

Form No.J(2)

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 227 of 2006

Asit Chanda

Versus

The New India Assurance Company Ltd. & Anr.

For the Appellant : Mr. Rabindranath Mahato

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

Heard & Judgment on : 17th March, 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 29th August, 2005 passed by the learned Judge, Motor Accident Claims Tribunal cum Additional District Judge, Midnapore in M.A.C. Case No. 752 of 2003.
3. An application under Section 166 of the Motor Vehicles Act had been filed by the victim sustaining injury on his body due to an accident which occurred on 23rd August, 2002 at about 7.00 a.m. with the involvement of the offending vehicle being a Bus bearing

registration no. W.G.B. 5470 whereby the victim being a passenger of the bus was injured as it lost control and overturned.

4. Learned Advocate representing the appellant/claimant submitted that the learned Tribunal did not consider the disability certificate marked as Ext.3 as well as the evidence adduced by OPW.1. He did not contradict the other aspects considered by the Learned Tribunal in assessing the amount of compensation.
5. The learned Advocate representing the respondent No.1/Insurance Company verbally challenged the monthly income of the victim to be Rs. 6000/- at the relevant point of time in absence of oral and documentary evidence. It was further submitted that the document marked as Ext. 3 did not distinctly reveal the nature of injury sustained by the victim to have been to the extent of 40%.
6. Considered the rival contentions of the Learned Advocates representing both the parties.
7. The cross examination of OPW1 being orthopaedic surgeon deposed before the Learned Tribunal as one of the board members to have issued the disability certificate marked as Ext. 3. OPW.1 *inter alia* stated as follows:

"In Ext.3, besides me, the other Board Members also put their signature, along with the seal and signature of the

Vice Principal of Midnapore College & Hospital. We, the Board Members, examined the claimant physically and on finding his disability, we had issued the certificate, ext.3, in our official capacity. 40% of the earning capacity of a person is lost in case of his 40% disability”.

8. The document marked as Ext. 3 mentioned in column No.1 “left hip disability following x-ray. The Learned Tribunal should have considered the evidence of OPW1 in its entirety along with the certificate of disability marked as Ext.3 which mentioned the disability with regard to the left hip. The Learned Advocate representing the respondent No.1/insurance company apart from verbal assertion did not file any cross objection to the same, this Court is not inclined to interfere with the monthly income of the victim as assessed by the learned Tribunal. The impugned judgment and order passed by the Learned Tribunal is modified to the following extent:

Monthly Income	Rs. 6000/-
Annual Income	Rs. 72,000/-
	X 16
Multiplier to be “16”	Rs. 11,52,000/-
	Rs. 4,60,800/-
Disablement (40%)	Rs. 15,000/-
	Rs. 1,000/-
Medical Expenses	Rs. 4,76,800/-
Pain and Suffering	Rs. 16,000/-
Less Award	Rs. 4,60,000/-
Entitlement	

9. The appellant/claimant are entitled to a sum of Rs. 4,60,800/- along with 6% interest per annum to be paid from the date of filing of the claim application till the date of its actual realization.
10. The Learned Advocate for the respondent No.1/insurance company is to deposit the balance sum of Rs. 4,60,800/- 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 cum Additional District Judge, Midnapore in M.A.C. Case No. 752 of 2003 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.)