Form No. J(2)
Item No. DL / 172-173
ARPAN – A.R.(CT)
c.m. A.R. (CT)

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction
(Appellate Side)

Before: The Hon'ble Justice Ananya Bandyopadhyay

F.M.A. No.725 of 2021

United India Insurance Company Limited

Vs.

Amal Kumar Bhunia & Anr.

With

COT 6 of 2025

Amal Kumar Bhunia
Vs.

United India Insurance Company Limited & Another

For the Appellant	:	Mr. Rajesh Singh, Adv.
For the Claimant/ Respondent	:	Mr. Ashique Mondal, Adv.
Heard On	:	08.01.2025, 12.02.2025, 13.02.2025. 24.03.2025, 21.07.2025 & 23.07.2025
Judgment On	:	23.07.2025

<u>Ananya Bandyopadhyay, J.:</u>

1. Both the Learned Advocates representing the appellant/ Insurance Company and the respondent/ claimant are present in Court.

2. The instant appeal had been filed against the judgment and award dated 9th October, 2018 passed by the Learned Additional District Judge, Motor Accident Claims Tribunal, 16th Court, Alipore, South 24 Parganas in Motor Accident Claim Case No.54 of 2014.

3. An application under Section 166 of the Motor Vehicles Act had been filed by the injured victim having incurred an accident which occurred on 15th October, 2014 at about 3:45 PM being driver of the Motor Cycle bearing registration no. WB/20W/5384 which was dashed by a Trailer bearing registration no. WB/41F/7165 approaching at an exceeding speed, rashly and negligently resulting in the fall of the victim from his motor cycle sustaining injuries and subsequently transmitted to the CMRI Hospital, Kolkata and was discharged therefrom after a fortnight of treatment.

4. Learned Advocate representing the appellant/ Insurance Company submitted to have filed the instant appeal agitating the issue of percentage of disability considered by the Learned Tribunal considering the deposition of P.W. 4 and the document marked as Exhibit – 9 which indicated permanent disability to the extent of 70 per cent being suffered by the victim. It was further emphasised that the victim had incurred a fracture injury restricted to his right lower limb and not the entire body. Accordingly, Learned Tribunal should not have considered the permanent disability to the extent to 70 per cent pertaining to the whole body of the victim. Moreover, such injury sustained by the victim in the left lower limb did not affect his income and, therefore, the victim

was not entitled to any compensation with regard to the future prospect or future loss of income since the victim had been the owner of a mobile shop and his avocation merely restricted him to a sedentary lifestyle. Accordingly, the victim should not have been entitled to any compensation towards future prospect or future loss of income.

5. The Learned Advocate representing the appellant/ Insurance Company further relied on the decision of the Hon'ble Supreme Court in ***Civil Appeal No (s). 1337-1338 of 2019 (Uttar Pradesh Road Transport Corporation vs. Vibhor Fialok & Anr.)*** wherein it had been, *inter alia*, observed as follows:

> "10. ***Considering the material available on record, the important question that arises for consideration before the Court is: what should be the income which is to be adopted to calculate the compensation under the head of "loss of future income". It is to be noted here that the Tribunal and the High Court have given divergent opinion in this aspect, while the Tribunal considered the income of the Claimant to be Rs.15,400 on the ground the claimant proved he was working in the R.K. Enterprises, the High Court has also accepted that the claimant was working in R.K. Enterprises but also held that the had income from his own business as well, therefore his income as to be determined considering the Income Tax Returns filed by the injured claimant. On perusal of the Award of the Tribunal it is clear that the Claimant while filing the petition contended, he runs his own***

business and did not plead that he also works at M/S. R.K. Enterprises. It is trite law that no evidence can be led beyond pleadings, in the case at hand the Tribunal erred in allowing the claimant to lead evidence on the point that he was working in R.K. Enterprises, which was not pleaded in the claim petition. The Tribunal also erred in allowing PW2 to depose on the fact that the claimant was working in R.K. Enterprises. Be that as it may, we are of the opinion that on the basis of evidence available on record i.e. Income Tax Returns, it can be inferred that the claimant's main source of income was from M/s. Fashion Fabric, a company run by him as pleaded in the claim petition. It is settled position of law that, Income Tax Returns (ITR's) of the claimant are credible is to be considered for determining the monthly income of the claimant. Average of the Income Tax Returns filed by the claimant would be Rs.2,27,660 annually (1,81,587 + 2,33,523 + 2,67,870 / 3) or Rs. 18,972 per month.

11. Now considering the issue at hand, it can be seen from records and as noted hereinabove, the Claimant runs a textile business under the name and style of M/s. Fashion Fabric and said business is continuing. Therefore, it can be seen that the claimant was having his own source of income and he would not lose the same because of the injuries suffered by him and therefore we are of the opinion that the claimant is not entitled to future prospects and the High Court erred in granting the same"

6. The Learned Advocate representing the respondent No.1/ claimant submitted that the learned Tribunal erred in considering the component of multiplier to be "14" with regard to the age of the victim to be 40 years at the time of the accident which should otherwise be 15. Moreover, the income of the victim had been subsequently reduced to Rs.1,55,186/- as per the document marked as Exhibit – 13 collectively pertaining to the assessment year 2015-16 after the victim had sustained injuries.

7. It was further submitted that an extent of his income was utilized in disbursing liabilities towards an amount of Rs.5 lakh taken as loan Rs.11,000/- and odd was contributed towards conveyance charges as well as payment towards staff/ agent etc. The annual income of the victim had been considerably reduced as an effect of the accident having suffered the disability to the extent of 70 per cent by the victim and was entitled to corresponding future prospect which the Learned Tribunal failed to grant.

8. Considered the submissions of the learned Advocates representing both the parties.

9. Since, the occurrence of the accident, involvement of the offending vehicle, driving licence, route permit and insurance policy etc. have not been disputed by the Learned Advocate representing the parties, this Court restricts itself only to the extent of issues agitated by the respective parties.

10. The victim adduced evidence before the learned Tribunal as P.W. 1. During his cross-examination victim, *inter alia*, stated *"**My business is still running…. My business has been started for last 10 years. My distributor supplied the Mobile Phone. The name of the company is R.P. Distributor, Lungi Station Road, Mahestala. I used to make payment either cheque or cash. I used to pay cheque of SBI, Mollar Gate Branch. I do not remember the Account Number. I can produce the statement. At the relevant time of accident my monthly sale was about Rs.10 lakh to Rs.12 lakh. At present my sale amount is about Rs.2 lakh to Rs.3 lakh per month. My said business is still running through my agent. At present the price of the mobile set has been reduced. At present my treatment is still going on at CMRI. I went to CMRI lastly about two months back. I did not file the said documents. Dr. Advised me to move with the help of crutch for whole life or rest of my life. But there is no written advise of the document**."*

11. The injured victim through his deposition before the Learned Tribunal admitted the fact that his business was operative and there had been substantial flow of money into his account. The document marked as Exhibit – 13 collectively revealed increments in sale of mobile phones in consecutive years with corresponding increments in his total profit proportionately.

12. Learned Advocate representing the respondent No.1/ claimant stated certain liabilities towards payment of remuneration to the staff and

agents, conveyance charges which would be evident to have been paid by the victim prior to the accident sustained by him. Further liability incurred by the victim having obtained a loan of a sum of Rs.5 lakh cannot be directly attributable to the reduction of his income as stated in the ITR after the amount to have been deducted towards payment of EMI and other expenditures. Ancillary expenditure being the liabilities of the victim cannot substantiate reduction in total profit rather it can be opined to be the deductions towards liabilities through a cumulative sum of the component taken together to constitute the yearly income. The Apex Court observed in ***Uttar Pradesh Road Transport Corporation (supra)*** had explained the extent of disability to be computed whether the particular part of the body sustained injuries inconsistent of the entire body of the victim. In the instant case, the victim suffered 70 per cent permanent disability of the right lower limb as mentioned in serial no.3 of the certificate dated 2nd July, 2015 issued by M.R. Bangur Hospital, 700033 marked as Exhibit – 9.

13. In view of the aforesaid judgment the disability will be reduced to $^{1}/_{4}$th of 70 per cent amounting to 17.5 per cent. The age of the victim at the time of accident was 40 years and accordingly, the multiplier should have been considered to be 15. Since the victim could not plausible proof any loss of income, he is not entitled to future prospect. However, learned Trial Court should have granted compensation towards the non-pecuniary damages though the entire sum of Rs.4,28,246/- had been awarded towards medical expenditure considering the documents

marked as Exhibit – 16 collectively. Under the above facts and circumstances, the compensation awarded by the learned Tribunal is modified to the following extent.

Annual Income	Rs. 3,07,130/-
Less Tax	**-** Rs. 5,150/-
	Rs. 3,01,980/-
Multiplier '15'	**x** 15
	Rs. 45,29,700/-
Disability (17.5%)	Rs. 7,92,698/-
Add Medical Expenses	**+** Rs. 4,28,246/-
	Rs. 12,20,944/-
Add Non-Pecuniary Damages	**+** Rs. 3,00,000/-
	Rs. 15,20,944/-

14. The Learned Advocate representing the appellant/Insurance Company submits to have deposited a sum of Rs. 28,05,246/=(Rs. 25,000 + 27,80,246) through two separate cheques as per challan filed by the Learned Advocate representing the appellant/insurance company.

15. The Respondent Nos. 1 /claimant is entitled to receive the amount of Rs. 15,20,944/- at the rate of 6 per cent per annum from the date of filing of the claim application on 21st November, 2019 till the date of actual realization.

16. 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 accounts of the present respondent no.1 /claimant as mentioned in the impugned judgment award dated ^{9th} October, 2018 passed by the Learned Additional District Judge, Motor Accident Claims Tribunal, 1^{6th} Court, Alipore, South 24 Parganas in Motor Accident Claim Case No.54 of 2014 on proof of proper identification of the respondent no.1 /claimant subject to payment of *ad valorem* court fees and refund the balance amount, if any, through a cheque to the learned advocate for the appellant/ 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.

17. The instant appeal and cross objection are disposed of accordingly.

18. The pending applications, if any, stands disposed of.

19. The TCR be sent down to the concerned tribunal forthwith.

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

(Ananya Bandyopadhyay, J.)