

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

FMAT 246 of 2013

Alok Sarkar

Vs

The New India Assurance Company Ltd. & Anr.

For the Appellant : Mr. Biswarup Biswas.

**For the Respondent No. 1/
(Insurance Company)** : Ms. Sucharita Paul.

For the Respondent No. 2 : None.

Hearing concluded on : 04.07.2024

Judgment on : 30.07.2024

Shampa Dutt (Paul), J.:

1. The present appeal by the Claimant/Appellant has been preferred against the judgment and award dated 16th day of January, 2013 passed by the Learned Judge, Motor Accident Claims Tribunal and the Additional District Judge 3rd Court, Nadia at Krishnanagar, Nadia (hereinafter called Learned Tribunal Judge) in M. A. C. Case No. 76 of 2009, **under Section 166 Motor Vehicles Act.**

2. THE FACTS:-

“On that relevant day, 13.12.08 at about 9.00 a.m. the victim/injured was going on foot towards Bagula Bazar at about 9.30 hours, at that time one motor cycle being No. W.B.-52 C/3576 was going at a high speed towards Bagula Hospital from Bagula Bazar and all on a sudden the said motor cycle dashed this victim, as a result his right leg along with foot was fractured and badly damaged and he was shifted to Bagula Hospital, where from he was transferred to District Hospital, Nadia and then to Kalyani Cure Nursing Home and there from to North City Hospital, Calcutta and operation took place twice on his right leg and now he is a permanent disabled person. As such the victim by filing this petition prays for compensation to the extent of Rs. 13 Lakhs. He further stated that he is aged about 27 years and he has business of clothes and earns Rs. 3,000/- per month.”

3. The said case was opposed by the New India Assurance Company by filling W.O. This O.P. has opposed the same to the effect that the petitioner has got no cause of action. Petition is not maintainable. The petition is barred by law. The O.P. does not admit petitioner's case. This O.P. has also challenged the earning of the victim and stated that

the claim of compensation is excessive and an exaggerated one. This O.P. has disputed that on 13.12.08 the victim was going on foot at Bagula Bazar and that the offending Motor Cycle was going at a high speed towards Bagula Hospital and the vehicle dashed the victim and victim sustained injuries and that the statements are all false and that no such accident took place through the vehicle W.B. 52 C/3576.

4. The claimant examined 10 witnesses, himself as P.W. 1 and relevant documents were marked Exhibits 1 to 10.

5. The Learned Tribunal while disposing of the case held as follows:-

"I think the petitioner is entitled to get the said cost like Rs. 30,000/- + Rs. 17,691/- and Rs. 600/-, i.e. Rs. 48,291/- towards medical expenses. Apart from that he is entitled to get an amount of money towards pain and suffering. I think there is no such hard and fast rule to calculate the same. Considering the period of suffering on and from 13.12.08 to 08.01.09, he was more or less passed his days as in-door patient, his one month the pain and suffering is calculated to the tune of Rs. 30,000/-. In fact, in absence of any percentage of disability, I am not able to calculate and allow the compensation to the tune of income. In addition to that a sum of Rs. 3,000/- is to be awarded towards loss of his income during his period of suffering. As such on arithmetical calculation, award would be Rs. 81,291/-(48,291/+ 30,000/- + 3000/-). Accordingly, these issues are decided in favour of the petitioner. He is entitled to get a sum of Rs. 81,291/-."

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

That the Learned Tribunal did not consider the proper income of victim and compensation for his permanent disablement due to

the severe injuries sustained in the accident on the basis of the medical documents.

7. On hearing the Learned Counsels for the both sides and considering the materials and evidence on record, the following is evident:-

- i) In the accident, the victim suffered fracture of right leg and feet.
- ii) There was rash and negligent driving on the part of the offending vehicle.
- iii) The accident happened in 2008 and without any proof of income, the income of the victim is taken as **Rs. 3000/- per month.**
- iv) The victim was under treatment of P.W.2, from the date of accident 20.12.08 to 16.10.09 but hospitalization was for about two months.
- v) P.W.6, has deposed that the nursing home received Rs. 17,693/- towards treatment of the victim.
- vi) P.W.7, (Surgeon) has proved the discharge report (Exhibit 14) and proved that he received **Rs. 30,000/-** as professional charges (receipt was proved and marked Exhibit 15).
- vii) Exhibit 16 (collectively) are the cash memo's for the medicines.
- viii) The tribunal accepted his age as 27 years. The Insurance has not challenged it, so **multiplier of 18** is applicable.

ix) **Admittedly, the victim does not have a disability certificate.**

8. Considering the said materials on record and relying upon the Judgment in **Sidram vs The Divisional Manager United India Insurance Co. Ltd. & Anr., in Civil Appeal No. 8510 of 2022, decided on 16 November, 2022, (Para 112),** the “**just compensation**” in this case would be as follows:-

a) The injuries sustained by the victim in this case as per the evidence of P.W. 7 (Dr. Sandipan Gupta) is as follows :-

*“Multiple comminuted fractures of right 4th & 5th metatarsal and fallanges with dorsel lacerated wound with skin loss. It required an operation. Accordingly, the operation took place on 06.01.2009. CRIF with multiple K-wires, would excision & script thickness skin grafting under image control done by spinal anesthesia. This is the operation on 06.01.2009. It was written by my Assistant namely Dr. M.B. Murmu. I am acquainted with his hand-writing. This is the note by my own hand and signed by me. The said operation note dated 06.01.2009 to 07.01.2009 is marked Exbt.13 collectively. This is the carbon copy of the Discharge Certificate with my advice. This is my hand-writing along with my signature in the carbon process. The said Discharge Report is marked as Exbit.14. I received a sum of Rs. 30,000/- as professional charges of my team on account of the treatment and operation of the Patient. It was prepared by the office and I put my signature in the said receipt. The said receipt is marked as Exbit.15. **It is fact that the injuries as mentioned in my report are grievous in nature.** It is fact that this type of injury may be caused by mother vehicle accident.”*

Thus the loss of earning of the victim for two months be taken as Rs. 6000/- (business).

Loss of earning of the victim for two months	Rs.6,000/-
Medical Expenses	Rs. 50,000/-
Litigation Charges	Rs. 20,000/-
Conveyance Charges (One medical institution to another)	Rs.20,000/-
Non-Pecuniary Damages	Rs. 50,000/-
Loss of amenities	Rs. 30,000/-
Total Amount	Rs. 1,76,000/-

9. Admittedly, the Claimant has received the **amount of compensation of Rs. 81,291/-** together with interest in terms of order of the learned Tribunal. Accordingly, the claimant/injured is now entitled to the **balance amount of compensation of Rs. 94,709/- 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 FMAT 246 of 2013 accordingly 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 Judgment be sent to the Learned Tribunal, along with the trial court records, if received.
16. Urgent Photostat certified copy of this Judgment, if applied for, be given to the parties on usual undertaking.

(Shampa Dutt (Paul), J.)