

11.09.2024  
Piya  
ct no. 30  
sl no. 6

**FMA 805 of 2006**  
**With**  
**CAN 2 of 2015**  
**(Old No.: CAN 4462 of 2015)**  
**With**  
**CAN 3 of 2017**  
**(Old No.: CAN 3876 of 2017)**  
**With**  
**CAN 4 of 2023**

**Sk. Mainul**  
**Vs.**  
**The Oriental Insurance Co. Ltd.**

**For the Appellant** : Mr. Krishanu Banik.

**For the Respondent/  
Insurance Company** : Ms. Gopa Das Mukherjee.

**Re : IA No.: CAN 4 of 2023**

- 1. IA No.: CAN 4 of 2023** is not pressed by the learned counsel for the appellant and is thus rejected being not pressed.
- 2.** The present appeal has been preferred by the claimant against the Judgment and Award dated 6<sup>th</sup> day of December, 2004 passed by the learned Judge, Motor Accident Claims Tribunal (Fast Track, 2<sup>nd</sup> Court), Asansol, Burdwan in MAC Case No.45/2002 & 78/2001, **under Section 166 of the Motor Vehicles Act.**

### 3. Facts :-

*“.....On 07.12.2000 the petitioner Sk. Mainul was travelling in a dumper bearing No.WB-37/6705 being Khalasi (worker) of the same. The said dumper was proceeding towards Churulia after unloading coal at Charanpur siding. At that time the dumper over turned. In the said accident **four fingers of the petitioner cut down.** Accident was caused due to fault of the driver of dumper. He was treated in the Nursing Home. He used to earn Rs.1800/- as his remuneration. He is now unable to do any work due to his injured hand and operation of abdomen. He is not able to do daily usual work. So the injured has filed this case and prayed for compensation of Rs.3 lakhs.....”*

### 4. The case was contested by Oriental Insurance Co. Ltd.

By filing written statement denying all facts as made in the plaint and contending inter alia, that the petitioner has no cause of action and this case is not maintainable. The specific defence of the opposite party/Insurance Company is that the petitioner sustained no injury in his hand due to any accident on 07.12.2000 near Charanpur. He was not admitted in any Hospital namely Asansol Medical Centre Private Ltd. The alleged accident had not taken place due to fault of the driver. The petitioner is able to do his usual work with his right hand. The driver of the offending vehicle had no valid driving licence. So, the O.P/Insurance Co. is not liable to make any payment to the petitioner. So, this case is liable to be dismissed.

5. The claimants examined two witnesses and proved relevant documents which were marked as **Exhibit-1 to 2 series.**
6. **Considering the materials on record the learned tribunal held as follows:-**

**“..... MAC Case No. 45/2002 and 78/2001**

**Dated 06.12.2004**

*.....Considering evidence and the injury of the petitioner, I find that the petitioner sustained grievous injuries. As his four fingers were amputated. So, I like to award Rs.5,000/- as compensation for pain and sufferings. Accordingly, the victim is entitled to compensation of Rs.65,000/-. The amount, if any, paid in any case under Section 140 of the M.V. Act over the self same incident, that shall be deducted from the total awarded amount.....*

**Sd/-  
Judge, MACT  
(Fast Track 2<sup>nd</sup> Court)  
Asansol.....”**

7. **From the materials including evidence on record, the following is evident:-**

- i) The claimant in the present case is the injured and admittedly he lost his four fingers of his left hand (Exhibit-3).
- ii) The **disability certificate** of the medical board is prima facie valid and has been marked **as exhibit-3** by the tribunal. The said certificate shows that the claimant injured had suffered permanent disability to the extent of **25%**. The certificate was issued in July, 2001. The accident in this case occurred in December, 2000.

- iii) Age of the injured in 2001 is shown as **20 years**, so **multiplier 18** will be applicable.
- iv) Motor Accident case no.3 of 2000 dated 07.12.2000 of Barabali Police Station has been proved by appellant/claimant (Exhibit-6 series). The said document proved the accident in the present case and also that the offending vehicle is a dumper. The said offending dumper caused the accident in the present case in which the victim suffered the injuries.
- v) Exhibit-4 is the copy of the Insurance certificate showing that the offending vehicle had valid insurance at the relevant time.
- vi) The victim in this case has claimed that he was the 'Khalasi' of the offending dumper and used to get monthly salary of Rs.1800/- per month. No documents were produced in support of the said income.
- vii) The learned Tribunal considering the said fact held the income in respect of the victim as notional income of Rs.1500/- (exhibit-2).
- viii) As the accident occurred in year 2000, income is taken as Rs. 3000/- per month.
- ix) **Exhibit-2**, proves that the victim was aged 20 years old at the time of accident.

- x) Exhibit-2 is the discharge certificate, which also shows that the injured was admitted in Hospital from 07.12.2000 to 18.12.2000 (10 days).

**8.** Accordingly, the **“just compensation”** in the present case would be as follows:-

|                          |                      |
|--------------------------|----------------------|
| 3000x12x18x25%           | Rs. 1,62,000/-       |
| Towards Medical expenses | Rs.50,000/-          |
| Non-pecuniary damages    | Rs.50,000/-          |
| Loss of earning          | Rs.50,000/-          |
| <b>Total amount</b>      | <b>Rs.3,12,000/-</b> |

**9.** Admittedly, the Claimant/Appellant has received the amount of compensation of Rs. 65,000/- together with interest in terms of order of the learned Tribunal. Accordingly, the claimant is now entitled to the **balance amount of compensation of Rs. 2,47,000/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.**

**10.** Taking into consideration, the amount already received by the **Claimant/Appellant**, the **Respondent No. 1/Insurance Company** shall deposit the balance amount, along with the interest, with the learned Registrar General, High Court, Calcutta, within a period of six weeks, who shall release the amount in favour of the Claimant, upon

satisfaction of his identity and payment of ad-valorem Court fees, if not already paid.

**11. The appeal being FMA 805 of 2006 stands disposed of. The impugned judgment and award of the learned Tribunal under appeal is modified to the above extent.**

**12.** No order as to costs.

**13.** All connected applications, if any, stand disposed of.

**14.** Interim order, if any, stands vacated.

**15.** Copy of this Order be sent to the Learned Tribunal, along with the trial court records, if received.

**16.** Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

**(Shampa Dutt (Paul), J.)**