IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

Appellate Side

Present :

The Hon'ble Justice Shampa Dutt (Paul)

FMA 2504 of 2014

(FMAT 1253 of 2011)

Sri Pulakesh Pal

Vs.

National Insurance Company Ltd. & Anr.

For the Appellant	:	Mr. Biswarup Biswas.
For the Respondent No.1/ Insurance Company	:	Mr. Saibalendu Bhowmik.
Hearing concluded on	:	27.06.2024
Judgment on	:	18.07.2024

Shampa Dutt (Paul) , J.

1. The present appeal has been preferred by the Claimant/Appellant against the Judgment and award dated 25th July, 2011 passed by learned Judge, M.A.C. Tribunal and Additional district Judge, 2nd Court, Nadia at Krishnanagar, District-Nadia in M.A.C. Case No.406 of 2006, **under Section 166 of the M.V Act.**

2. **The Facts :-**

> *"On 20.04.2005 at about 11.00 a.m. Shri Pulakesh Pal was dashed by a truck registered as W.B. 03/9020 near Sandhya Mathpara. The vehicle was being driven rashly and negligently. The petitioner sustained fracture injury on his right leg and he was taken into Nadia District Hospital. Due to such accident the petitioner cannot lead normal life. According to the petition, the offending vehicle was covered with insurance of National Insurance Company. He is claiming compensation to the tune of Rs.6,00,000/-."*

3. The opposite party/owner did not contest the case while the opposite party/Insurance company contested the case by filing a written objection denying all the material allegations.

4. The claimant/appellant has examined two witnesses, P.W 2 being a Doctor and proved documents being FIR, charge sheet, Referral card, Disability Certificate **(Marked Exhibits 1 to 5).**

5. **The learned Tribunal finally held as follows:-**

*"**M.A.C Case No.406 of 2006***

Date: 25.07.2011

From the F.I.R. (Exbt. 1) we find that Pulokesh Pal, claimant, met with road traffic accident. Exbt. 2 (Charge sheet) shows that the driver of the offending vehicle was driving the vehicle with rash and negligent manner and for that reason as it appears prima facie the accident took place. Exbt. 4 suggest that the victim sustained fracture injury. Since, the Disability Certificate (Exbt. 5) was not issued in conformity with the guidelines issued by the Government of India, I do not consider it sufficient to rely upon. Consequently, in my opinion, the claimant/petitioner has failed to prove that he has become disabled up to the extent of 50% due to road traffic accident. Admittedly, he sustained injury which is grievous in nature and therefore, he is entitled to compensation to the extent of Rs.15,000/-. He suffered mental agony and pain for which he should get Rs.10,000/-. He must have incurred some expenses towards medicine which the claimant failed to prove. However, on that count, I am inclined to give him Rs.5,000/- due to loss of income and during laid up period he should get Rs.3,000/- per month w.e.f. 20.04.2005 to 25.06.2005 (2 months & 6 days) i.e. Rs.6,600/-. Thus, the claimant is entitled to get Rs.36,600/- and not Rs.6,00,000/- as he claimed. Since, the vehicle was covered with Policy of insurer and not the owner is liable to pay such compensation.

Sd/-
Member, M.A.C.T. & Addl District Judge,
2nd Court, Nadia, Krishnanagar"

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

That the income, disability certificate and medical expenses considered by the Tribunal was not in accordance with law.

7. **The claimant/appellant** has relied upon the ruling in ***Sidram vs. The Divisional Manager, United India Insurance Co.***

Ltd. & Anr., (2023) 3 SCC 439, on 16.11.2022. The Supreme Court held:-

> *"**12.** With regard to future medical expenses, the claimant has not stated as to the nature of future treatment required. Hence, he would not be entitled for any compensation on the head of future medical expenses. However, it is made clear that if at all the claimant incurs any expenses towards any surgery or treatment on account of the injury suffering in the present motor accident and if he proves the same before the insurer, the insurer shall indemnify the same.*
>
> ***13.** Accordingly, the claimant is entitled for a total compensation of Rs 9,26,800 as against Rs 6,13,000 awarded by the Tribunal."*

8. **The Respondent/Insurance Company** has relied upon the ruling in ***Raj Kumar vs. Ajay Kumar & Anr., (2011) 1 SCC 343,*** the Supreme Court held:-

> ***"26.** The evidence showed that at the time of the accident, the appellant was aged around 25 years and was eking his livelihood as a cheese vendor. He claimed that he was earning a sum of Rs. 3000 per month. The Tribunal held that as there was no acceptable evidence of income of the appellant, it should be assessed at Rs. 900 per month as the minimum wage was Rs. 891 per month. It would be very difficult to expect a roadside vendor to have accounts or other documents regarding income. As the accident occurred in the year 1991, the Tribunal ought to have assumed the income as at least Rs. 1500 per month (at the rate of Rs. 50 per day) or Rs. 18,000 per annum, even in the absence of specific documentary evidence regarding income.*
>
> ***27.** In the case of an injured claimant with a disability, what is calculated is the future loss of earning of the claimant, payable to the claimant, (as contrasted from loss of dependency calculated in a fatal accident, where the dependent family members of the deceased are the claimants). Therefore, there is no need to deduct one-third or any other percentage*

from out of the income, towards the personal and living expenses.

28. *As the income of the appellant is assessed at Rs. 18,000 per annum, the loss of earning due to functional disability would be 20% of Rs. 18,000 which is Rs. 3600 per annum. As the age of the appellant at the time of the accident was 25, the multiplier applicable would be 18. Therefore, the loss of future earnings would be Rs. 3600 × 18 = Rs. 64,800 (as against Rs. 55,080 determined by the Tribunal). We are also of the view that the loss of earning during the period of treatment (1-10-1991 to 16-6-1992) should be Rs. 12,750 at the rate of Rs. 1500 for eight-and-half months instead of Rs. 3600 determined by the Tribunal. The increase under the two heads is rounded off to Rs. 20,000."*

9. Considering the materials and evidence on record, it is evident that:-

a) The claimant was born on 27.09.1976. The date of accident is 20.04.2005. Thus, he was about **28 years** old at the time of accident, so **multiplier of 17** will be applicable. ***(Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation and Anr., (2009) 6 SCC 121)***

b) The income be fixed at **Rs.3,000/-** per month as the accident occurred in the year 2005.

c) He was laid up for two months 6 days, so a total amount of **Rs.6,600/-** is to be given as compensation.

d) The claimant has been given a disability certificate showing that his percentage of **permanent disability is 50%** (Orthopaedically) and due to the accident there has been shortening of the RT Lower Limb (fracture of right leg).

e) **The disability certificate** issued by the medical board shows signatures of the members of the Medical Board including the Chairman and the Superintendent's of the hospital.

f) The incident being of the year 2005 and the petitioner being self employed, his income be fixed at **Rs.3,000/- per month.**

10. A disability certificate or a PwD certificate holds significant importance for persons with special abilities. It allows specially abled individuals to avail the benefits, facilities and concessions offered under different government schemes.

The certificate is issued by the medical authorities to validate the type and extent of the disability a person has the medical boards of respective states and districts issue a disability certificate.

The board generally comprises a Chief Medical Officer or a Sub-Divisional Medical Officer in the district and another expert in the specified field such as ENT Surgeon, Ophthalmic Surgeon, Orthopaedic Surgeon, Audiologist, Psychiatrist, Clinical Psychologist, etc.

The validity of a disability certificate varies based on the type of disability. The medical authority which issues the PwD certificate clearly mentions the period for which the certificate will remain valid.

A disability certificate remains valid for lifelong in case of a permanent disability. However, for temporary disabilities, the certificate/ID card remains valid for a period of five years. It has to be renewed once in five years subject to the medical examination of the disabled person.

So, the disability certificate in this case is valid, as it has been issued in due process, as per rules.

11. **Thus, the 'just compensation' in this case would be:-**

3000x12x17x50%	Rs. 3,06,000/-
Medical expenses incurred	Rs.15,000/-
Non-pecuniary damages	Rs.15,000/-
Loss of earning	Rs.6,600/-
Total amount	**Rs.3,42,600/-**

12. Admittedly, the Claimant has received the **amount of compensation of Rs. 36, 600/-** 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. 3,06,000/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.**

13. 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.

14. **The appeal being FMA 2504 of 2014/FMAT 1253 of 2011 stands disposed of. The impugned judgment and award of the learned Tribunal under appeal is modified to the above extent.**

15. No order as to costs.

16. All connected applications, if any, stand disposed of.

17. Interim order, if any, stands vacated.

18. Copy of this Judgment be sent to the Learned Tribunal, along with the trial court records, if received.

19. Urgent Photostat certified copy of this Judgment, if applied for, be given to the parties on usual undertaking.

(Shampa Dutt (Paul), J.)