

22.05.2024
SL No.20
Court No.25
Ali

**IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction**

**F.M.A. 387 of 2024
With
IA No.:CAN/3/2024**

**The National Insurance Company Ltd.
Vs.
Srinath Chakraborty & Anr.**

Mr. Sanjay Paul,
Ms. Jaita Ghosh
.....for the appellant/Insurance Co.

Mr. Amit Ranjan Roy
.....for the respondents/claimants.

The instant appeal has been preferred against the judgment and award dated 31st day of July, 2013, passed by the learned Judge, Motor Accident Claims Tribunal, ADJ, Fast Track 1st Court, Howrah, in MAC Case no. 28 of 2007.

The Insurance Company has preferred the instant appeal against the said award.

The brief facts of this case that the victim of this case, i.e., the present respondent, namely, Srinath Chakraborty was met with an accident when he was 14 years old on 20.11.2006 at about 8.00 A.M. at Gopigang, Howrah by a lorri bearing No. WB-29/2023 which was running at the time at a very high speed and rash and negligent manner. By such accident the victim sustained severe injury on his waist, chest, right ankle and fracture on right femur causing permanent disablement. He was

admitted to the private Nursing Home wherein the operation was done.

One claim application was filed before the learned tribunal under Section 166 of the M.V. Act for getting compensation.

The Insurance Company contested the claim case by filing written statement.

After hearing the parties the learned Tribunal has awarded a sum of Rs.2,75,000/- towards the compensation and directed the Insurance Company to pay the compensation together with interest @ 6% per annum from the date of filing of the claim application.

The Insurance Company preferred the instant appeal against the award on the ground that the learned tribunal has assessed the functional disability of the deceased to be 50% on the basis of a medical certificate issued by a private Doctor.

Mr. Paul, learned advocate for the Insurance Company submits that the disability certificate issued by a Doctor cannot be believed. He further argued that the injured never appeared before the Government Doctor or Government Hospital to have a disability certificate. So, the disability certificate is not legally tenable. So, he prayed for dismissal of the instant award.

Mr. Roy, learned advocate appearing on behalf of the claimants submits that the claimant was only 14 years old and he sustained severe injuries all over his person. The medical document proved that he was admitted to Nursing home twice wherein a major operation was conducted over the fracture portion of his body. The medical certificate issued by the Doctor reflected that the injured was limping due to the shortening of his leg. So, Mr. Roy submits that the learned tribunal has justifiably passed the award. Mr. Roy further argued that the evidence of PW-4 proved that the injured incurred a huge amount of money towards his medication but such fact was not considered by the learned tribunal.

Heard the learned advocates perused the materials on records also perused the medical certificate issued by the Doctor which was relied by the learned tribunal. It appears that the medical certificate was marked as Exhibit-6. The Doctor S.K. Majhi is a medical practitioner who deposed before the learned tribunal as PW-5. During his examination he stated that he is a retired medical officer of Howrah District Hospital and he examined the injured. He also deposed that during examination he also examined the medical papers of the injured and is of opinion that the disability of

the injured is 50%. During cross examination he admitted that the patient/injured was suffering from shortening of limb as his leg was shortening by one inch. I have also perused the discharge certificate marked as exhibit-7 & 7/1; wherefrom it appears that the respondent was admitted on 05.05.2006 at Ashoka Polyclinic and Nursing home at Howrah and discharged there from on 07.05.2006 after operation; and again he was admitted in the same Nursing home on 21.11.2006 and discharged there from on 27.11.2006.

Considering the entire issue it appears to me that though the injured was never placed himself in a Government Hospital but the fact suggests that the victim was limping due to shortening of his leg which was only happened for such accident.

Considering the fact that the victim was a student of 14 years old, I think it necessary to hold that the learned tribunal has considered the entire fact and awarded an amount of Rs.2,75,000/- by considering the notional income of Rs.3,000/- per month. I find that there is no absurdity or perversity in the award passed by the learned tribunal. The 50% permanent disablement of a student who is limping is appears to be justified.

However, as the claimant has never filed any cross appeal so they are not entitled to get any medical expenses in this case.

On the above observation the award passed by the learned tribunal is hereby affirmed. The appeal is hereby disposed of with a direction to the Insurance Company to comply with the award along with interest @ 6% per annum.

It further appears that the Insurance Company has deposited the entire awarded sum at the time of filing of the instant appeal along with interest. The same amount must have accrued some interest. The office of the learned Registrar General, High Court, Calcutta is directed to disburse the same in the name of the respondent/injured within four weeks after vacation from the date of passing of this order.

The appellant is at liberty to correct the address of respondent No. 1 by virtue of application being CAN 3 of 2024.

Accordingly, the application being CAN 3 of 2024 is disposed of.

The **FMA 387 of 2024** is disposed of.

All connected applications, if any, stand disposed of.

Interim orders, if any, stand vacated.

Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)