

10.04.2025
Sl. No.18
Ct. No.3
K.S.

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI**

F.M.A.T. No. 12 of 2020

Runu Paul

-Versus-

Nikhil Chandra Dey Sarkar & Anr.

Mr. Uday Sankar Sarkar

Mr. Ajoy Kumar Singhanian

Ms. Tamalika Sarkar

.....For the Appellant

Mr. Hirak Barman

.....For the Insurance Company

Paper Book filed in Court be taken on record.

This appeal involves a claim case under Section 166 of the Motor Vehicles Act which was filed at the behest of the injured/appellant herein on account of injuries sustained by her in a motor accident which took place on 30th July, 2012 at about 10.30 a.m. at Coochbehar – Alipurduar & Pundibari P.W.D. Road near S.B.I., Khagrabari Branch under Kotwalli Police Station.

On the date of occurrence, the injured/appellant met with an accident due to rash and negligent driving of a vehicle/truck bearing no. W.B. 73A-0144, duly insured with the National Insurance Company Limited. In effect, the claimant/appellant sustained severe injuries on her head, eye, chest & abdomen. After the accident, she was shifted to the M.J.N. Hospital, Coochbehar in serious and unconscious condition. Subsequently, she was referred to North Bengal Medical College and Hospital for better treatment. Ultimately, she was taken to Paramount Hospital Pvt. Ltd., Siliguri where she had undergone two surgical operations and therefore during the period of admission, the claimant had to incur the expenditure to the tune of Rs. 3,00,000/- (Rupees Three Lacs only).

Thereafter, the appellant/claimant filed an application under Section 166 of the Motor Vehicles Act, 1988 seeking compensation to the tune of Rs.5,00,000/- (Rupees Five Lacs only).

Though, the owner of the offending vehicle did not contest the claim petition, but the Insurance Company entered appearance in the case and filed written objection denying all averments of the claim contending, inter alia, that claimant is not entitled to any compensation.

Learned Tribunal recorded the evidence and examined all the five witnesses including the injured and the representative of the Paramount Hospital Pvt. Ltd., Siliguri and Subham Hospital, Coochbehar and the employee of the hospital.

In course of trial learned Tribunal admitted a good number of evidence including written complaint, F.I.R., referral card, seizure list, medical voucher, copy of the charge-sheet etc. as Exhibit 1 to 13.

After hearing the parties to the claim case, learned Tribunal assessed a lumpsum compensation to the tune of Rs.2,50,000/- under Section 164 of the Motor Vehicles Act.

Learned counsel appearing on behalf of the appellant has submitted that the learned Judge has recorded his findings in terms of Section 164 of the Motor Vehicles Act in disposing of a claim petition under Section 166 of the Motor Vehicles Act. It is further submitted that the actual medical expenditure has not been considered and also no consideration of the compensation in other heads has been made.

In support of his contention, he relied on the principle of a case of *Raj Kumar Vs. Ajay Kumar & Anr.* reported in **2011 ACJ 1**.

Per contra, learned counsel appearing on behalf of the Insurance Company has submitted that the learned Judge rightly imposed the compensation amount and the amount is reasonable one in terms of nature of injury sustained by the appellant.

It has been further submitted on behalf of the Insurance Company that the documents produced in course of evidence, cannot lead to any presumption of any grievous injury sustained by the injured/appellant herein.

At the very outset, I find that the factum of injury sustained by the claimant in a rash and negligent driving of a vehicle has not been disputed.

In this appeal, claimant prays for enhancement of the compensation only on the heads of medical expenditure, pain and suffering, loss of amenities etc.

On a careful perusal of the impugned judgment in this appeal, I find that the learned Tribunal passed an order without any application on behalf of the claimant under Section 164(1) of the Motor Vehicles Act. Learned Tribunal can only impose the lumpsum compensation envisaged in the provision of Section 164 subject to filing of an application by the claimant under the specific provision of Section 164(1) of the Motor Vehicles Act, which runs as follows:-

“164. Payment of compensation in case of death or grievous hurt, etc.- (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or grievous hurt due to any accident arising out of the use of motor vehicle, a compensation, of a sum of five lakh rupees in case of death or of two and a half lakh rupees in case of grievous hurt to the legal heirs or the victim, as the case may be.”

Provision of Section 164(2) clearly reveals that the lumpsum compensation can only be imposed on an application filed under Section 164(1) of the Motor Vehicles Act. Therefore, learned Judge erred in granting compensation invoking the provision of Section 164(1) of the Motor Vehicles Act.

In this case, from the evidence including the discharge summary issued by Paramount Hospital Pvt. Ltd., Siliguri (Exhibit – 10) it appears that the appellant sustained multiple Bilateral Ribs Fracture involving 4th to 10th Ribs of right side and 3rd to 10th ribs of left side. That apart, she also sustained other injuries on her body.

Learned counsel appearing on behalf of the Insurance Company has tried to make this Court understand that the injury sustained by the

claimant is simple in nature and compensation may be awarded accordingly.

It is not disputed that at the relevant point of time, the claimant was aged about 18 years, a college going girl. From the discharge summary it appears that the claimant sustained severe injury and pain at the relevant point of time and her prolonged treatment, in this regard, cannot be denied.

Considering all facts and circumstances discussed above, it appears from the document, particularly Exhibit – 9 that claimant is entitled to receive the total expenditure towards medical treatment to the tune of Rs.1,79,580/- and considering the age of the girl and also considering the severity of the injury, I am fixing a sum of Rs.2,00,000/- towards pain and suffering and Rs.1,00,000/- for future medical expenses, particularly, relying on the principle enunciated in *Raj Kumar (supra)*.

Therefore, the claimant is entitled to compensation to the tune of Rs.4,79,580/- (Rupees Four Lacs Seventy Nine Thousand Five Hundred Eighty only) along with interest @ 6% per annum from the date of filing of the application (16.03.2013) in compliance with the provision of Section 171 of the Motor Vehicles Act.

It is reported that the Insurance Company has already paid the awarded amount of Rs.2,50,000/- to the claimant and accordingly, the Insurance Company is directed to pay the amount of Rs.2,29,580/- along with interest @ 6% per annum from the date of filing of the application (16.03.2013) till the date of deposit of the cheque before the learned Tribunal.

The Insurance Company is further directed to pay the interest calculated on the awarded amount of Rs.2,50,000/- along with interest on that amount @ 6% per annum from the date of filing of the claim application till 26.09.2019. The Insurance Company is also directed to deposit the cheque in the name of the claimant within six weeks from date before the learned Tribunal.

The learned Tribunal is also requested to disburse the cheque to the claimant on proper identification and verification.

With the above observation, Appeal being, **F.M.A.T. No. 12 of 2020** stands disposed of.

Tribunal Records, if there be any, be sent down along with the copy of the order to the Tribunal immediately.

All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of the requisite formalities.

(Bibhas Ranjan De, J.)