

Form No.J(2)

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 1407 of 2024

Khokan Bagdi

Versus

United India Insurance Co. Ltd & Anr.

For the appellant/claimant : Mr. Uday Sankar Chattopadhyay,
Ms. Aishwarya Datta,
Ms. Rajashree Tah

For the respondent nos. 1 : Mr. Parimal Kumar Pahari

Heard & Judgment on : 16th 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 15.09.2015 passed by the learned Additional District Judge, Motor Accident Claims Tribunal, Fast Track 2nd Court, Burdwan in M.A.C. Case No. 47 of 2013.
3. An application under Section 166 of the Motor Vehicles Act, 1988 had been filed by the claimant/victim on account of an accident which occurred on 04.07.2011 at about 20.00 hours at Guskara-Burdwan Road near Durganagar Bus Stop with the involvement of the offending vehicle being a 'Bus' bearing registration no. WB-41A-5555. The claimant victim was admitted at Burdwan Medical College and Hospital and subsequently at Lifeline Nursing Home where his

right leg was amputated and he suffered permanent disability to the extent of 70% as assessed by the Medical Board.

4. The learned Advocate representing the appellant/claimant submitted that the learned Tribunal had dismissed the claim application on the following grounds:-

(i) In the claim application the number of the offending vehicle was stated to be WB-41A-5550 instead of WB-41A-5555;

(ii) There was a delay in filing the complaint for 15 days;

5. The learned Advocate representing the respondents/Insurance Company opposed the submission of the learned Advocate representing the appellant/claimant stating the claim application should have mentioned the right number of the vehicle to absolve the Insurance Company from the liability to pay the compensation as the said vehicle was not insured under the respondents/Insurance Company. Moreover, the delay of 15 days in filing the written complaint was not explained and, therefore, the learned Tribunal had rightly dismissed the claim application.

6. Considered the rival contention of the learned Advocate representing both the parties.

7. The documents marked as exhibit-3 being the charge-sheet filed by the Investigating Officer on 31.12.2011 on conclusion of the investigation had mentioned the number of the offending vehicle which had been seized to be WB-41A-5555. The charge-sheet was filed against the Driver of the offending vehicle, namely, Shiv Sambhu Chakraborty. The evidence of OPW – 1 being the owner of the vehicle WB-41A-5555 stated that Shiv Sambhu Chakraborty was the driver of the vehicle owned by him at the relevant point of time

and endorsed that an accident occurred on 04.07.2011 involving his vehicle bearing registration no. WB-41A-5555 which was driven by Shiv Sambhu Chakraborty. It was further submitted *"on the relevant date and time to the accident did happen my vehicle had valid insurance, registration, route permit, fitness etc. etc., I have no personal knowledge so far as the accident is concerned. However after the accident I was reported by my driver"*.

8. During his cross-examination the OPW – 1 stated *"in the said accident a person was run over by my vehicle"*. The deposition of OPW – 1 corroborated with the statements enumerated in the charge-sheet involving the offending vehicle bearing registration no. WB-41A-5555 along with the same being filed against Shiv Sambhu Chakraborty being the Driver of the offending vehicle as stated by OPW – 1, the owner of the vehicle. The learned Tribunal should not have discarded the evidence on record without assessing the same in its entirety. The written complaint marked as exhibit-1 stated that the victim had been hospitalized after incurring such serious injuries which resulted in the delay of 15 days in filing the written complaint which would not be fatal to destroy the claimant's case.
9. Moreover, the evidence of P.W.3 being the Assistant Professor, Burdwan Medical College and Hospital, Department of Orthopedic stated the victim to have suffered physical disability to the extent of 70% as assessed by the Board constituted by the aforesaid Hospital issuing the disablement certificate marked as exhibit-6.
10. The learned Tribunal should have considered the haplessness on the part of the victim to have suffered severe injuries resulting in the amputation of his right leg and delay of 15 days in filing the

complaint was, therefore, negligible. Sine the accident occurred in the year 2011 and in absence of corroborative evidence with regard to his avocation and income a sum of Rs.3,000/- is considered to be the notional income per month under the facts and circumstances of the case. The victim is entitled to the compensation based on the calculations as denoted below:-

Monthly Income	Rs. 3,000/-
Annual Income	Rs. 36,000/-
70% Disability	Rs. 25,200/-
25% Future Prospect	Rs. 6,300/-
	Rs. 31,500/-
Multiplier '13'	X 13
	Rs. 4,09,500/-
Add : Non-pecuniary expenses	Rs. 3,00,000/-
	Rs. 7,09,500/-

11. The Learned Advocate for the respondent No.1/insurance company is to deposit the sum of Rs. 7,09,500/- along with 6 % per cent interest per annum from the date of filing of the claim application before the office of the learned Registrar General, High Court Calcutta within six weeks from the date of passing of this order .

12. The office of the Registrar General, High Court, Calcutta shall encash the said cheque and thereafter disburse the same to the appellant/claimant as mentioned in the award passed by the learned Additional District Judge, Motor Accident Claims Tribunal, Fast Track 2nd Court, Burdwan in M.A.C. Case No. 47 of 2013 on proof of proper identification of the appellant/claimant subject to payment of *ad valorem* Court's fees.

13. The instant appeal is disposed of accordingly.

14. The pending applications, if any, stands disposed of.
15. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)

Srimanta, A.R.(Ct)