



**In the High Court at Calcutta
In The Circuit Bench at Jalpaiguri
Appellate Side**

Present:

The Hon'ble Justice Biswaroop Chowdhury

FMA 65 of 2024

With

IA NO: CAN 1 of 2024

Pratima Pradhan

Vs.

United India Insurance Company Limited & Anr.

For the appellant

: Mr. Gobinda Saha, Adv.
: Ms. Priyanka Dey, Adv.
: Mr. Milan Ch. Laskar, Adv.
: Ms. Srija Bhowmik, Adv.

For the Respondent/Insurance Company.

: Mr. Pasupati Nath, Adv.

Heard On : 23.03.2026

Judgment On : 25.03.2026

Biswaroop Chowdhury, J.

The Appellant before this Court was a claimant in a case under Section 166 of the Motor Vehicles Act 1966 and is aggrieved by the Judgment and Award dated 15/12/2023 passed by the Learned Additional District Judge 1st Court Darjeeling in MACC No-2/2014.

The case of the appellant/claimant before the Learned Trial Court may be summed up thus:



On 10-01-2014 at about 4 P.M. in the evening at Sevoke Road while the injured along with her daughter Shivani Pradhan was going towards Cosmos Mall at Siliguri on a Rick Shaw, the Rick Shaw was hit from the back of the offending truck bearing No. WB-73-C-4151 and she was thrown on the road. The truck was driven in most mischievous manner, rashly and negligently and without any care or caution which ran over the victim's both feet. The victim Smt. Pratima Pradhan sustained serious injuries and she was first admitted at Anandaloke Hospital and Neuroscience centre at Siliguri on the same day i.e. on 10.01.2014 thereafter when her condition deteriorated she was referred to Apollo Gleneagles Hospital Kolkata on 14-01-2014.

Pursuant to the filing of the claim case notice was issued upon the opposite party vehicle owner and opposite party United India Insurance Com. Ltd. Opposite Party Vehicle owner did not contest the case. However the opposite party United India Insurance Com. Ltd. filed written statement and contested the case ISSUES were framed and evidence was adduced.

Learned Trial Judge by Judgment and Award dated 15-12-2023 disposed of the claim case by observing and directing as follows:

Hence it is ordered that the instant case being MACC No. 02/2014 be and the same is hereby allowed on contest against the opposite party no-2 and ex-parte against the opposite party no-1 but without costs.

The opposite party no.2 (United Insurance Company Limited), which indemnified the opposite party no-1/the owner is hereby directed to pay the



total compensation amount of Rs. 14,68,600/- (Rupees fourteen lakhs sixty eight thousand six hundred) only with interest @6% per annum from 05-07-2018 till full liquidation by issuing one A/C payee cheque in the name of the claimant Smt. Pratima Pradhan u/s. 166 of Motor Vehicles Act, 1988 within two (02) months from the date of this Order, failing which the claimant shall be at liberty to put the order in execution in accordance with law.' The Appellant/claimant being aggrieved by the Judgment and Award passed by the Learned Trial Judge has come up with the instant appeal.

Heard Learned Advocate for the Appellant and Learned Advocate for the respondent perused the evidence adduced and materials on record.

Learned Advocate for the Appellant submits that although the appellant suffered 75% disablement but the same was not taken into consideration by the Learned Trial Judge.

Learned Advocate further submits that although the Income Tax Return was exhibited with objection but the income reflected in the Income Tax Return was not taken into consideration on the other hand the Learned Judge proceeded on the basis of national income of Rs. 5,000/- per month. Learned Advocate also submits that although medical prescriptions and medical bills were submitted and huge medical cost was incurred but the Learned Trial Judge awarded only Rs. 14,00,000/-.

Learned Advocate for the respondent no-1 submits that the appellant/claimant did not file income tax return of the previous year, and the



return was filed after the accident, and the Income Tax Authority was not examined Learned Advocate further submits that the claimant/appellant in her cross examination stated that she has no document to show that she was doing business.

Learned Advocate also submits that the Learned Trial Judge rightly considered the notional income.

The following Judicial decisions are relied upon by the Learned Advocates:-

Sudhir Bhuiya VS National Insurance Co. Ltd.

Reported in 2005 (1) TAC-66 (Cal)

Raj Kumar VS Ajay Kumar

Reported in AIR. ONLINE 2010.SC.125

V. Subbu Lakshmi and ors. VS S. Lakshmi and Anr.

Civil Appeal No-990 of 20-08.

(Supreme Court of India)

FMA-492 of 2020

Smt. Shipra Bramha VS New India Assurance Company Ltd.

(Calcutta High Court)



Now with regard to the disability suffered it is necessary to consider the observation made by the Hon'ble Supreme Court in the case of Raj Kumar VS Ajay Kumar (supra). In the said case the Hon'ble Supreme Court observed as follows:

'12. The Tribunal should also act with caution, if it proposed to accept the expert evidence of doctors who did not treat the injured but who give 'ready to use' disability certificates, without proper medical assessment. There are several instances of unscrupulous doctors who without treating the injured, readily giving liberal disability certificates to help the claimants. But where the disability certificates are given by duly constituted Medical Boards, they may be accepted subject to evidence regarding the genuineness of such certificates. The Tribunal may invariably make it a point to require the evidence of the Doctor who treated the injured or who assessed the permanent disability. Mere production of a disability certificate or Discharge Certificate will not be proof of the extent of disability stated therein unless the Doctor who treated the claimant or who medically examined and assessed the extent of disability of claimant, is tendered for cross- examination with reference to the certificate. If the Tribunal is not satisfied with the medical evidence produced by the claimant, it can constitute a Medical Board (from a panel maintained by it in consultation with reputed local Hospitals/Medical Colleges) and refer the claimant to such Medical Board for assessment of the disability.

13. We may now summarise the principles discussed above :



(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.'

In the instant case disability certificate was proved by authorized staff of North Bengal Medical College and hospital and it is observed that locomotor disability on right upper and lower limbs with diagnosis left MCA territory infarct with right hemiparesis was assessed to the extent of 75% with clause of re-assessment after five years.



Although the Learned Judge came to the conclusion that there is no iota of evidence that the disability is due to road traffic accident but the fact that the appellant suffered accident and that Locomotor disability is also caused due to accident apart from other causes and the evidence of P.W. 2 goes to show that the appellant suffered injury on her leg the disability due to accident should be accepted on the observation made in the disability certificate that there is locomotor disability on right upper and lower limb.

Now with regard to the income of the appellant/victim as the appellant only filed income tax return after the accident took place it would not be safe to proceed on the basis of the said income tax return document. Thus the Learned Trial Judge did not commit any error to discard the document. However it would be reasonable to consider the notional income as Rs. 6,000/-.

With regard to the compensation on account of Medical Expenses awarded by the Learned Trial Court this Court is of the view that as medical expenses of Anandalok hospital was not taken into consideration and future expenses are also made in case a person suffers disability it would be reasonable to further add one Lakh on account of medical expense. Thus compensation on account of medical expenses should be Rs. 15,28,576/-.

Now with regard to period of stay in hospital and the injury suffered the appellant is entitled to Rs. 200,000/- on account of pain and suffering.

Considering the nature of disability and occupation of victim it is reasonable to proceed on the ground of loss of income and earnings.



Thus considering the notional income of the appellant to be Rs. 6,000/- per month and the future prospect of 30% it would be proper to proceed on the basis of monthly income of Rs. 8,000/- per month.

The annual income will come to Rs. 9,8000/-. The loss of future earning on the basis of disability will be $75/100 \times 98000/-$. Thus loss of annual earning is 73,500/-. The Multiplier of 10 may be applied-.

Thus total loss of future earning comes to Rs. 7,30,500/-.

Further the appellants are entitled to get Rs. 15,28,576/- on account of medical expenses and Rs. 200,000/- on account of pain and sufferings. Hence total compensation comes to Rs. 24,69,076/- by arithmetical calculation. However this Court is of the view that compensation of Rs. 24,00,000/- is just and reasonable.

Thus this Appeal FMA 65/2024 stands disposed. The Judgment and Award dated 15/12/2023 passed by Learned Additional District Judge 1st Court Darjeeling in MACC 02 of 2014 stands modified to the extent that the appellant is entitled to compensation of Rs. 24,00,000/- along with interest @6% per annum from the date today of filing claim case till.

The respondent no. 1 United India Insurance Company Limited shall deposit Rs. 24,00,000/- along with interest at @6% per annum from date of filing claim case till today. Such deposit shall be made within 8 weeks from the date of communication of this order.



In the event compensation awarded by Learned Trial Court is paid balance amount be deposited.

Urgent certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Biswaroop Chowdhury, J.)