

S/L 6
18.06.2026
Court No.9
Swd

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 1249 of 2012

**Mir Kasim Halder
VS
National Insurance Co. Ltd. & Anr.**

*Mr. Niranjana Maity,
Ms. Indrani Ghosh.*

... for the Petitioner.

Mr. P. K. Pahari

... for the Respondent.

1. The learned Advocates for the parties are present.
2. Heard learned Advocates for the parties.
3. The appellant before this Court was a claimant in a case under Section 166 of the Motor Vehicle Act, 1988 and is aggrieved by the judgment and award dated 28th September, 2011 passed by learned Additional District Judge, 9th Court, Alipore in MAC Case No.57 of 2010. The case of the claimants/appellants before the learned Trial Court may be summed up thus:-
4. At the material time of accident on 28.12.2007 the victim Mirkasim Halder was going towards padmehat on foot following the extreme left side of 80 No. bus road near Benstikari within P.S. – Jaynagar and the driver of offending vehicle No.WB-20E-9717 (Motor cycle, Passion) was proceeding with his vehicle rashly and negligently

in the same direction and hereby dashed against the said pedestrian Mirkasim Haldar with great force from behind and as a result he fell down and sustained severe injuries on his person causing permanent disablement.

5. Rash and negligent driving of the driver of offending vehicle NO.WB-20E-9717 (Motor cycle, Passion) was the sole and direct cause of the accident. The injured had an active life and energy till the date of accident. But after accident owing to sustaining permanent disablement he has lost his active life and energy and unable to lead a normal life. He has become completely dependent upon the assistance and help of others.
6. Pursuant to the filing of this claim case notice was issued upon the opposite party. Opposite party Insurance Company contested the claim case by filing written objection. However the opposite party vehicle owner did not contest the case. Issues were framed and evidence was adduced.
7. Learned Trial Judge upon considering the evidence adduced and upon hearing the learned Advocate was pleased to dispose of the claim case by observing and directing as follows:

“that the present MAC Case be and the same is allowed on contest against the OP No.2 and allowed ex-parte against the O.P. No.1.

Petitioner do get compensation amounting to Rs.2,41,000/- (Rupees two lacs forty one thousand) only together with interest @ 9% p.a from the date of filing of this case i.e. from 28.4.2008 to till the date of realisation. O.P. No. 2 is further directed to pay this amount within two months from this day failing which the petitioner shall have the liberty to put the order into execution. Let a copy of this order be supplied to the O.P. No. 2 free of cost for compliance.”

8. The appellant/claimant being aggrieved by the judgment and award passed by the learned Trial Court has come up with the instant appeal. Heard learned Advocate for the appellant and learned Advocate for the respondent insurance company. Perused the materials on record.
9. Learned advocate for the claimant submits that the learned Trial Judge erred in considering the disability of the claimant injured person when the doctor who deposed before the Court and issued the certificate stated that the claimant appellant suffered 60% of the disability.
10. Learned advocate further submits that although all the medical bills were exhibited and the total medical expenses incurred amounts to

Rs.2,08,000/- but the learned Trial Judge awarded the compensation on medical expenses of Rs.20,000/-.

11. Learned advocate also submits that the amount awarded on account of pain and suffering is Rs.5,000/- which is a meagre. It is submitted by the learned Advocate that although the employer of the injured person deposed that the claimant was receiving wages of Rs.4,000/- but the learned Tribunal considered the notional income of the injured person as Rs.3,000/- and applied the multiplier of 15 instead of 17.

12. Learned Advocate for the appellant relies upon the following decisions:-

1. Miss Rushi @ Ruchi Thapa, through her father, Sri Dhan Bahadur Thapa Vs. M/s. Oriental Insurance Co. Ltd. & Anr. reported in **2024 (4) T.A.C. 715 (S.C)**

2. Sohan Lal Passi Vs. P. Sesh Reddy & Ors. reported in **1996 ACJ 1044.**

13. Learned advocate for the insurance company relies upon the reasons given by the learned Trial Judge with regard to considering the disability of the injured person as 40% instead of 60%. Learned advocate also relies upon the decision of Division Bench of this Hon'ble Court in the case of **Barun Kumar Das v. New India Insurance**

Company Ltd. & Anr. reported in **2005 (1) T.A.C 225 (Cal.)**.

14. Learned advocate further submits the decision of the Hon'ble Supreme Court in the case of **Raj Kumar Vs. Ajay Kumar** reported in accident **ACJ 2011 volume 1** gives guideline regarding compensation in injury case. Learner Advocate also submits that the learned Trial Court considering the decision of the Hon'ble Supreme Court of **Laxmi Devi & Ors. Vs. Mohammad Tabbar & Anr.** reported in **(2008) 12 SCC 165** fixed notional income as Rs.3,000/- per month.
15. Upon considering the submissions of the learned Advocates and considering the decision of the learned Trial Court with regard to the disability as assessed by the learned Trial Court it appears from the record that the doctor who issued the disability certificate did not examine the injured person. Moreover, the percentage of the disability which was certified by the doctor is 60%.
16. In similar case, the Hon'ble Division Bench of this Court in the case **Barun Kumar Das v. New India Insurance Company Ltd. & Anr. (Supra)** refused to accept the disability certificate of the doctor who did not treat the injured person.
17. Further, the Hon'ble Supreme Court in the case of **Raj Kumar Vs. Ajay Kumar (supra)** was pleased to observe that when the disability

certificate were issued by doctor who did not treat the injured person the Court while accepting such certificate should proceed with abundant caution.

18. Moreover, it is the usual procedure that when a person is declared to be disabled to the extent more than 40%, the said disability certificate to be issued by the board constituted in accordance with law.

19. In the instant case, the disability certificate was not issued by the board and upon considering the reasons assigned by the learned Trial Judge, this Court does not find any error of the learned Trial Judge accepting the disability of 40%.

20. However, considering the evidence adduced by the PW 4 it appears nothing could be shaken that the injured person was working under the said employer. Thus, the evidence of the said witness PW 4 ought to have been accepted and the computation of compensation ought to have been proceeded on considering the notional monthly income to be Rs.4,000/-.

21. In the event, monthly income is considered as Rs.4,000/-, 40% of future prospects being added and the multiplier of 17 applied, the total disability suffered comes to $\{(Rs.4,000 + 40\% \times 12 \times 17 \times 40\%) \times 12 \times 17 \times 40\% \}$ (Rs.5,600/- - Rs.4,56,960/-). Further,

considering the period of stay in the hospital and the medical expenses incurred, this Court is of the view that Rs.2,00,000/- on pain, suffering and medical expenses is just and reasonable. Thus, the Claimant/Appellant is entitled to Rs.6,56,960/- from the respondent No.1 insurance company. However, this Court is of the view that Rs.6,50,000/- is just and reasonable. Thus, the Appellant/Clement is entitled to Rs.6,50,000/- along with interest at the rate of 6% per annum from the date of filing of the claim case till today.

22. Hence, this appeal **FMA 1249 of 2012** stands disposed of. The judgment and award passed by the learned Additional District Judge, 9th Court, Alipore in MAC Case No.57 of 2010 stands modified to the extent that the Appellant/Clement is entitled to compensation of Rs.6,50,000/- along with interest at the rate of 6% per annum from the date of filing claim case till today.

23. The respondent insurance company shall deposit before Registrar General, High Court, Calcutta Rs.6,50,000/- along with interest at the rate of 6% per annum within 8 weeks from the date of communication of this order. In the event, the compensation awarded by the learned Trial Court is already paid, the balance amount be

deposited. The appellant/claimant will be entitled to withdraw the compensation upon compliance of all the necessary formalities.

24. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(BISWAROOP CHOWDHURY, J.)