
(2009) 06 CAL CK 0032
In the Calcutta High Court
Case No : F.M.A. 2010 of 2001

Sri Swapan Kumar Pandey

APPELLANT

Vs

National Insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 23-06-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 166

Citation : (2009) 06 CAL CK 0032

Hon'ble Judges : Debasish Kar Gupta, J; Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : Krishanu Banik, for the Appellant; Deb Narayan Roy, for the Respondent

Final Decision : Allowed

Judgement

Debasish Kar Gupta, J.—This appeal is directed against the judgment and award dated May 4, 2001 passed by the Motor Accident Claim Tribunal, Burdwan in M.A.C case No. 72/39 of 2000. The learned Tribunal allowed the claim petition filed u/s 166 of the Motor Vehicles Act, 1988 in part on contest.

2. By virtue of the judgment and award the learned Tribunal held that the appellant, who was a helper in vehicle(Bus) bearing registration No. WB41/5228, was the victim of an accident. The accident took place at the crossing of Memari Tarakeswar Road and Calcutta-Durgapur High Way Express near Mosagram on January 11, 1997, when there was a collision between two vehicles bearing registration Nos. WB 41/5228 and URI-795 respectively. As a result the left arm of the appellant from elbow joint up to the wrist joint got smashed and after operation and grafting the left arm took an ugly look. The learned Tribunal awarded an amount of Rs. 1,00,784/-(including medical expenses and others) only towards compensation for 60% permanent partial disablement of the appellant assessing his notional income at Rs. 7920/- only per annum and considering his age as 23 years for the purpose of applying the structural formula prescribed in the second schedule to the Motor Vehicles Act, 1988 under the

provisions of Section 163A of the Act.

3. According to Mr. Krishanu Banik, learned Counsel appearing for the appellant, the finding of the learned Tribunal that the appellant sustained 60% permanent partial disablement was erroneous. After getting left arm from elbow joint up to wrist joint smashed, the appellant became unfit for the work of a helper in a bus resulting in 100% permanent disablement. Mr. Banik also submits that finding of the learned Tribunal that the appellant used to work 22 days per month was not correct. Mr. Banik further draws our attention to the fact that although a certificate in support of incurring expenditure for treatment, money receipt showing payment to a Nursing Home and five money receipts showing expenditure of Rs. 2,010/- for purchasing blood had been produced, the learned Tribunal only awarded Rs. 15,000/- towards medical expenses. Mr. Banik relied upon the decisions of *R.D. Hattangadi v. Pest Control (India) Pvt. Ltd.* reported in 1995 ACJ 366 : *R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others*, *Sabata* reported in *Pratap Narain Singh Deo Vs. Srinivas Sabata and Another*, T.A.C. 125 and *Sri Kesto Saha v. The New India Assurance Co. Ltd.* reported in 2002 WBLR(Cal) 808, in support of his above submissions.

4. On the other hand, it is submitted by Mr. Deb Narayan Roy, appearing on behalf of the respondent Insurance Company that the learned Tribunal took into consideration the certificate which had been issued by the Handicapped Board to assess partial permanent disablement of the appellant at 60%. He further submits that Tribunal assessed the income of the appellant on the basis of the income of co-worker of the appellant as had been assessed in another claim petition. It is further submitted by him that in absence of money receipts, the learned Tribunal rejected the claim of medical expenses partially in this case.

5. Having heard the learned Counsels appearing for the respective parties as also considering the facts and circumstances of this case we find that sustaining of permanent disablement by the appellant arising out of the accident under reference and the age of the appellant are not in dispute.

6. With regard to the assessment of disablement of the appellant, we find that the learned Tribunal observed in the impugned judgment and award the left arm of the appellant from elbow joint right up to the wrist joint got smashed and after operation and grafting the left arm had taken an ugly look. From the deposition of the appellant before the learned Tribunal it is evident that he had been rendered unfit for the work of helper of a bus and he had become dependent on his father at the age of 23 years. The observations of the Apex Court in the matter of *R.D. Hattangadi*(supra) (at page 369) were as follows:

9. Broadly speaking, while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being

assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include express incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far as non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.

7. Applying the above principles of law on the facts and circumstances of this case, we find that the learned Tribunal erred in not assessing the permanent disablement of the appellant at 100%.

8. Regarding the income of the appellant, the learned Tribunal accepted his claim of claim of earning Rs. 50/- per day. But in calculating his monthly income, the learned Tribunal observed that he used to work 22 days in a month. The basis of such observation was that the income of a co-worker of the appellant was estimated on that basis. We are not inclined to accept such reasoning. It was based on no evidence. In our considered view the annual income of the appellant should be $\text{Rs. } 50 \times 30 \times 12 = \text{Rs. } 18,000/-$.

9. The learned Tribunal awarded Rs. 15,000/- only to the appellant towards medical expenses rejecting his claim partially on the ground of non-production of money receipts. We find from the materials on record that the appellant produced money receipt for Rs. 17,700/- which had been issued by the Care and Cure Nursing Home, Burdwan. Five money receipts for Rs. 2010/- for purchasing blood were also produced. Therefore, leaving aside the certificate issued by Dr. M.M. Ray, Orthopaedic Surgeon, assessment of an amount of Rs. 17,700/- + 2,010 = Rs. 19,710/- only should be awarded to the appellant towards medical expenses.

10. In view of the observations made hereinabove, the impugned judgment and award is modified to the extent that the respondent Insurance Company is liable to pay Rs. 3,30,010/- { $(18,000 \times 17) = 3,06,000 + 19,710 + 5000$ }. The respondent Insurance Company is directed to pay the above amount of Rs. 3,30,710/- only to the appellant after due adjustment of the amount already paid to him on the above account by sending an account payee cheque drawn in favour of the appellant at his postal address within one month from the date of communication of this order.

11. The insurance company will also pay interest on the said amount @ 6% per annum to be calculated from the date of filing of the claim petition till the date of deposit made in the Tribunal.

12. This appeal is thus allowed by modifying the impugned judgment and award

to the extent mentioned hereinabove.

13. There will be, however, no order as to costs.

14. Urgent xerox certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

Ashim Kumar Banerjee, J.

15. I agree.