judgment and award dated 17th day of April, 2023 passed by the learned Judge Motor Accident Claims Tribunal ADJ Fast Track 3rd Court Sadar, Paschim Medinipur in a Motor Accident Claim Case No. 208 of 2018.

2. The report of the stamp reporter suggests that the appeal is preferred by delay of 170 days. Heard the Learned Advocates. Perused the grounds in the application being CAN 1 of 2024. It appears; that the grounds are sufficient. Accordingly the delay in preferring the instant appeal is hereby condoned.

3. The appeal be formally admitted. The parties are ready for hearing of this appeal accordingly the appeal is taken up for hearing.

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4. The injured/claimants have preferred this instant appeal against the award passed by the Learned Tribunal. The fact of accident stated in the claim application is as follows:-

On 04.02.2018 at about 6:20 p.m. the injured was going by a tractor bearing No. WB 33C/3693 from the side of Pirakata towards the Shalbani and while the said tractor reached over the Banmalipur Shibmandir at the time of one truck bearing No. WB-33B8904 coming from opposite side with a very high speed and rash and negligent manned dashed against the tractor by a head on collision. As a result the victim and other passengers were serious injured and they are shifted to Shalbani Rural Hospital wherefrom they were shifted to Medinipur Medical Hospital and thereafter admitted at Mahamaya Nursing Home Keranitala.

5. It is the case of the claimant that he was a mason by profession and used to earn Rs. 7,500/- per month but after the accident he became completely disabled and could not work anymore. The claimant filed an application before the Learned Tribunal u/s 166 of Motor Vehicle Act for getting compensation on the ground that he became permanently disabled due to rash and negligent driving of the driver of the offending vehicle.

6. The claim case was contested by the Insurance Company by filing written statement. The Learned Tribunal after hearing the parties and after receiving the evidence, has awarded a sum of Rs 50,000/- towards the compensation and directed the Insurance Company to pay the compensation.

7. Being aggrieved by and dissatisfied with the said award the present appeal has been preferred for enhancement of the award.

8. Learned Advocate Mr. Krishanu Banik appearing on behalf of the Claimants /appellants submits that the award passed by the Learned Tribunal is very meagre one and it is also erroneous in the facts and circumstances of this case. He submits that Learned Tribunal was wrong for awarding the minimum compensation without adopting the guideline of the Hon'ble Apex Court to pass the award on the basis of the structure formula. He further submits that the Learned Tribunal should have fixed the monthly income of the claimant to be Rs. 7,5,00/-. The Learned Tribunal should have awarded the future prospects in favour of the claimants, by virtue of decision of Hon'ble Apex Court in **National Insurance Company Vs. Pranay Sethi.**

9. Mr. Banik further submits that, the disability of the injured was sufficiently proved by the evidence of PW 2, but the Learned Tribunal has not considered the disability certificate as well as the FIR charge sheet seizure list etc from which the accident and injury of the injured has been sufficiently proved. He prayed for enhancement of the award on the basis of structure formula.

10. Mr. Rajesh Sing, Learned Advocate, appearing on behalf of the Insurance Company submits that the entire case of the claimant is totally false. The appellant has failed to prove that he has suffered in injury in the alleged accident. The evidence of the injured itself disclose that he sustain injury by the said accident in the left leg, but the disability certificate is showing his disability at the right leg.

He further argued that the Learned Tribunal should have dismissed the claim case on the sole ground of falsity.

Mr. Sing further argued that the evidence of the doctor (PW2) clearly shows that the disability of the injured is not permanent in nature. So, the claimant/appellant is not entitled to get the compensation according to the structure formula.

11. Refuting the contention of the Insurance Company Mr. Banik submits that the Insurance Company is not filed any documents before the Learned Tribunal to disprove the case of the claimant; moreover, the accident and injury of the appellant was not challenged by the Insurance Company, so, Mr. Banik argued that the plea of the Insurance Company cannot be believed. Mr. Banik further argued that the claimant/injured must have sustained injury on the left portion of the Tibia of his right leg, for which he stated in his examination-in chief that he suffered injury in his left tibia.

12. Heard the Learned Advocate, perused the evidence examination-in chief PW 1. In Paragraph 4 of his examination- in-chief claimant/appellant deposed on oath that he sustained injury on his “left tibia”. In the claim application at Para 11 the injured/ the claimant stated regarding his nature of injury as follows:-

“Sustained grievous injuries on his leg, eyes, and fractures injury of his right tibia and also injury other parts of the body”.

13. It further appears that the alleged accident happened on 04th of February 2018; the medical papers i.e. OPD Slip of Medinipur Medical College and Hospital, Paschim Medinipur dated 11th October 2018 disclose about the fracture injury at (right) leg. There are some

other OPD patient card of the said hospital showing X-ray and treatment at the (right) leg of the appellant. Considering the entire facts it appears to me that the present appellant being illiterate, rustic people do not have much acquaintances with the Court procedure. Moreover, he did not have any knowledge in English. Thus, he must have signed his examination-in chief before the Learned Tribunal without properly perusing the entire contained of the same. The error in the paragraph 4 of examination-in chief of the appellant is apparent and, I think it inadvertent.

14. However, Mr. Banik tried to convince the Court that the left tibia means the left portion of tibia of right leg; such argument is not justified in the present facts and circumstances of this case and hence it is turned down.

15. Considering the entire facts it appears to me that the name of the present claimants/appellants is appearing as injured of the accident in the charge-sheet of the police case being Shalbani PS Case No. 25 of 2018 dated 04.02.2018 which was arising out of the said accident. Thus the case of the appellant is appears to me truthful.

16. In considering the disability of the appellant, it appears that the disability certificate was exhibited by the Learned Tribunal. The disability certificate shows the disability is 40% with the noting as “Post traumatic deformity showing of (R) leg”. PW 2 is the doctor who is the author of the said disability certificate. PW 2 has specifically stated that the disability of the injured/appellant is not permanent in nature, as the disability of the appellant is not permanently in nature.

So the appellant is not entitled to get any compensation on the basis of structure formula.

17. In considering the functional disability of the appellant in this case. It appears to me that the appellant was a mason by profession, though the appellant failed to prove his income and avocation in this case, but being a mason he has to work with his hands and he has to stand in a place or climb up scaffolding. Let me consider whether such avocation of the injured is suffered by such disability. By virtue of decision of Hon'ble Apex Court in **Raj Kumar Vs. Ajay Kumar**, it appears that the disability of the appellant is only in respect of one lower limb. Such disability is not permanent in nature. The percentage of disability in respect of only that lower limb is 40% (PW2). So, in considering the disability of this limb in respect of the entire body of the claimant, it cannot be equated to 40%. I find the appellant himself stated that he can stand and work freely, thus I find no justification to assess the functional disabilities of the appellant in this case.

18. The Learned Tribunal has awarded amount of Rs. 50,000/- towards the compensation by virtue of 2nd schedule of Section 163 of MV Act, which is the minimum compensation of account of injury comes. The Learned Tribunal has awarded only Rs. 10,000/- towards the pain suffering of the claimant. It appears to me from the OPD patient card in the name of the appellant that, though the incident happened in the year 2018 but the appellant had to appear before the hospital for the treatment of his (right) leg in the year 2023 also. Considering the fact I think it is necessary to hold that the Learned

Tribunal has awarded very minimum compensation towards the pain and suffering of the present appellant in this case I think It would be justified to award further Rs. 50,000/- to the appellant under the heading of non-pecuniary damages which includes pain and everything, further medical treatment, loss of amenities of life, loss of expectation of life, discomfort etc.

19. The Insurance Company is directed to pay the balance of compensation amounting to Rs 50,000/- to the appellant together with 6% interest per annum from the date of filing of the claim application through the office of the Learned Tribunal within 08 weeks.

20. On such deposit the appellant is at liberty to receive the same on usual terms and conditions.

21. The instant appeal is disposed of under the above observations.

22. Connected CAN applications if pending are also disposed of.

23. 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.)