

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

FMA 257 of 2001

(FMAT 1126 of 2000)

with

CAN 1 of 2000

(Old No. CAN 2719 of 2000)

Sri Pran Kumar Roy

Vs.

National Insurance Co. Ltd. & Anr.

**For the Appellant/
Claimant** : Mr. Niranjan Maity.

**For the Respondent No.1/
Insurance company** : Mr. Parimal Kr. Pahari.

**For the Respondent No.2/
Owner** : None.

Hearing concluded on : 24.09.2024

Judgment on : 24.09.2024

Shampa Dutt (Paul), J.:

1. The present claim appeal has been preferred by claimant/appellant against the Judgment and Order dated 20th day of January, 2000 passed by the learned Judge, Motor Accident Claims Tribunal, Alipore, South 24 Parganas, Additional District Judge, 10th Court, Alipore, South 24 Parganas, in MAC Case No. 189 of 1999, **under Section 166 of the M.V. Act.**

2. **FACTS :-**

“.....The present case has been preferred by the victim/injured and his case is that he used to earn Rs.1600/- per month as helper of vehicle No. WB-19/1333. He met with an accident on 13.03.99 at about 7.20 hours at Mayo Road, P.S. Basti where he was going towards Dharmatala side by the Bus bearing No. WB-19/1333 in the capacity of helper. The driver of the said Bus was proceeding with the vehicle in a rash and negligent manner and due to sudden jerk the victim, the helper of the bus fell down from the Bus on the Mayo Road and as a result he sustained severe injuries on his person. He was removed to Falta P.H.C. and treated there.

The offending vehicle was owned by Md. Insure Ali Sk Hasting P.S. M.C.R. No. 167 dated 23.03.99 was started. By filing the claim application under Section 166 of the M.V. Act, he claims for compensation to the tune of Rs.60,000/-.....”

3. The O.P. No. 2/National Insurance Co. Ltd. has contested the M.A.C. case by filing a written statement denying therein all the allegations made in the petition. According to them, the claim compensation of Rs.60,000/- is imaginary. They pray for dismissal of the claim application.

4. The Claimant examined himself as P.W. 1 and proved relevant documents which were marked as **Exhibits 1 to 8.**

5. **On conclusion of the hearing the learned Tribunal held as follows:-**

“.....MAC Case No. 189 of 1999

Dated:-20.01.2000

.....Notional income of Rs.15,000/- should be adopted in this case. There is 10% disability. So, Rs.15,000/- multiplied by 17 it comes to Rs.2,55,000/-. To this Rs.2,55,000/- multiplied by 10% as disablement determined in place of 20% as exbt. 8 it will give Rs.25,500/-. For pain and suffering he is entitled to Rs.5000/-. He is also entitled to get another sum of Rs.5000/- for his medical expenses. So he is entitled to get total sum of Rs.35,500/- as claim compensation in this application u/s. 166 of M.V. Act.

**Sd/-
Judge, MAC Tribunal
(10th ADJ, Alipore).....”**

6. **Being aggrieved the present appeal has been preferred on the following ground :-**

That the learned tribunal failed to grant ‘just compensation’.

7. **Considering the materials including the evidence on record it has been proved:-**

- i) That the victim sustained injury in the accident involving the offending vehicle and he sustained an injury on his left hand.
- ii) At the time of the accident, the offending vehicle had valid insurance **(Exbt. 6)**. The medical documents are marked as **(Exbt. 7)** collectively, and the disability certificate/Medical Certificate is marked as **(Exbt. 8)**.

- iii) On perusal of the same, this Court finds that the said disability certificate/medical certificate has not been issued by the Medical Board of a Government Hospital. The said document has been issued by a private doctor and, as such, is **not a valid disability certificate, as it is not as per rules and as such cannot be considered.**

The Supreme Court in ***Bajaj Allianz General Insurance Company Pvt. Ltd. Vs Union of India and ors., 2021 (4) T.A.C. 676 (S.C.)***, held:-

*“(iv) As far as the aspect of the issuance of certificate on disability of victims is concerned, it is reiterated that the guidelines laid down by this Court in Raj Kumar v. Ajay Kumar and Anr., (2011) 1 SCC 343 mandatorily must be followed by the MACTs, in respect of loss of income due to injury/disablement. **The District Medical Board is also directed to follow the guidelines issued** by the Ministry of Social Justice and Empowerment, Government of India vide Gazette Notification S. No. 61, dated 05.01.2018, **for issuance of disability Certificate** in order to bring Pan India uniformity. **The consequence is that the MACT would ascertain that permanent disability certificate issued by the District Medical Board or body authorized by it is in accordance with the Gazette Notification alone.** Once the certificate is issued in this manner, the same can be marked for purposes of being taken into consideration as evidence **without the necessity of summoning the concerned witness to give formal proof of the documents unless there is some reason for suspicion on the document;**”*

- iv) **Exhibit 8, (Medical Certificate)** shows that the victim at the time of accident was 31 years of age.

- v) The victim has claimed that he used to **earn Rs.1600/- per month** as on the date of the accident i.e. 13.03.1999 and, as such, as per the statement of the victim/injured his income be taken as Rs.1600/- per month.
8. It is seen that the compensation granted by tribunal, considering the injury sustained, is **‘just compensation’** (in the absence of a valid disability certificate) and thus the judgment and award under appeal requires no interference and **is affirmed.**
9. **The appeal being FMA 257 of 2001/FMAT 1126 of 2000 stands dismissed.**
10. All connected applications, if any, stand disposed of.
11. Interim order, if any, stands vacated.
12. Copy of this Judgment be sent to the Learned Tribunal, along with the trial court records, if received.
13. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)