

S/L 16
15.4.2024
Court No.551
SD

FMA 411 of 2023

The Oriental Insurance Company Ltd.

Vs.

Santanu Barik & Anr.

Ms. Sucharita Paul

...for the Appellant.

Mr. Ashique Mondal

...for the Respondents.

The instant appeal has been preferred against the judgment and award dated January 6, 2022 passed by the learned Judge, Motor Accident Claims Tribunal, ADJ, 14th Court, Alipore, South 24 Parganas in MAC Case No.417 of 2002.

The brief fact of the case is that on December 20, 2001 at about 10:10 p.m. the driver of the offending vehicle bearing no. WB 19-0884, Shaktiman Truck with Trailer No. WBI 2630 (without engine) drove the same along the Strand Road, North to South direction in a rash, negligent, careless manner without blowing horn thereto dashed the wrecker no. WB-15-1384 from behind, causing severe injuries to the driver of that tracker. As a result, the present appellant being the driver of the wrecker namely, Santanu Barik sustained severe injuries on his persons and was removed to SSKM hospital for treatment.

The injured has filed an application before the learned Tribunal under Section 163A of the MV Act for getting compensation on the ground that the accident occurred due to rash and negligent driving of the driver of the offending

vehicle duly insured under the policy of the insurance company.

The claim case was contested by the insurance company by filing written statement. After hearing the parties and after receiving the evidence, the learned Tribunal has awarded a sum of Rs.1,14,700/- together with 6 per cent interest per annum from the date of filing of the case as a compensation and directed the insurance company to pay the compensation.

Being aggrieved by and dissatisfied with the said award, the insurance company has preferred the instant appeal.

Ms. Sucharita Paul, learned advocate appearing on behalf of the appellant/insurance company submits that the award passed by the learned Tribunal is erroneous and it is violative to the notification dated May 22, 2018. She submits that this is a injury case and the evidence would show that the injured has suffered a minor injury. So, in this case he may entitled to get only Rs.25,000/- according to the Second Schedule described in 1(c) of the said schedule under Section 163A of the MV Act as amended on 22.5.2018.

She further submits that the award passed by the learned Tribunal and computation thereof is illegal in the eye of law. So, the award cannot be maintainable.

She further submits that the learned Tribunal has assessed the 15% of partial disability of the injured on the basis of evidence of P.W.2. She further submits that P.W.2 is one of the Doctors, namely, Dr. P.K. Mondal who issued the

certificate after eight years without conducting any x-ray and clinical examination over the persons of the injured. She further submits that the injury as described by the P.W.2 is no way connected with the alleged accident. So, she prays for dismissal of the instant claim application by setting aside the impugned award.

Mr. Ashique Mondal, learned advocate appearing on behalf of the respondents/claimants submits that the learned Tribunal has correctly assessed the injury and the disability of the claimant to be 15% on the basis of the opinion of Dr. P.K. Mondal (P.W.2). The certificate is placed in the LCR and marked as Exhibit 8.

Mr. Mondal further argues that the learned Tribunal has observed the certificate issued by Dr. P.K. Mondal and learned Tribunal has also got reliance of such observation by virtue of compensation of Hon'ble Apex Court in B. Lakshmana Vs. Divisional Manager, New India Assurance Co. Ltd.

He also points out the observation of the learned Tribunal in the inner page 5 of the impugned judgment wherein the learned Tribunal has believed the permanent disability of the injured is 15%. Mr. Mondal also cited the relevant portion of the Workmen's Compensation Act, 1923 wherein after the schedule (I), it has been noted that *"complete and permanent loss of the use of any limb or member referred to in this Schedule shall be deemed to be the equivalent to the loss of that limb or member"*. He argues that though the leg of the injured was not amputated

but as the said limb became useless or loss of use. So, the instant disability of the injured can very well be considered as 15% disability.

Heard the learned advocates.

After hearing the parties and after considering the materials also after considering the LCR and the original medical papers placed in the LCR, it appears that after the accident the injured, namely, Santanu Barik was admitted to the SSKM hospital. The injury report of the Santanu Barik was marked as Exhibit 6. The Exhibit 6 depicted the injury as follows:-

“As reported by the patient and party H/O RTA on 20.12.2001 at 10:10 p.m. The patient, a driver of the police two crane was driving the crane when the crane vehicle was hit from behind by a trailer followed by injury over Rt knee (above the Rt knee). The patient was attended and treated for ER SSKM Hospital.”

It was also mentioned in that report that patient was ‘not admitted’. The OPD ticket of the patient was also marked as Exhibit 7 wherein the history was stated to be ‘abrasion right knee’. Exhibit 8 is the opinion of Dr. P.K. Mondal (P.W.2).

The opinion of the doctor is as follows:-

*“H/O RTA. Injury over Right knee. Abrasion.
(As per report of cases of serious injury admitted into the SSKM Hosp. Kolkata dt. 20.12.2001. Identity Case No. GFR2466308, Election Commission of India.).*

The patient states that after accident be was taken to the Emergency Dept. of SSKM Hosp. and was treated with Inj Tetanus Toxoid, Inj. Voveran, Inj Rantac, Cap Amoxicillin 500 mg and was referred to SOPD.

The patient now complains of painful stiffness of left knee jt, pain on walking, squatting, pain on running.

On Examination:-

1. *Tenderness on left knee on lateral side.*
2. *Tenderness on lower end of left Femur on lateral condyle at the upper attachment of lateral Collateral ligament of left knee joint. 3 cm scar on anterior aspect of left knee.*
3. *Last 60 of left knee jt flexion painful & limited.*
4. *Wasting of left quadriceps & hamstring muscles ++.*

After history taking, clinical examination, examination of Hospital Emergency Dept. ticket, Hosp injury report, I am of opinion that the patient suffers Permanent Partial Disability to the extent of 15% (Fifteen per cent) due to sprain injury on left knee with partial tear of lateral Collateral ligament of left knee, weakness of left thigh muscles and painful stiffness of left knee joint.”

The injury of the claimant in a road traffic accident was happened in the year 2001; he placed himself before P.W.2 on April 24, 2009. During examination the P.W.2 has taken the history of road traffic accident of the injured over the right knee but the patient stated before him regarding his complains of painful stiffness of knee joint, pain on walking, squatting, pain on running at the left knee. On examination, the P.W.2 has observed tenderness of lower end of left femur or lateral condyle at the upper attachment of lateral collateral ligament of left knee joint. 3 cm scar on the anterior aspect of the left knee. So, from the entire observation of the P.W.2 it appears that the patient that is the claimant of this case, has complained before the P.W.2 regarding his weakness and stiffness at the left knee, I find no justification how the injury or stiffness or disability of the claimant has connected with the said road traffic accident wherein he has suffered the accident at his right leg.

I find no document to connect the said injury of the claimant in the road traffic accident in the left knee. Considering the same, it appears to me the learned Tribunal

has misread the entire evidence and misappreciate the facts and circumstances of the case. Thus, in my view, the award passed by the learned Tribunal is one of the instances wherein the learned Tribunal has not properly gone through the papers placed before me. I find no justification to pass any award in favour of the claimants.

Accordingly, the instant appeal be allowed.

The award passed by the learned Tribunal is hereby set aside.

I make it clear that the injured has tried to mislead the court regarding his claim before the learned Tribunal. The claimant has not come with the clean hands. Accordingly, he is not entitled to get any compensation in this case.

The instant appeal FMA 411 of 2023 is disposed of.

All connected applications, if any, stand disposed of.

Let the LCR be sent down immediately before the learned Tribunal.

Insurance company is at liberty to withdraw the statutory compensation of Rs.25,000/- with accrued interest from the office of the learned Registrar General, High Court at Calcutta.

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

(Subhendu Samanta, J.)