

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

FMA No. 1068 of 2010

(FMAT 1700 of 2009)

Ajijur Rahaman @ Dulal Sk.

Vs.

National Insurance Co. Ltd. & Anr.

For the Appellant : Mr. Niranjana Maity.

**For the Respondent No. 1/
Insurance Company** : Mr. Rajesh Singh.

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

Hearing concluded on : 20.08.2024

Judgment on : 12.09.2024

Shampa Dutt (Paul), J.:

1. The present appeal has been preferred by the claimant against the Judgment and Award dated 06.08.2009 passed by Judge, Motor Accident Claims Tribunal, Additional District Judge, District Judge, 10th Court at Alipore, South 24 Parganas, in M.A.C. case no. 30 of 2007, **under Section 166 of the Motor Vehicles Act, 1988.**

2. THE FACTS :-

“.....On 18.01.2004 Ajijur Sk. @ Dulal Sk. was standing by the eastern side non metal portion of Garia Baruipore Road near Ramkrishna Mission Mandirgate, the vehicle No. WB-20F/0027 (Motor Cycle) was proceeding towards Baruipore side from Garia side and that motor cycle dashed down Ajijur Sk. while overtaking another vehicle through left side. Ajijur has lost his active life and energy due to said accident and he is unable to lead his normal life and he has become completely dependent upon others. According to the petitioner he was earning Rs. 3,000/- p.m. and he has claimed Rs. 1,50,000/- towards compensation with interest.....”

3. Only the O.P. 2/National Insurance Co. Ltd. contested the case by filing written statement denying and disputing the entire claim and contention of the petitioner.
4. The Claimant's examined **3 witnesses** and proved documents marked **Exhibit 1 to 7.**
5. The Opposite Party did not adduce any evidence.
6. **The tribunal finally held as follows :-**

*“..... **MACC No. 30 of 2007***

Dated 6th August, 2009

.....I find and hold that the petitioner is entitled to get only a consolidated sum of Rs. 15,000/- towards compensation and in my considered opinion that amount would be just and adequate compensation for the petitioner in the light of the facts and circumstances of the case.....

**Sd/-
10th Addl. Dist Judge, Alipore
MACC Tribunal Judge, Alipore.....”**

7. Being aggrieved, the claimant has preferred this appeal on the ground :-

*That the Learned Tribunal failed to grant “**Just Compensation**” to which the claimant is entitled to as per the provision of the motor vehicles act.*

8. From the materials including the evidence, the following is evident :-

- i) Discharge Certificate shows that the claimant/injured was admitted at M.R. Bangur Hospital, Kolkata from **18.01.2004 to 21.02.2004.**
- ii) Medical paper at page 38 of the M.R.B., hospital shows that the claimant suffered “**.....Fracture of Shaft Femur lower 1/3rd.....”**
- iii) The ‘X-ray’ report at page 42 shows :-

“.....Fracture at shaft of right femur with 1m nail inside, Minimal displacement, irregular calus on medial side, no evidence of healing on Lateral side screw at medial condial of right femur are seen fracture at lower pole of patila of right knee joint with progressive healing in proper alignment is seen.....”

- iv) Though Dr. P.K. Mondal (P.W.1) has proved his certificate showing that the injured claimant suffered **45% disability**, the same is not in accordance with law and this cannot be considered. (***Raj Kumar Vs Ajay Kumar and Anr., (2011) 1 SCC 343*** and ***Bajaj Allianz General Insurance Company Private Ltd. Vs Union of India and Ors., Writ Petitions Civil Nos. 534/ 2020***)
- v) There being no documents in support of his income in the year 2004, his income is taken as **Rs 3000/-p.m.**
- vi) **Thus the ‘Just Compensation’ in this case would be :-**

i)	<i>Loss of earning for two months @ Rs.3000/-</i>	<i>Rs. 6,000/-</i>
ii)	<i>Medical Expense considering the nature of injuries</i>	<i>Rs. 10,000/-</i>
iii)	<i>Pain and sufferings</i>	<i>Rs. 10,000/-</i>
vi)	<i>Non pecuniary damage</i>	<i>Rs 4,000/-</i>
	Total	Rs. 30,000/-

9. Admittedly, the Claimant has received the amount of compensation of **Rs. 15,000/-** 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. 15, 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. Requisites for service upon the respondents was filed by the Appellant's in the year 2011, thus claimant is entitled to interest from filing till deposit.
12. **The appeal being FMA 1068 of 2010/ FMAT 1700 of 2009 stands disposed of. The impugned judgment and award of the learned Tribunal under appeal is modified to the above extent.**
13. All connected applications, if any, stand disposed of.
14. There will be no order as to costs.
15. Interim order, if any, stands vacated.
16. Copy of this Judgment be sent to the Learned Tribunal, along with the trial court records, if received.
17. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)