

Form No. J(2)

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 626 of 2023

**The Oriental Insurance Company Limited
Versus
Sahajan Molla @ Sajahan Molla & Anr.**

For the Appellant : Ms. Sayanti Santra

For the Respondent Nos. 1 : Mr. Krishanu Banik
Ms. Tandra Karim
Mr. Tathagata Banik.

Heard & Judgment on : 29th July, 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 28.07.2022 passed by the Motor Accident Claims Tribunal cum learned Additional District Judge, Fast Track 4th Court, Alipore, South 24 Parganas, in M.A.C. Case No. 2 of 2013.
3. An application under Section 166 of the Motor Vehicles Act had been filed by the injured victim as a claimant seeking

compensation on account of an injury to the extent of 25% as assessed by the private doctor to have been sustained by him in an accident which occurred on 24th August, 2012 at about 4.45 p.m. with the involvement of an offending vehicle being a private bus bearing registration No.25B/2763 approaching at an excessive speed rashly and negligently collided with the Tata Sumo bearing registration No. WB-22U-4765 wherein the victim had been a passenger and due to the impact of the same had suffered injuries and had been admitted at Calcutta National Medical Collage and Hospital where he was treated till 22nd September, 2012.

4. The Learned Advocate representing the appellant/Insurance Company submitted that the accident occurred due to fault and negligence of both the vehicles give rise to an issue of contributory negligence whereby the Learned Tribunal discarded the same had cast the entire liability upon the appellant/insurance company to pay compensation relieving the other offending vehicle being the Tata Sumo as aforesaid. It was further submitted that the victim was initially given first aid and after 13 days had been admitted at the hospital and such injury need not have been attributable to the accident where he had been initially resorted to first aid. The injury claimed by the victim as a result of the accident, therefore, was negated. More-over,

the physical disablement assessed to the extent of 25% was the opinion of a private doctor who did not treat the victim. Therefore, it was erroneous on the part of the Learned Tribunal to have considered the physical disability if at all been suffered by the victim as a consequence of the accident to have been examined by the private doctor as aforesaid after two years. More-over, the Learned Tribunal assessed the interest at the rate of 6.5 per cent per annum which was exorbitant. It was further submitted that the Learned Tribunal on its own accord mentioned the victim suffered a loss of income of six months in absence of any evidence either oral or documentary to that effect.

5. The Learned Advocate representing the respondent Nos. 1 /claimant submitted the victim had undergone an operation in the hospital and had been admitted till 22nd September, 2012 owing to the accident suffered by him. It was further submitted that the opinion of the private doctor who did not treat the victim could not have been discarded in view of the observations of the Hon'ble Supreme Court in umpteen number of decisions. The Learned Tribunal taking into account the other aspects had rightly considered the compensation award which need not be interfered with.
6. Considered the submissions of the learned Advocates representing both the parties.

7. Since, the occurrence of the accident, involvement of the offending vehicle, the driving license, Insurance certificate etc. are not disputed by the Learned Advocate representing the appellant/insurance company, this Court restricts itself only to the points agitated by the respective parties.
8. The document marked as Ext. 1 being the discharge certificate issued by the Calcutta National Medical Collage and Hospital, Department of Health and Family Welfare, Government of West Bengal revealed the victim to have been undergone operation with regard to the right shoulder by plating. The initial application for first aid in any type of injury sustained by a person cannot be the ultimate determination of a medical issue regarding a person which could be detected to have been aggravated with time. The first aid to have been applied to the victim in absence of proper medical examination could not have been a sacrosanct conclusion that the victim did not suffer any major injury which later on had to be addressed through operation with plating of the same as mentioned in discharge certificate and the history of the treatment undergone by the victim with regard to the documents marked as Ext.1 collectively. The submissions of the Learned Advocate representing the appellant/insurance company to the issue challenging injury suffered by the victim only on the basis of the same to be meager and alleviated is negated. The deposition

of P.W.2 being private doctor who had treated the victim and had issued the disablement certificate marked as Ext. 15 after lapse of two years from the date of the operation approximately stated that the victim had suffered "*permanent and partial disability to the extent of 25% due to painful stiffness of right shoulder joint with restricted movement with weakness of right upper arm*". The opinion of the P.W.2 was restricted only to the extent of the injury and disablement suffered with regard to right shoulder and not towards the entire body of the victim. In view of the decision of the Hon'ble Supreme Court in **Uttar Pradesh Road Transport Corporation vs. Vibhor Fialok & Anr.**¹ In paragraph 13 as replicated as follows:

9. ***Having regard to the aforesaid analysis, we turn our attention to the facts on hand the award of the tribunal would disclose that the claimant had sustained open grade III, B/L femur condyle with fracture SOF with fracture proximal fibula with ciley Pest (RT) side and other multiple injuries. He was hospitalized for about 14 days on account of the injuries sustained, claimant is said to have sustained 48% permanent disability to the right lower limb as deposed by the Dr. PW-3 who issued the said certificate. The said disability certificate remained unchallenged as rightly noted by the High Court. Thus, the assessment of compensation under the head of loss of future earning would depend upon the affected impact of such disability on the earning capacity of the claimant. In the instant case, the tribunal as well as the High Court has arrived at a conclusion that there is permanent functional disability. However, it is not forthcoming from the award of the tribunal or the impugned judgment as to the corresponding functional disability. There may be case of***

¹ Civil appeal No(S) 1337-138 of 2019

whether the disability is permanent or temporary also. If the disablement percentage is expressed with reference to any specific limb, then effect of such disablement of the limb on the functioning of the entire body i.e. the permanent disability suffered by the person will have to be assessed/reconsidered for the purposes of computation towards loss of future income. In the instant case, the tribunal has not ascertained the impact on the earning capacity of the claimant in future, by virtue of the disability sustained. However, it has proceeded to hold that there is 40% disability in relation to the right lower limb and has held that a sum of Rs. 2 lacs is to be awarded towards disfigurement/hardship/inconvenience caused due to such disability. The High Court in relation to the same has assessed the loss of future earning capacity by considering the functional disability to the whole body at 48% which has been held hereinabove as erroneous. Thus, this court will have to undertake the exercise of assessing the whole body disability and as per almanco manual, the whole body disability when compared to the particular limb disability would be $1/4^{\text{th}}$ in respect of that of the lower limb. In the instant case, the lower limb disability assessed by Dr. Lalit P.W.3 is 48% and $1/4^{\text{th}}$ of the same would be 12% and accordingly the compensation is being determined by considering the income of the claimant at Rs. 18,972/-. Thus, compensation that becomes payable to the claimant for loss of future earning would be $18,972 \times 12 \times 17 \times 12\% = \text{Rs. } 4,64,434.56/-$ and the compensation under the head of loss of earning during laid up period would be $\text{Rs. } 18,972 \times 5 = \text{Rs. } 94,860$ (considering the laid up period is for five months). The compensation awarded by the High Court towards medical expenses, conveyance charges, special diet, attendant charges, pain and suffering, loss of disfigurement remains undisturbed. Thus, the claimant would be entitled to in all a sum of Rs. 9,06,100/- under the following heads.

Head	Amount(in Rs.)
Loss of Future Earning Capacity	4,64,434.56
Loss of Income during laid up Period (Monthly income x 5)	94,860/-
Medical Expenses (After considering the Medical Bills produced)	8,250/-

Conveyance Charges	7000/-
Special Diet (Rs. 1000 per month x 9)	9000/-
Attendant charges (Rs. 300 per day x 75 days)	22,500/-
Pain and suffering	
1,00,000/-	
Loss of disfigurement/disability	2,00,000/-
Total	9,06,044.56
	Rounded of to 9,06,100/-

The disability to the extent of 25% for computing compensation to be payable to the respondent No.1/claimant for loss of future earnings would be Rs. 5,278 x 12 x 18 x 6.25% = Rs. 71,275/- the compensation under the head of the loss of earnings for the period of recovery 4 months would be Rs. 5278/- x 4 = 21,112/

10. Considering the observations of the Hon'ble Apex Court Pranay in National insurance company Ltd. Vs. Pranay Shetty & Anr² and Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr.³ The impugned award of Rs. 5,30,683/- is modified as follows:

Loss of Future Earning Capacity	Rs. 71,275/-
Loss of Income during laid up period	Rs. 21,112/-
(Monthly Income x 4)	Rs. 1,00,000/-
Pain & Suffering	<u>Rs. 1,92,387/-</u>

11. The learned Advocate representing the appellant/Insurance Company submits to have deposited a sum of Rs.8,83,943/- (Rs. 25,000/- + Rs. 8,58,943/-)through two separate cheques as per

challan filed by the learned advocate representing the appellant/insurance company.

12. The Respondent Nos. 1 /claimant is entitled to receive the amount of Rs. 1,92,387/- at the rate of 6% per cent per annum from the date of filing of the claim application i.e. 19.12.2012 till the date of actual realization.
13. The office of the learned Registrar General High Court at Calcutta, shall encash the cheques and thereafter disburse the entire awarded amount so deposited along with accrued interest directly to the bank account of the present respondent Nos. 1 /claimant as mentioned in the impugned judgment and order passed by the Motor Accident Claims Tribunal cum learned Additional District Judge, Fast Track 4th Court, Alipore, South 24 Parganas, in M.A.C. Case No. 2 of 2013 on proof of proper identification of the respondent No.1/claimant subject to payment of ad valorem Court fees and refund the differential amount if any through a cheque to the learned advocate for the insurance company for the accounts of the insurance company. The office of the learned Registrar General, High Court at Calcutta will instruct the claimant to provide details of his bank account with relevant documentary proof, prior to such disbursal as aforesaid.
14. The instant appeal is disposed of accordingly.
15. The pending applications, if any, stands disposed of.

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

(Ananya Bandyopadhyay, J.)