

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

**Present:**

**The Hon'ble Justice Ananya Bandyopadhyay**

**F.M.A 940 of 2022**

**With**

**IA No. CAN 1 of 2022**

**Sourav Pathak**

**-Vs-**

**The Manager, NICL & Anr.**

For the Appellant : Mr. Ashique Mondal

For the Respondent no.1/  
Insurance Company : Ms. Sucharita Paul

Heard on : 04.07.2025

Judgment on : 04.07.2025

**Ananya Bandyopadhyay, J.:-**

1. Both the Learned Advocates representing the appellant/claimant and the respondents/Insurance Company are present in Court.
2. The instant appeal had been filed against the judgment and award dated 29.11.2018 passed by the Learned Judge, Motor Accident Claims Tribunal, 2<sup>nd</sup> Bench, City Civil Court at Calcutta in M.A.C. Case No. 118 of 2012.
3. An application under Section 166 of MV Act had been filed on the injury sustained by the claimant in an accident which occurred on 20.05.2007 at about 8 hours at Dum Dum Park, VIP Road, Airport

Flank within the jurisdiction of Lake Town Police Station with the involvement of the offending vehicle being a Hyundai Santro Car bearing registration No. WB-02U-0066 which approaching at an exceeding speed rashly and negligently dashed the victim driving his motorcycle bearing registration no. WB-24J-1370 which eventually injured him and then initially admitted at RG Kar Medical College and thereafter at Charnok Hospital and Research Centre Private Limited wherefrom he was discharged.

4. Learned Advocate representing the appellant submitted the Learned Tribunal to have considered a monthly income of the victim to be Rs. 3,000/- instead of Rs. 5,000/- on failure to produce relevant documents disregarding the documentary as well as oral evidence on record. The opinion of the private doctor to the extent of physical disability suffered by the victim to be 45% as well as functional disability to be 50% . The Learned Tribunal discarded such opinion considering the percentage of disability to be 30% arbitrarily. Though the claimant proved a sum of Rs. 4,24,555/- to have been the expenditure incurred for his treatment considered the sum to the extent of Rs. 3,91,140/- only.
5. It was further submitted a sum of Rs. 11,71,180/- could not be proved by the appellant-claimant to have been disbursed towards medical bills and receipts since the same were not marked as exhibits.

6. Learned Advocate representing the appellant-claimant further submitted the tribunal to have not granted compensation towards future prospect to the extent of 40%.
7. Learned Tribunal further erroneously granted a sum of Rs. 2,500/- towards pain and suffering which was paltry amount considering the pain and trauma suffered by the victim. Moreover, compensation towards future medical expenditure as well as loss of amenities in life in future were not considered apart from a modicum amount of Rs. 5,000/- granted on account of loss and amenities in life.
8. Learned Advocate representing respondent-Insurance Company submitted in absence of relevant documents to prove the victim to have been a building material supplier earning Rs. 5,000/- per month.
9. The Learned Tribunal was justified in considering the income of Rs. 3,000/- per month for the year 2007. The percentage of disability assessed to the extent of 45% as a consequence of the accident was denoted by a private doctor who did not treat the physical disability to be 30%. The claim of the victim to have incurred medical expenditure to the extent of Rs. 12,50,000/- to Rs. 12,75,000/- could only be proved to the extent of Rs. 3,91,140/- through medical documents. Accordingly, the Learned Tribunal granted the same to the extent it was proved.
10. The Learned Advocate representing the respondent-Insurance Company relied upon the following decisions in 2011 (1) SCC 343 –

Raj Kumar Vs. Ajay Kumar & Anr. and Sudhir Bhuiya vs National Insurance Company Limited – Calcutta High Court reported in (2005) 1 ACJ 509/(2005) 1 TAC 66/(2005) 2 ACC 800 wherein it was observed as follows:

*"... The Tribunal should also act with caution, if it proposed to accept the expert evidence of doctors who did not treat the injured but who give 'ready to use disability certificates, without proper medical assessment. There are several instances of unscrupulous doctors who without treating the injured, readily giving liberal disability certificates to help the claimants. But where the disability certificates are given by duly constituted Medical Boards, they may be accepted subject to evidence regarding the genuineness of such certificates. The Tribunal may invariably make it a point to require the evidence of the Doctor who treated the injured or who assessed the permanent disability. Mere production of a disability certificate or Discharge Certificate will not be proof of the extent of disability stated therein unless the Doctor who treated the claimant or who medically examined and assessed the extent of disability of claimant, is tendered for cross- examination with reference to the certificate. If the Tribunal is not satisfied with the medical evidence produced by the claimant, it can constitute a Medical Board (from a panel maintained by it in consultation with reputed local Hospitals/Medical Colleges) and refer the claimant to such Medical Board for assessment of the disability..."*

*"... The contents of a document without examining the author are worst pieces of hearsay evidence... It was further observed while dismissing the appeal of the claimant that ... This court is quite alive to the position of law that in proceedings under the Motor Vehicles Act the technicalities of the Evidence Act will not stand in the way of a Tribunal in giving appropriate relief to a litigant as pointed out by the Apex Court and while disposing of such proceedings the Tribunal should be guided by the basic principles of natural justice. The principle of exclusion of hearsay evidence as provided in the Evidence Act is, however, not a technical rule but based on the principle that the evidence must be direct and that the person whose version will form part of evidence must face cross-examination of the party against whom such evidence will be used. I have already indicated that if the Tribunal decides to rely upon the opinion of any person for the purpose of awarding any compensation, the person who will be forced to pay the amount, must get an opportunity to cross-examine the author of the opinion. Thus, the Tribunal had rightly refused to mark the disablement certificate unless the same was proved in accordance with the provisions of the Evidence Act. The other two documents must also be proved by calling Durgapur Steel Authority as witness unless those documents are admitted by the respondents.*

*I, thus, find no reason to entertain this application and the same is accordingly dismissed..."*

11. Considering the rival contentions of the Learned Advocates representing the respective parties, the Learned Tribunal had granted the medical expenses as aforesaid in respect of the documents placed before the same. Mere assertion of an expenditure to the extent of Rs. 11,71,180/- as claimed by the Learned Advocate representing the appellant-claimant could not be granted in absence of relevant documents.
12. The Learned Tribunal, however, should have granted compensation towards future prospect to the extent of 40%. The amount of compensation granted towards pain and suffering, mental agony and loss and amenities should be increased.
13. Considering the observations of the Hon'ble Apex Court in National insurance company Ltd. Vs. Pranay Shetty & Anr<sup>1</sup> and Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr.<sup>2</sup>, the impugned award of Rs. 5,84,740/- is modified as follows:

14.

|                       |                |
|-----------------------|----------------|
| Annual Income         | Rs. 36,000/-   |
| Multiplier 17         | X 17           |
|                       | <hr/>          |
|                       | Rs. 6,12,000/- |
| Loss of Income (30%)  | Rs. 1,83,600/- |
| Future Prospect (40%) | Rs. 73,440/-   |
| Medical Expenses      | Rs. 3,91,140/- |

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<sup>1</sup> 2017(4)TAC 673(S.C)

<sup>2</sup> (2009) 6 SC 121

|                                               |                       |
|-----------------------------------------------|-----------------------|
| Pain and Sufferings                           | Rs. 25,000/-          |
| Mental Agony                                  | Rs. 25,000/-          |
| Loss of Amenities                             | Rs.50,000/-           |
|                                               | <hr/>                 |
|                                               | Rs. 7,48,180/-        |
| Already received in terms of Tribunal's award | <u>Rs. 5,84,740/-</u> |
| Enhancement                                   | Rs. 1,63,440/-        |

15. The Learned Advocate for the appellant/claimant submitted that the appellant/claimant have withdrawn a sum of Rs.5,84,740/-. The appellant/claimant is entitled to receive the balance sum of Rs.1,63,440/- 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. In view of the observation of the Hon'ble Supreme Court in Parminder Singh -Vs.- Honey Goyal & Ors.<sup>3</sup> the appellant/claimants are to provide the details of Bank accounts held in the name of the appellants/claimant at the office of the Learned Registrar General, High Court at Calcutta for disbursal of the compensation amount.

16. The Learned Advocate representing the respondents/Insurance Company is to deposit the balance sum of Rs.1,63,440/- along with interest at the rate of 6% interest per annum from the date of filing of the claim application before the office of the Learned Registrar General, High Court, Calcutta within two months from the date of passing of this order.

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<sup>3</sup> 2025 1 NSC 361

17. The Office of the Learned Registrar General, High Court at Calcutta, shall encash the cheques and thereafter disburse the same directly to the Bank accounts of the appellant/claimant in equal proportion as mentioned in the impugned judgment of the Learned Judge, Motor Accident Claims Tribunal, 2<sup>nd</sup> Bench, City Civil Court at Calcutta in M.A.C. Case No. 118 of 2012 on proof of proper identification of the appellant/claimant subject to payment of ad valorem Court fees.
18. The instant appeal is disposed of accordingly.
19. The pending applications, if any, stands disposed of.
20. The TCR be sent down to the concerned Tribunal forthwith.
21. 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.)