IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

F.M.A 834 of 2018

Sujoy Dutta Roy
-Vs-
National Insurance Co. Ltd. & Ors.

For the Appellant : Mr. Krishanu Banik

For the Respondents/ Insurance Company : Ms. Sucharita Paul

Heard on : 19-07-2024, 06-08-2024

Judgment on : 4th April, 2025

<u>Ananya Bandyopadhyay, J.:-</u>

1. The claimant filed an application under Section 166 of the M.V. Act in the Court of Motor Accident Claims Tribunal, Additional District & Sessions Judge, Special Court, Dakshin Dinajpur at Balurghat being MAC Case No. 58/2009, claiming an award of Rs 1,00,000/- whereby the aforesaid was grievously injured due to a road traffic accident on 18.12.2008 at about 9:00am. The offending vehicle bearing Registration No. WB-61/2968 hit the aforesaid deceased in a rash and negligent manner. Consequently, the victim sustained grievous injuries was admitted in the MO Balurghat District Hospital. Subsequently, based on a complaint, Balurghat P.S. Case No 358/08 dated 19.12.08 was instituted against the driver of the offending vehicle as aforesaid.

2. The respondent, the National Insurance Company contested the aforesaid MAC case.
3. The Learned Tribunal as aforesaid disposed of the issues framed considering the oral as well as documentary evidences and awarded a sum of Rs.3,16,000/- as well as an interest of 8% from the date of filing the case, against the owner of the vehicle.
4. The Learned Advocate representing the appellant/ owner of the vehicle submitted as follows:-
    a. It was erroneous to accord liability to pay compensation towards the victim injured upon the insured instead and in place of upon the insurer of the offending vehicle bearing No. WB-61/2968 (Trakker) on the ground that the driver of the offending vehicle did not have any valid driving licence at the time of occurrence of the motor accident (occurred on 18.12.2008).
    b. The claimant failed to produce the valid driving licence of the driver of the offending vehicle since against the accused driver one criminal case was lodged before the Buniadpur Court where the driving licence was lying in the custody of the said court and due to the said fact, the driving licence of the driver of the offending vehicle bearing no. WB-61/2968 (Trakker) had not been renewed and under such circumstances the victim injured who was the third party

could not be made to claim compensation from the insurer of the offending vehicle.

c. In the case of lack of valid driving licence and fake driving licence, the insurer of the offending vehicle would pay the compensation towards the victim injured in a motor accident at first and the amount of compensation which had been paid by the insurer would be recovered from the insured of the offending vehicle in accordance with law.

d. The Learned Tribunal Judge misconstrued and misunderstood the ratio/principle decided in the various reported cases by the Hon'ble Apex Court of India as well as by the Hon'ble High Court at Calcutta ie. i) National Insurance Company Limited Vs. Swaran Singh and other reported in 2004 ACJ (1) ii) Shanti Hazra Vs. New India Assurance Company Ltd. and Another 2015 (2) TAC 198 (Cal) iii) United India Insurance Company Ltd. Vs. Sujata Arora and Others, 2013 (3) TAC 29 (SC) iv) Sohan Lal Passi Vs. P. Sesh Reddy and Others, 1996 ACI 1044 while adjudicating the present claim case and pronouncing the award under appeal.

e. The actual monthly income of the victim injured should have been calculated by considering the material on records

f. The future prospects of the victim injured should have been calculated by considering various reported decisions of the

Hon'ble Apex Court of India and further more this Hon'ble High Court at Calcutta be expected to apply the principle held by the Hon'ble Apex Court of India in the case of National Insurance Company Ltd. Vs. Pranay Sethi reported in 2017 ACJ 2700 = 2017 (4) TAC 673 while passing the impugned award

g. The compensation of the victim-injured who suffered from 45% permanent disability in his body due to the serious injury out of the said motor accident should have been calculated under the heads of (i) damages for mental and physical shock, pains and suffering already suffered or likely to be suffered in future, (ii) damages to compensate for the loss of amenities of life ie on account of injury the claimant may not be able to walk, run or sit, (ii) damages for the loss of expectation of life, ie, on account of injury the normal longevity of the person concerned is shortened (iv) inconvenience, hardship discomfort, disappointments, frustration and mental stress in life.

h. The Leamed Tribunal Judge ought to have given the gravity and degree of deprivation as well as the degree of awareness of the deprivation in personal case though it is impossible to equate money with human suffering, agony and personal deprivation and the court on Tribunal should make on honest and serious attempt to award damages sofas as the money can compensate to loss and as such the impugned award is bad in law and the same is liable to be set aside.

i. Interest should have been payable at 9% per annum from the date of filing of the claim application over the total claim as prayed for from the date of filing of the claim application.

5. Heard the submission of the learned advocates representing the respective parties.

6. The document marked as Ext. 9/1 series being the disability certificate issued by the Medical Board constituted by the office of the Superintendent District Hospital Balurtghat, Dakshin Dinajpur, West Bengal assessed the disability to the extent of 45%. Based on its remarks injuries of "post traumatic shortening of left lower limb" in column 6 of the said disability certificate it had been mentioned that the injury of the appellant restricted his travel without assistance or escort and adviced physiotherapy. The evidence of P.W.4 revealed the patient being the victim to have incurred expenditure of a sum of Rs. 20,300/- towards medical treatment and medicines which were marked as Ext.10. The learned Tribunal erred in considering sum of Rs. 20,300/- on the basis of two distinct bills collectively which had been marked as Ext. 10 with regard to the medical expenses amounting to Rs. 20,300/- and not Rs. 40,600/-. The income of the victim was considered by the learned Tribunal in absence of oral and documentary evidence to be Rs. 3000/- as notional income. This Court is not inclined to interfere with the monthly income of the victim as assessed by the learned Tribunal.

7. The learned Tribunal in the impugned order *inter alia* as follows:

> *From the aforesaid evidence of D.W.1 National Insurance Company limited has been able to prove that the driver was driving the offending vehicle without any valid driving license on the date of accident i.e. 18.12.2008. The National Insurance Company Limited has also been able to prove before this Court that the owner of the offending vehicle bearing No. WB 61/2968 was guilty of negligence and he failed to exercise a reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicle by the duly licensed driver or one who was not disqualified to drive at the relevant time.*
> *That this defence is available to the insurer, National Insurance Company Limited in view of the judgment reported in National Insurance Company Limited Vs. Swaran Singh & Others reported in 2004 ACJ. Therefore, the National Insurance Company Limited cannot be fastened with the liability to pay the compensation to the petitioner/claimant on account of the accident occurred on 18.12.08. It is the owner/insured of the offending vehicle bearing no. WB 61 2968 who is liable to pay the compensation to the petitioner/claimant".*

The impugned award of Rs. 4,97,000/- is modified as follows:

Monthly Income	Rs. 3000/-
Annual Income	Rs. 36,000/-
Future Prospect to be added(40%)	Rs. 14,400/-
	Rs. 50,400/-
Total loss of income 45%	Rs. 22,680/-
Multiplier to be "16"	X 16
	Rs. 3,62,880/-
Medical Expenses	Rs. 20,300/-
Future Medical Expenses	Rs. 25,000/-
Non pecuniary damages	Rs. 25,000/-
	Rs. 4,33,180/-

8. The appellant/claimant is entitled to a sum of Rs. 4,33,180/- 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 its actual realization.

9. The Learned Advocate for the respondent No.1/insurance company is to deposit the balance sum of Rs. 4,33,180/- 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 and recover the same from the owner of the offending vehicle upon proof that the driving licence was possessed by the driver of the offending vehicle at the relevant point of time of the accident.

10. 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 & Sessions Judge, Special Court, Balurghat, Dakshin Dinajpur in M.A.C. Case No. 58 of 2009 on proof of proper identification of the appellant/claimant subject to payment of ad valorem Court's fees.

11. The instant appeal is disposed of accordingly.

12. The pending applications if any stands disposed of.

13. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)