

(2000) 08 CAL CK 0031

In the Calcutta High Court

Case No : Civil Appellate Jurisdiction F.M.A. No. 461 of 1995

New India Assurance Co. Ltd.

APPELLANT

Vs

Ram Kishan Singh and Others

RESPONDENT

Date of Decision : 10-08-2000

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 141, 146, 168
Penal Code, 1860 (IPC) — Section 279, 304A

Citation : (2001) 1 ACC 186 : (2001) 1 CALLT 75

Hon'ble Judges : Vinod Kumar Gupta, J;Arunabha Barua, J

Bench : Division Bench

Advocate : Mr. Kamal Krishna Das, for the Appellant;

Judgement

1. The appellant Insurance Company is aggrieved of the award dated 29.6.1991 passed by the learned Tribunal in M.J.C. Case No. 162 of 1987 whereby the Tribunal has awarded a compensation of Rs. 48,000/- in favour of the respondent claimant and against the appellant with interest at the rate of 12% per annum. We have heard Mr. Das, learned Advocate appearing for the appellant. Despite calls and despite the case being listed, no one has appeared for the respondent claimant to oppose this appeal.

2. The case of the claimant before the Tribunal was that on 15.3.82 he was driving his car bearing registration No. WME 2937 and that an accident occurred with another car bearing registration No. WME 5897 and because of this accident the respondent No. 1 resolved certain injuries. He was admitted in the Calcutta Medical Research Institute from 15th March, 1982 for 13 days. His further case was that he was aged about 45 years at the time of the accident and his monthly income was more than Rs. 600/-. The Tribunal considering the yearly income at Rs. 4,900/- and the fact that the respondent No. 1 was aged 45 year, applied the multiplier of 10 and awarded the compensation in favour of claimant to the extent of Rs. 48,000/- as noticed above.

3. This appeal can be allowed only on the simple ground of total lack of evidence

as far as the awarding of compensation is concerned. In this appeal we are not concerned with the rashness or negligence as a ground for causing accident. Even if we presume that the accident was caused because of the rashness and negligence of the driver of the offending vehicle, as far as claiming compensation is concerned, it was the duty of the respondent No. 1 to have adduced evidence in the Court below to substantiate his claim. Strangely but unfortunately the learned Tribunal has also observed that there was no evidence adduced by the respondent No. 1 and yet, despite total lack of evidence, awarded the compensation to the extent of Rs. 48,000/- and that too by a strange method of applying the multiplier method in an injury case. The only evidence produced by the respondent No. 1 in the Court which could be said to have any direct or indirect bearing with relation to injury was the statement of P.W.4 Dr. M.N. Parbat. This doctor admittedly was a general medical practitioner and did not have any link with the Calcutta Medical Research Institute whereas on the own showing of the respondent No. 1 he was admitted in the aforesaid Hospital. This doctor was not a qualified medical petitioner. He was simply an LMF He was not even an M.B.B.S., what to talk of either his being an orthopaedic or a neurological surgeon. There is an unexhibited document produced by the respondent in the Court below, being the so-called discharge and summary certificates which showed that Dr. Saibal Gupta was the Doctor-In-Charge, but strangely neither Dr. Saibal Gupta nor any one else from Calcutta Medical Research Institute was produced as a witness. The respondent No. 1, in short, failed to produce either any oral or documentary evidence to subordinate any claim whatsoever towards the compensation for any loss or injury sustained by him. We even do not know because of total lack of evidence as to whether any injury was in fact sustained by the Respondent No. 1 or so as to whether he remained admitted in Calcutta Medical Research institute for any time. Because of such lack of evidence, it was not proper on the part of the Tribunal to have awarded any compensation amount.

4. For the foregoing reasons therefore, while allowing this appeal, we set aside the judgment and award of the Tribunal and dismissed the claim petition filed by the Respondent No. 1, but without any order as to cost.

5. Mr. Das submits that the appellant has deposited a sum of Rs. 48,000/- in this Court in the present appeal. Because of the fact that this appeal is being allowed in full, we permit the appellant to make an application before the Registrar General of this Court for withdrawing this amount and we direct that if the appellant makes such an application, the Registrar General will disburse this amount to the appellant along with the interest accrued, if any.

6. Let urgent xerox certificate copy of this judgment be given to the learned Advocate for the appellant.

7. Appeal allowed