

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 779 of 2022

**Tapan Kumar Ghosh
Versus**

The United India Insurance Company Ltd. & Anr.

For the Appellant : Mr. Jayanta Kumar Mondal
Mr. Sayantan Rakshit

For the Respondent No.1/
Insurance co. : Mr. Parimal Kumar Pahari.

Heard & Judgment on : 8th April, 2025.

Ananya Bandyopadhyay, J:

1. The Learned Advocates representing the respective parties are present.
2. The instant appeal had been filed against the judgment and award dated 25th August, 2021 passed by the learned Judge, Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court, Durgapur in M.A.C. Case No. 3 of 2019.
3. An application under Section 166 of the Motor Vehicles Act had been filed by the claimant on account of the accident suffered by him which occurred on 31st March, 2018 at about 8.35 a.m. on

NH-2 at Andal Gram More under jurisdiction of Andal police station with the involvement of the offending vehicle being Toyota car bearing registration No. WB-68L/2567 collided with the motor cycle bearing registration No. WB-40AJ/0934 which was being driven by the victim/claimant who instantaneously suffered injuries and had been admitted in Mission Hospital, Durgapur whereby he was detected with 30% physical disability by the Medical Board.

4. Learned Advocate representing the appellant/claimant submitted that the learned Tribunal considered Rs. 3000/- to be notional income as well as did not consider the future prospect and the claimant was entitled to a sum of Rs. 1,35,417/- which was paid by the employer of the victim/claimant towards medical charges.
5. The learned Advocate representing the respondent No.1/Insurance Company submitted that the appellant continued with service after the accident till the date of his retirement and the learned Tribunal in absence of any further materials on record the learned Tribunal was justified in assessing the monthly income of the victim to be Rs. 3000/- as notional income. Moreover, the employees' contribution towards the medical expenditure should not have been paid by the insurance company

and the learned Tribunal was justified in pronouncing the impugned judgment and order.

6. Considered the rival contentions of the Learned Advocates representing the respective parties.
7. Since the occurrence of the accident, the driving license, the Insurance policy, the route permit etc. and other ancillary issues have not been disputed by the learned advocate representing the respondent No.1/insurance company, this Court restricts itself only to the extent of further income as well as the medical expenditure in view of the judgment cited in *Oriental Insurance Co. Ltd. Vs. R. Swaminathan & Ors.*¹ Wherein it had been opined as follows:

"We have been taken through the records by the learned counsel on both the sides. While Claims Tribunal had awarded Rs. 40,000 towards 'medical expenses', the learned Single Judge has quashed this award under this head on the ground that the medical expenses of the claimant were met by his employer. This position is not controverted by the learned counsel for the claimant before us. Under the head of 'pain and suffering', while the Tribunal awarded a sum of Rs. 1,00,000, the learned Single Judge has reduced it to Rs. 30,000. We are not satisfied that there is any justifiable reason to make such a reduction nor do we see any reasoning in support, in the judgment of the learned Single Judge. We are, therefore, satisfied that the payment under this head needs to be retained as in the award of the Tribunal. The compensation awarded under the head of 'permanent disability' is Rs. 1,25,000/- in the award of the Tribunal. Having perused the judgment of the learned Single Judge, we do not see any justifiable reason to reduce it to Rs. 75,000, nor is the learned

¹ 2006 ACJ 1398

counsel, for the appellant able to satisfy us on this count. We are of the view that there was no justification to interfere with the compensation awarded by the Tribunal except under the head of 'medical expenses'. In the result, we hold that the compensation to be awarded to the claimant, the respondent No.1, shall be as under :

<i>Medical Expenses</i>	<i>: Nil</i>
<i>Future Medical Expenses</i>	<i>: 1,85,000</i>
<i>Pain and suffering</i>	<i>: 1,00,000</i>
<i>Permanent disability</i>	<i>: 1,25,000</i>

Rs. 4,10,000

This amount shall be payable to the claimant together with interest at the rate of 12 per cent per annum from the date of claim petition".

8. The victim continued with his service being declared fit to join after the recovery at the railways and continued to remain in service till date of his retirement. The learned Tribunal has rightly assessed the notional income of the victim to be Rs. 3000/- in absence of any further avocation joined by the victim/claimant and this Court is not inclined to interfere with the same. However, the victim has suffered injury in the eyes which must have been traumatic with a possibility of even losing eye sight must have agonized him to an incredible extent. Accordingly, this Court is inclined to enhance sum of Rs. 50,000/- granted towards pain and suffering to the extent of Rs. 1,00,000/-
9. The Learned Advocate for the appellant/claimant submitted that the appellant/claimant has withdrawn a sum of Rs. 3,53,789/- along with interest. The appellant/claimant is entitled to a sum of

Rs. 50,000/- along with interest at the rate of 6% per annum to be paid from the date of filing of the claim application till the date of final realization.

10. The Learned Advocate for the respondent No.1/insurance company is to deposit the balance sum of Rs. 50,000/- along with interest as aforesaid before the office of the learned Registrar General, High Court Calcutta within six weeks from the date of passing of this order.
11. The office of the Registrar General, High Court, Calcutta shall encash the said cheque and thereafter disburse the same to the present appellant/claimant as mentioned in the award passed by the learned Judge, Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court, Durgapur in M.A.C. Case No. 3 of 2019 on proof of proper identification of the appellant/claimant subject to payment of ad valorem Court's fees.
12. The instant appeal is disposed of accordingly.
13. The pending applications if any stands disposed of.
14. The TCR be sent down to the concerned tribunal forthwith.
15. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)

c.m. AR. Ct.