

Form No.J(2)

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 509 of 2023

**Sirajul Islam Mondal
Versus**

The Oriental Insurance Company Limited & Anr.

For the appellants/claimants. : Ms. Sima Ghosh.

For the respondent nos. 1 : Mr. Anjan Chakraborty.

Heard & Judgment on : 7th April, 2025.

Ananya Bandyopadhyay, J:

1. The Learned Advocates representing the respective parties are present.
2. The instant appeal has been filed against the judgment and award dated 22.12.2022 passed by the learned Judge, Motor Accident Claims Tribunal, Fast Track 3rd Court, Berhampore, Murshidabad in M.A.C. Case No. 260 of 2017.
3. An application under Section 166 of the Motor Vehicles Act, 1988 had been filed by the victim/appellant who sustained an accident on 15.03.2017 at about 11:00 A.M. being a 'Helper' of a 'Trekker' bearing registration no. WB-57-4084 which proceeded towards Hariharpara when the offending vehicle being a 'Pick-up-Van' bearing registration no. WB-76A/2886 at an exceeding speed rashly and negligently collided with the 'Trekker' from behind as a consequence of which the victim sustained injuries and was primarily transmitted to Murshidabad Medical College and Hospital

wherefrom he was sifted to N.R.S. Medical College and Hospital at Kolkata.

4. The learned Advocate representing the appellant/claimant submitted that the learned Tribunal erroneously did not consider the percentage of injury to the extent of 80% as assessed by the Medical Board and arbitrarily reduced the same to 40%. The victim at the relevant point of time used to earn Rs.4,000/- per month as a 'Helper' and the Tribunal disregarding the same computed the compensation on the basis of the monthly income of the victim to be Rs.3,000/- as notional income.
5. The learned Advocate representing the respondents/Insurance Company opposed the submissions of the learned Advocate representing the appellant/claimant stating the fact that in absence of evidence the Tribunal had justifiably considered the monthly income of the victim to be Rs.3,000/-. Moreover, it has been submitted that in view of the referred judgment of the Hon'ble Supreme Court the learned Tribunal had correctly assessed the injuries sustained by the victim to be 40%.
6. Considered the rival contention of the learned Advocates representing both the parties. The victim suffered amputation of his right leg above the knee. He was working as a 'Helper' of a 'Trekker' which require both the legs to pursue the work of a 'Helper'. Amputation of right leg above the knee shall definitely incapacitate the victim to pursue any kind of work which involved movement from one place to another as well as to do any kind of menial job where effort is to be administered through both the legs. The Tribunal should have considered the precarious helplessness of

the victim contrary to reduction of the percentage of injury to the extent of 40%. Any organ of a body has its own function and importance for the existence of an individual, the inexplicable trauma and agony to which the victim has been subjected to owing to amputation of the right leg above the knee cannot be realized by any other human being leading a normal life and the victim is entitled to a sum of Rs.4,00,000/- on account of pain and suffering.

7. In the year 2018, considering the fiscal index prevalent the monthly income of the victim can be assessed to be Rs.4,000/- which could not be improbable.
8. Considering the observations of the Hon'ble Apex Court in National insurance company Ltd. Vs. Pranay Shetty & Anr¹ and Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr.² the impugned award of Rs. 2,25,920/- is modified as follows:

Monthly Income	Rs. 4000/-
Annual Income	Rs. 48,000/-
Future Prospect to be added(10%)	Rs. 4,800/-
	Rs. 52,800/-
Multiplier "13"	X 13

Total	Rs. 6,86,400/-
Disability 80%	Rs. 5,49,120/-
Non-pecuniary damages	Rs. 4,00,000/-
	Rs. 9,49,120/-
Already received with 6% interest	Rs. 2,25,920/-
Balance due along with 6% interest per annum from the date of filing of the claim application till the date of its actual realization	Rs.7,23,200/-

9. The Learned Advocate for the appellant/claimant submitted that the appellant/claimant has withdrawn a sum of Rs. 2,25,920/- along with

interest at the rate of 6% per annum. The appellant/claimant is entitled to a further sum of Rs. 7,23,200/- along with 6% interest per annum to be paid from the date of filing of the application i.e. 13.06.2017 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. 7,23,200/- 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 .
11. 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 Judge, Motor Accident Claims Tribunal, Fast Track 3rd Court, Berhampore, Murshidabad in M.A.C. Case No. 260 of 2017 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. 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)