

(1986) 01 CAL CK 0017

Calcutta High Court

Case No: A.F.O.O. No. 1142 of 1978

Uper Singh and Another

APPELLANT

Vs

Dibyendu Biswas

RESPONDENT

Date of Decision: Jan. 8, 1986**Acts Referred:**

- Bengal Motor Vehicles Rules, 1940 - Rule 238
- Motor Vehicles Act, 1939 - Section 110A(1)

Citation: (1987) ACJ 464**Hon'ble Judges:** Monoranjan Mallick, J; Ganendra Narayan Ray, J**Bench:** Division Bench**Advocate:** Biswajit Choudhury, for the Appellant; Anil Kumar Bhandary, for the Respondent**Final Decision:** Allowed

Judgement

Ganendra Narayan Ray, J.

This appeal arises out of the judgment and award dated 30th July, 1977 passed by the learned Judge, Motor Accidents Claims Tribunal for Calcutta and 24 Parganas in M.A.C. Case No. 142 of 1973.

2. Uper Singh and the New India Assurance Company Ltd. who are the objectors in the said accident case before the Tribunal, are the Appellants in the instant appeal. On an application for compensation u/s 110-A(1)(a) of the Motor Vehicles Act, 1939 made by the claimant-Respondent. Dibyendu Biswas, the said M.A.C. Case No. 142 of 1973 was started. The claimant-Petitioner contended that because of rash and negligent driving of a lorry bearing No. WMK 447 belonging to the Appellant, Uper Singh, the said claimant-Petitioner sustained serious injuries on his feet and ankle joint, resulting in amputation of half of his left foot as a result of which the claimant has been crippled. It appears that the claimant is an employee in, the Telephone Department of the Government of India and at the relevant time he had been

For loss of pay	Rs.
800/-***	
For pain and suffering	Rs.
3,000/-**	
For cost of treatment etc.	Rs.
6,000/-**	
For permanent partial	Rs.
10,000/-	
Rs	dis
Rs	transport
Rs	at 0001 hr

Spport
Dant

4. So far as the aforesaid sum of Rs. 48,000/- on account of additional expenses to be incurred on account of transport and for maintaining an attendant is concerned. Mr. Chowdhury has submitted that the claimant-Petitioner has not pleaded the special damages on account of the said two factors and in his evidence also he has not indicated as to whether any attendant has been maintained by him and there is no evidence about the cost being incurred by the claimant Petitioner on account of engaging an attendant. Mr. Chowdhury has, therefore, submitted that the learned Judge has awarded a sum of Rs. 18.000/- towards cost of attendant out of his imagination without any rational basis. Mr. Chowdhury has also contended that so far as the cost of transport of Rs. 30.000/- is concerned, the learned Judge has also not given any indication as to how the said sum can be awarded in favour of the claimant Petitioner. He has indicated that the claimant-Petitioner has also not pleaded the special damage on account of loss being suffered by way of additional

expenses of transport because of the accident suffered by the Petitioner. That apart, in his evidence, the claimant-Petitioner has also not indicated as to what is the actual loss being suffered by him because of additional expenses being incurred by him on account of transport. He has, therefore, submitted that the said amount of award for Rs. 30,000/- on account of transport must be held to be arbitrary and without any rational basis.

5. Mr. Bhandary, learned Counsel appearing for the Respondent claimant-Petitioner, has, however, submitted that all the provisions of the CPC are not applicable in the proceedings under the Motor Vehicles Act and under Rule 238 (?) of the Bengal Motor Vehicles Rules, 1940, some provisions of the CPC have been made specially applicable. Mr. Bhandary has submitted that the claimant-Petitioner has given evidence to the effect that because of the accident he has been permanently disabled and crippled for which he has to engage a person in the house. Mr. Bhandary has also submitted that although the remuneration of the attendant engaged by the claimant-Petitioner has not been indicated in the evidence, the court can take a judicial notice of the fact that if a helper is to be engaged the claimant-Petitioner is bound to incur reasonable expenses on that account and if the cost for such attendant engaged for the rest of his life has been assessed at Rs. 18,000/-, it cannot be said that the said amount is unreasonable or without any basis whatsoever. Mr. Bhandary has also contended that the claimant-Petitioner has stated in his deposition that because of the accident suffered by him, it is no longer possible for him to move in the public vehicles and for attending office he is to go either by mini bus or by taxi and hiring of taxi for such purpose is frequent. Mr. Bhandary has drawn attention of the court that the claimant-Petitioner is a resident of Paikpara area and he is to attend his office in Telephone Bhavan which is quite far off from the place of residence. He has, therefore, submitted that in the aforesaid circumstances, the learned Judge is not unjustified in assessing the quantum of compensation on account of additional expenses being incurred by the claimant-Petitioner on account of transport. He has submitted that the assessment of the sum of Rs. 30,000/- for the rest of the life of the claimant-Petitioner must be held to be reasonable, more so, if increasing cost of transport is taken note of by the court.

6. After hearing learned Counsel for the parties, it appears to us that the specific rules of pleading as contained in the CPC need not be adhered to in the proceedings before the Accidents Tribunal. There is no manner of doubt that the claimant-Petitioner is to lead proper evidence on the basis of which the award of compensation can be objectively assessed. It is necessary for the claimant-Petitioner to lead evidence for each item of compensation so that there are materials on the basis of which the court can assess such compensation on a rational basis. It is true that the claimant-Petitioner in his deposition has stated that because of his physical condition he requires assistance of a person and he has engaged a person in his house. But unfortunately the claimant-Petitioner has not indicated what amount of

expenditure is being incurred by him for engaging such helper. In the aforesaid circumstances it becomes very difficult for the court to determine the amount of compensation on the score of engaging an attendant objectively. We are, therefore, not inclined to accept the assessment made by the learned Tribunal on the score of engaging an attendant at Rs. 18,000/-. But keeping in view that for engaging any helper, the Petitioner is bound to incur some expenditure, we feel that ends of justice will be best met, in the facts of the case, if we assess compensation on the score of engaging an attendant at Rs. 10,000/-. So far as transport is concerned, the same difficulty arises. Although the claimant-Petitioner has stated in his deposition that he cannot travel by the public buses and he has to attend office either in a mini bus or by a taxi, but he has not indicated the amount of expenditure being incurred by him every month for that purpose. In the absence of such specific evidence, it becomes difficult for the court to determine the additional expenses being incurred by the claimant-Petitioner on account of transport objectively and as such the amount assessed on the score of transport at Rs. 30,000/- cannot be accepted by us. But on the basis of evidence adduced by the claimant-Petitioner it is quite clear that he is incurring additional expenditure because of the accident suffered by him as he cannot move in the ordinary way in public vehicles and he has been compelled to travel either in a mini bus or in a hired taxi and he has also deposed that hiring of taxi is frequent. In the aforesaid circumstances, we reduce the compensation on the score of transport at Rs. 20,000/-. It is unfortunate that such assessment in the facts of the case is bound to be a little irrational. But considering the increasing cost of transport, we think that it will be commensurate with justice if we assess Rs. 20,000/- on account of transport cost.

7. The appeal, therefore, is allowed to the extent indicated above. The total amount of compensation is therefore reduced by Rs. 18,000/- and the award is assessed at Rs. 48,800/- with interest as directed by the learned Judge. In the facts of the case, there will be no order as to costs.

8. In view of the reduction of the total amount of compensation, the owner is absolved of the responsibility of paying anything to the claimant-Petitioner and the whole amount is to be paid by the insurer.

Monoranjan Mallick, J.

9. I agree.