

(1991) 04 CAL CK 0039**Calcutta High Court****Case No:** A.F.O.O. No. 602 of 1984 with Cross-objection

Oriental Fire and Genl. Ins. Co.
Ltd.

APPELLANT

Vs

Nikunja Behari Biswas

RESPONDENT**Date of Decision:** April 19, 1991**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 22

Citation: (1993) ACJ 406**Hon'ble Judges:** Siba Prosad Rajkhowa, J; Shamsuddin Ahmad, J**Bench:** Division Bench**Advocate:** Malay Mohan Guha, for the Appellant; Samindra Kumar Das, for the Respondent**Final Decision:** Dismissed

Judgement

Shamsuddin Ahmad, J.

This appeal is directed against an award passed by the learned Judge, Motor Accidents Claims Tribunal, Alipore, in Motor Accident Claim Case No. 149 of 1978. The learned Judge disposed of a claim application filed by the petitioner who suffered injuries as a result of motor accident on 10.7.1976. As a result of that accident he has lost substantial capacity to earn. He was engaged in business under the name and style "Chhanda Trunk House". The learned advocate appearing for the appellant has submitted that the learned Judge failed to take into consideration the material evidence on record. But on a perusal of the records, it appears that the learned Judge found that the income of the victim was at the rate of Rs. 300/- per month and he was 47 years of age at the time of the accident. The learned Judge considered 65 years as the normal life span and accordingly applied 15 years' multiplier and from the amount arrived at on calculation he deducted 25 per cent by reason of lump sum payment and uncertainties of life. Accordingly, we cannot say that the learned Tribunal failed to take into consideration the materials appearing

before it. Accordingly, we are unable to find any merit in this appeal. The appeal stands dismissed without any order as to costs.

2. A cross-objection has been filed and in the cross-objection a ground has been taken that the amount calculated by the learned Judge is not in conformity with the evidence adduced. The claimant himself claimed that his monthly income was Rs. 800/- to Rs. 900/-. The learned Judge did not place reliance on this piece of evidence as no account book was filed before the learned Judge. Taking into consideration the circumstances as appeared in the evidence and the number of members maintained by the petitioner, the learned Judge came to the conclusion that his monthly earning was Rs. 300/-. It will also appear from the application itself that the claimant admitted that his present earning after he has sustained injury in the accident has been reduced to Rs. 150/-. If we take this into account, the learned Judge in effect has granted him relief taking his monthly income to be Rs. 450/-. Accordingly, we do not find any substance in the submission that the learned Judge did not take into consideration the material evidence on record in assessing the compensation allowed. But in our view, the learned Tribunal made an error in law in deducting 25 per cent from the lump sum amount of compensation because of uncertainties of life. Since the Tribunal has used multiplier, it cannot deduct amount for uncertainties of life and for making lump sum payment. Accordingly, we allow the cross-objection to the extent that the petitioner will get the compensation at the rate of Rs. 300/- per month multiplied by 15 years" multiplier. The amount of compensation will come to Rs. 54,000/-.

3. In the cross-objection the respondent has also taken a ground that the interest at the rate of 6 per cent was grossly inadequate. We agree with the submission made and hold that the respondent will get interest on the amount of compensation from the date of filing of the claim petition till payment at the rate of 12 per cent per annum. Accordingly, the cross-objection stands allowed to the extent indicated above.

4. The appellant insurance company will be liable for the amount in accordance with law. It is submitted that an amount of Rs. 30,000/- has already been paid to the claimant. The claimant will receive the amount of compensation less than the amount he has already received. There will be no order as to costs in the cross-objection.

S.P. Rajkhowa, J.

5. A cross-objection has been filed by the opposite party/ respondent under Order 41, Rule 22 of the CPC on the 23rd day of March, 1984 and valued at Rs. 41,500/-.

6. Appeal valued at Rs. 43,500/-.

7. Upon the hearing of this appeal along with cross-objection in a Division Court before the Hon"ble Shamsuddin Ahmad and the Hon"ble Siba Prosad Rajkhowa, two

of the Judges of this Court on the 19th day of April, 1991.

8. It is ordered and decreed that the appeal of the insurance company, the appellant therein, be and the same is hereby dismissed.

9. And upon the cross-objection filed by the respondent being allowed the decree of the Tribunal is modified to this extent that the respondent shall get enhanced compensation amounting to Rs. 54,000/- and interest at the rate of 12 per cent per annum on the amount of compensation, from the date of filing of the claim petition till payment.

10. And it is further ordered and decreed that the appellant insurance company shall be liable under the law for the amount of compensation payable.

11. And it is further ordered and decreed that the claimant shall receive the amount of compensation allowed by this Court, due and payable, minus the amount of Rs. 30,000/- already paid by the appellant and received by the claimant.