

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

F.M.A 171 of 2024

National Insurance Company Ltd.

-Vs-

Anup Kumar Samanta & Anr.

For the Appellants : Mr. Rajesh Singh

For the Respondents/
Claimants : Mr. Saswata Bhattacharyya

Heard & Judgment on : 06-05-2025

Ananya Bandyopadhyay, J.:-

1. The instant appeal was heard earlier and judgment was reserved. However, the matter was listed under the heading "For Hearing" for further clarification.
2. The Learned Advocates representing both the parties are present.
3. The claimant being the victim filed an application under Section 166 of the M.V. Act in the Court of Motor Accident Claims Tribunal, Additional District Judge, Fast Track 4th Court, Alipore being MAC Case No.376/2018, claiming an award of Rs. 1,00,00,000/- with cost and interest whereby the aforesaid victim was grievously injured due to a road traffic accident on 08.01.2018 at about 12:00 hours. The offending vehicle, a bus bearing Registration No. WB-19G/6377 hit the aforesaid deceased in a rashly and negligently who had been pedestrian. The victim was transported to a hospital for treatment.

Subsequently, based on a complaint, Hare Street P.S. Case No. 5/2018 dated 08.01.2018 was instituted against the driver of the offending vehicle as aforesaid.

4. The owner of the offending vehicle contested the case and filed a written statement where he denied the claims made by the claimant and disputed the claimant's age and income. He stated that the driver of the vehicle was neither in possession of a valid driving license nor was the vehicle covered by insurance policy. The percentage of disability and the medical expenses in respect of the victim was denied. An application under Section 170 of the MV Act was filed by the insurance company during the course of proceeding and was allowed.
5. The Learned Tribunal as aforesaid disposed of the issues framed considering the oral as well as documentary evidences and awarded a sum of Rs. 73,94,211/- as well as an interest of 6% from the date of filing the case payable by the insurance company.
6. The Learned Advocate representing the Appellants submitted the following:-
 - a. PW-4 was a tutored witness and no reliance could be placed on his testimony as he was neither questioned by the police authorities, not did he lodge the First Information Report. Moreover the said witness could not produce any documents to show to have accompanied the victim to the hospital after the accident and therefore, the testimony of the said witness regarding the involvement of the Mini Bus No. 19G/6377 in the concerned accident was not reliable at all.
 - b. The doctors who treated the victim were never brought before the court to confirm the percentage of permanent disability and therefore, the insurer

should not be held liable to satisfy the compensation that was calculated from a certificate that was not duly proved in accordance with the law before the Ld. Tribunal.

- c. The Ld. Tribunal should not have awarded a further sum of Rs 13,00,000/- for future medical expenses to the claimant over and above Rs 15,46,396 that was already granted to the claimant for medical expenses and the cost of prosthetics.
 - d. The award of Rs 13,00,000/- under the head of future medical expenses including the prosthetics was excessive and inflated.
 - e. The son of the injured victim received employment in the place of the injured father and the family did suffer any pecuniary loss as a result of the said accident.
 - f. The fitness certificate issued in favour of the offending vehicle was not valid at the time of the accident and therefore the appellant insurance company should not be responsible to pay compensation. The liability of the payment of compensation should be on the owner or the driver of the offending vehicle.
 - g. Under the Motor Vehicles Act, 1988, it is a statutory obligation on the part of the owner of the offending bus to have a valid fitness certificate of the said vehicle and not having the same is an offence under Section 149(2) of the said act for which no compensation shall be awarded against the insurer of the said vehicle and award, if any shall be passed against the owner of the offending bus.
7. The Learned Advocate representing the respondents/claimants submitted the victim to have suffered amputation of both lower limbs in the accident

and the learned Tribunal after assessing evidence on record both oral and documentary assessed the compensation, which should not be interfered with.

8. Heard the submission of the Learned Advocates representing the respective parties.
9. Perused the impugned judgment passed by the learned Tribunal taking into account the annual income, future prospect, pain and suffering reimbursement of medical expenses, reimbursement for prosthesis, future medical expenses including prosthesis assistance and nursing charges. The accident, the involvement of the offending vehicle, the disability suffered by the victim could not be challenged considering the oral and documentary evidence on record and the learned Tribunal had rightly computed the compensation award, which should not be interfered with.
10. The Learned Advocate representing the appellant/insurance company submitted to have deposited a sum of Rs. 95,35,479/- through two cheques at the office of the learned Registrar General, High Court at Calcutta by an order dated 24th April, 2023 passed by a Coordinate Bench of this Court. The respondents/claimants had been granted liberty to withdraw the 50% of the aforesaid deposited amount from the office of the learned Registrar General, High Court at Calcutta.
11. The Learned Advocate representing the respondents/claimants submitted to have withdrawn the aforesaid amount.
12. The Office of the learned Registrar General, High Court at Calcutta is directed to release 50% of the amount of the compensation awarded along with accrued interest in favour of the respondents/claimants in MAC Case

No. 376 of 2018 on proof of proper identification of the respondents/claimants subject to payment of ad valorem Court's fees within six weeks.

13. The instant appeal is disposed of accordingly.
14. The Trial Court Records shall be sent down to the concerned Tribunal forthwith.
15. Copy of the order be sent to the Department as well as concerned Tribunal for information.

(Ananya Bandyopadhyay, J.)