

In The High Court At Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present:-

The Hon'ble Justice Ananya Bandyopadhyay

FMA 444 of 2022

Sri Srikanta Dey

v.

National Insurance Co. Ltd. & Anr.

Mr. Niranjan Maity ... for the appellant/claimant.

Mr. Rajesh Singh ... for the respondent no.1/insurance company.

Mr. Sukumar Barik ... for the respondent no.2/owner.

Heard on: January 27, 2025.

Judgment on: February 12, 2025.

Ananya Bandyopadhyay, J:-

1. The Learned Advocates representing the respective parties are present.
2. The instant appeal had been preferred against the impugned judgment and award dated 10th January, 2023 passed by the learned Judge, Motor Accident Claims Tribunal and Additional District Judge, Fast Track, 5th Court, Alipore, South 24-Parganas in MAC Case No.41 of 2016.
3. An application under Section 166 of the Motor Vehicles Act had been filed by the victim being injured in an accident, which occurred on 10th July, 2016 at about 11.00 a.m. on Diamond Harbour Road (N.H. 117) near Amtala Down within the jurisdiction of Bishnupore Police Station with the involvement of the offending vehicle being a Maruti Omni Car bearing registration No.24C/3767, which collided with the motorcycle being driven by the victim. The victim suffered injuries to the extent of 30%, as assessed by the PW2, being a private doctor, who did not treat the victim.

4. The Learned Advocate representing the appellant/claimant submitted that the Learned Tribunal accepted the occurrence of the accident, the involvement of the offending vehicle, the insurance policy issued by the respondent No.1/insurance company, however, disregarded and disbelieved the extent of injuries suffered by the victim on the basis of the report and oral evidence of a private doctor, namely, (Mrs.) Binoti Das. It was further submitted that the Hon'ble Supreme Court on various occasions did consider the opinion of the private doctors and granted compensation accordingly. Moreover, income of Rs.12,000/- per month proved by the appellant/claimant through vouchers produced before the Court, marked as Exhibit 15 collectively through the evidence adduced by PW6 were not considered. The Learned Tribunal erroneously dismissed the claim application to the detriment of the victim.
5. The Learned Advocate representing the respondent no.1/insurance company submitted that the victim failed to prove his monthly income since prior to the accident vouchers were presented to the extent of Rs.12,000/- being paid as the monthly salary, which after the accident was reduced to Rs.4,000/- per month to have been paid through bank account abruptly without proper explanation.
6. The Learned Advocate representing the respondent no.1/insurance company further submitted that the victim did resume his work after the accident in accordance to his own evidence as PW 1, which evinced the fact that the victim did not lose the capacity to work and to earn. Moreover, the private doctor being PW 2 did not treat the victim and on the basis of the medical documents assessed the disability to the extent of 30%, which was below the permanent disability of 40%, as considered by the Disablement Act as well as the decisions of the Hon'ble Supreme Court. The Learned Tribunal had rightly dismissed

the claim application under Section 166 of the Motor Vehicles Act observing that the victim did not appear before the learned tribunal with clean hands on the basis of ambiguous submissions and erroneous documents.

7. Considered the rival contentions of the learned advocates representing both the parties.
8. The occurrence of the accident, the issuance of the insurance policy and the involvement of the offending vehicle were not disputed by the Learned Tribunal. The Learned Tribunal disbelieved the extent of injury assessed by the private doctor since the victim after six months of the accident rejoined his services as per the evidence of PW 6. The ESI certificate marked as Exhibit 17 revealed the victim to have been in absence of work without payment from 10.07.2016 till 19.01.2017. The victim failed to prove the exact amount earned by him in a month. The vouchers denoted Rs.12,000/- to have been paid to the victim on 12th February 2016 and Rs.12,300/- to have been paid to the victim on 8th March, 2016. Vouchers marked as exhibit 15 collectively did not state on which account such payment was disbursed to the victim. The vouchers also did not mention the category to which relied.
9. The bank statement issued after the victim resumed his services, post accident denoted a sum of Rs.4,000/- to have been transferred in his account by the employer, which appeared to be trustworthy since the private doctor PW 2 did not treat the victim and the assessment of disability to the extent of 30% was based only on the history of the injury suffered by the victim and medical documents. It cannot be sacrosanct in view of the victim being able to rejoin his services without lack of performance and further physical discomfort, which he did not mention before the Court through his evidence before the learned Tribunal.

10. Considering the entire gamut of the circumstances, this Court is inclined to grant compensation to the extent of Rs,24,000/- for loss of income during the period as stipulated in the ESI certificate marked as Exhibit 17 and a sum of Rs.26,000/- towards pain and suffering amounting to Rs,50,000/- along with interest at the rate of 6% to be paid from the date of filing of the application under Section 166 of the Motor Vehicles Act till the date of its actual realization.
11. The Learned Advocate for the respondent No.1/insurance company is to deposit a 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.
12. The office of the Registrar General, High Court, Calcutta shall encash the said cheque and thereafter disburse the same to the present appellant/claimant in MAC Case No.41 of 2016 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.)

S.R.