

(2004) 08 CAL CK 0050

Calcutta High Court

Case No: F.M.A. No. 23 of 2002

Barun Kumar Das

APPELLANT

Vs

New India Assurance Co. Ltd.
and Another

RESPONDENT

Date of Decision: Aug. 6, 2004

Acts Referred:

- Motor Vehicles Act, 1988 - Section 166

Citation: (2005) 2 ACC 132 : (2006) ACJ 799

Hon'ble Judges: Sankar Prasad Mitra, J; Prabir Kumar Samanta, J

Bench: Division Bench

Advocate: Krishanu Banik, for the Appellant; Parimal Kumar Pahari, for the Respondent

Judgement

Prabir Kumar Samanta and Sankar Prasad Mitra, JJ.

This misc. appeal is at the instance of the claimant appellant against an award made by the Motor Accidents Claims Tribunal in an application u/s 166 of the Motor Vehicles Act, 1988. The above appeal has been filed by challenging the quantum as awarded by the Tribunal. Learned Claims Tribunal by the aforesaid judgment and award has not granted any compensation for loss of earnings but has awarded a compensation for a total sum of Rs. 1,10,000 on account of medical expenses to the tune of Rs. 80,000 and Rs. 30,000 on account of pain and suffering and loss of expectation in life.

2. The facts of the case in brief are that the claimant met with an accident on 26.10.1998 at about 18.50 hours caused by the offending vehicle bearing registration No. WBS 3130. It appears from the deposition of the claimant himself that he was taken to R.G. Kar Medical Hospital soon after the accident. He was not advised by the said hospital to be shifted to a nursing home for a better treatment. But at the choice of the family members of claimant, he was shifted to a private nursing home on the same day and ultimately he was treated in two different

nursing homes for a period from 27.10.1998 to 15.11.1998. It is further evident from the records of this case that the claimant did not take any disablement certificate from the doctors who treated him at those two nursing homes. Claimant ultimately obtained a permanent partial disablement certificate from a private doctor, namely, Dr. H.K. Mukherjee who certified his permanent disability to the extent of 65 per cent on the basis of which the claim petition was made for compensation amount of Rs. 7,50,000 with interest.

3. In this case the rash and negligent driving of the offending vehicle by its driver has been proved in evidence and such finding of the Claims Tribunal has not been questioned in this appeal by the insurer respondent.

4. The claimant-appellant had incurred medical expenses to the tune of Rs. 80,254 which has been proved upon production of necessary medical bills and vouchers. The insurer respondent has also not questioned the grant of compensation for a sum of Rs. 80,000 on account of medical expenses incurred by the claimant.

5. It is also evident from the evidence of the claimant himself and the materials on record that he was employed as Senior Law Assistant in the West Bengal Industrial Development Corporation Ltd. at the relevant point of time. It has also transpired from his deposition that he is attending office regularly and receiving the salaries and/or emoluments as were received by him before accident. There is no evidence whatsoever that because of the injuries suffered by him in the said accident, he is not in a position to continue in his service or that he has been allowed to continue in his service on some sympathy and mercy by his employer. In fact, it has not been proved in evidence that claimant suffered any loss of earnings in his employment because of the injury suffered by him.

6. The injury as suffered by claimant has not been certified by the doctors who treated him in the nursing home, to have caused any permanent partial disablement. The materials on record on the other hand show that the injury of the claimant was confined to some toes of his one leg for which there is some loss of sensation in such toes. The medical certificate showing permanent partial disability of claimant to the tune of 65 per cent has been issued by one stock doctor, namely, Dr. H.K. Mukherjee. The said Dr. Mukherjee in his deposition has stated categorically that he did not treat the claimant at any point of time and issued such certificate on clinical observation of claimant. In his examination the said doctor has admitted that physiotherapy can make some improvement in the loss of sensation in the toes of the victim. In view of such admission by the said doctor and upon consideration of his evidence, we are in difficulty in accepting the veracity of the said medical certificate as issued by him certifying the permanent partial disablement of the victim to the extent of 65 per cent. We therefore, do not propose to rely upon the said certificate and consequently, do not make any observation as to the extent of permanent partial disablement suffered by the claimant.

7. Having regard to the fact that the claimant has not suffered any loss of earnings in spite of the injury suffered by him in the accident, the question has cropped up as to whether he should be compensated for any loss of earning capacity because of such injury suffered by him. We are of the view that the loss of earning capacity in future has some nexus with the loss of earnings at present in the context of the injuries suffered by the claimant in an accident. The injuries that have been suffered by the claimant in this particular case has resulted substantially in some loss of sensation in some toes of one leg of the claimant which in our view would not affect the earning capacity of the claimant in his employment in future. There is also no material to indicate that the above injury may affect his promotion and advancement in his service career.

8. The decision reported in [Calcutta Licensed Measurers Bengal Chamber of Commerce Vs. Md. Hossain](#), [Wasti Ram Kohli Vs. Indris and Others](#), ; [State of Himachal Pradesh and Others Vs. Chet Ram and Others](#), and [Govind Kana Vs. Kana Tida Mokaria](#), have been cited on behalf of claimant in support of the contention that even where there is no present loss of earnings by the claimant in his employment, still then the claimant would be entitled to compensation on account of loss of earning capacity in future, if there be any injuries on the person of the claimant because of the accident. We have carefully considered the said decisions. The facts and circumstances of the said reported decisions are distinguishable from the facts and circumstances of the case in hand.

9. Here in this case there is no suggestion on behalf of claimant in his evidence that apart from some discomfort in life there is a predictable chance of some loss in his salaries and/or emoluments and/or benefits in future, in course of his employment, because of such injuries suffered by him. Considering the nature of the injuries and the job performed by claimant, we do not find anything to arrive at a presumption of any loss of earning capacity in future by the claimant in his employment. We, therefore, do not find any reason to hold that the claimant would be entitled to compensation for loss of his earning capacity in future. More particularly in view of the fact that the petitioner has not suffered any loss in his earnings we affirm the finding of the learned Claims Tribunal that the claimant is not entitled to any pecuniary damages suffered by him because of the injuries on his person caused by the said accident.

10. However, claimant would be entitled to a compensation for non-pecuniary damages on account of pain and suffering, loss of expectation and amenities in life and discomfort which the claimant would suffer for such injuries on his person. It is also settled principle that compensation for such non-pecuniary damages cannot be determined with mathematical precision and for determination of such compensation some speculation is permissible.

11. The learned Tribunal has awarded a sum of Rs. 30,000 on account of such non-pecuniary damages. Considering the nature of injuries suffered by the victim

and having regard to the fact that such injuries can be cured to a substantial extent, if better treatment is provided, as indicated by the doctor, PW 2, we grant a lump sum compensation for a sum of Rs. 20,000 for future medical expenses for better treatment of the injuries suffered by claimant. On account of pain and suffering, loss of amenities and expectation in life and for discomfort that may be suffered by the claimant, the compensation as awarded by Claims Tribunal for a sum of Rs. 30,000 is treated as sufficient. We, therefore, do not interfere with the same.

12. Thus, in all the claimant would be entitled to a further compensation for a sum of Rs. 20,000 as above which will carry an interest at the rate of 9 per cent per annum from the date of filing of the application till payment. The insurer respondent is accordingly directed to pay the above awarded amount to the claimant directly by an account payee cheque or to deposit an account payee cheque drawn in the name of the claimant with the Claims Tribunal within a period of 4 weeks from the date of communication of this order. Either of the learned advocates for the parties will be at liberty to communicate the order of this court to the insurer respondent.

13. The judgment and award by learned Claims Tribunal is modified accordingly.

14. Appeal is thus disposed of. However, there will be no order as to costs. If urgent xerox certified copy of this order is applied for by the parties, the same should be given expeditiously.