IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 1318 of 2016

With

I.A No.: CAN/1/2017 (Old No.: CAN/6287/2017)

Sudip Ranjan Dey

VERSUS

The Manager, Reliance General Insurance CO. LTD. & ANR.

For the appellant: Mr. Saidur Rahaman, Adv.

For the respondents: Ms. Gopa Das Mukherjee, Adv.

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Last Heard on: February 06, 2026

Judgment on: February 24, 2026

Biswaroop Chowdhury,J:

1. The appellant before this Court was a claimant in a case under Section 166 of the Motor Vehicles Act, 1988 and is aggrieved by the judgment and award dated 23.03.2012 passed by Learned Additional District Judge, 2nd Court, Raiganj, Uttar Dinajpur in MAC Case no. 133/2019.

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

   On 13.09.2009 at about 1.00 hours the petitioner got down at Siliguri More, Raiganj on his way from Islampur and took his meal at Gurupada Hotel and thereafter was waiting at Kancha portion on the Eastern side of the National Highway for rickshaw to his residence. At that time the vehicle no. PB19C/5071 (Truck) coming from Siliguri side at a excessive speed and for such speed the driver lost his control over the vehicle which went of the Kancha portion of the road and dashed him with a great force. As a result the claimant sustained severe injuries on his person and was immediately removed to Raiganj District Hospital and the doctor diagnosed with his right leg was fully damaged and having no alternative the doctor amputed his right leg above knee.

   Due to rash and negligent driving on the part of the driver of the vehicle the accident took place. The injured was aged about 45 years at the relevant time and used to draw salary of Rs. 7,160/- per month. He became crippled and due to that cannot walk without help of crutch and he has to spend money on his journey to the office and he has been suffering from mental pain and agony and also other amenities of life.

Pursuant to the filing of the claim case notice was issued upon the opposite parties. Reliance General Insurance Company Limited, opposite party filed written statement and contested the case.

3. By judgment and award dated 23.03.2012 Learned Trial Court was pleased to dispose of the claim case by observing and directing as follows:

" Hence it is Ordered that the instant MAC case no. 133/2009 be and the same is allowed in part on contest without costs against the opposite party Reliance General Insurance Company Limited and exparte against the rest.

The claimant do get on award of Rs. 3,55,000/-(Rupees Three Lakh fifty five thousand) only and the opposite party Reliance General Insurance Company Limited is directed to pay the awarded amount by issuing an account payee cheque within two and half months from the date of order along with interest @ 6% per annum from the date of filing of this case till the payment ***threat*** *in default the award will carry on interest of at the rate of @ 8% per annum till the date of realising of the entire amount in default the claimant is at liberty for realising of the same in accordance with law."*

4. The appellants/claimants 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 no. 1 Insurance Company. Perused the materials on record.

Learned Advocate for the appellant/claimant submits that the compensation awarded to the claimant is meagre. Learned Advocate further submits that the Learned Trial Judge further erred in not taking into consideration, the future cost of artificial limb and future medical expenses in assessing the compensation amount. Learned Advocate also submits that future travelling cost of the claimant due to disability ought to have been taken into consideration. Learned Advocate relies upon the following judicial decisions:-

- ***Reliance General Insurance Co. Ltd. vs. Sushil @ Sachin and Others,*** reported in ***2025 (4) T.A.C. 49 (S.C.)***
- ***M.D. Jacob vs. United India Insurance Co. Ltd. and another,*** reported in ***2014 ACJ 648***

5. Learned Advocate for the respondent Insurance Company submits that the claimant/appellant did not loose his job due to his disability, thus the compensation awarded is justified. Learned Advocate relies upon the following judicial decisions:-

- ***Arvind Kumar Mishra vs New India Assurance Co. Ltd. & Anr, in Civil Appeal No. 5510 of 2005, Supreme Court of India.***
- ***Govind Yadav vs. The New India Insurance Co. Ltd., AIRONLINE 2011 SC 606***

- ***Raj Kumar vs. Ajay Kumar and another, (2011) 1 Supreme Court Cases 343***

6. Before proceeding to decide material in issue at the outset it is necessary to consider the nature of disability suffered by the claimant/appellant and the percentage of disability suffered.
7. Upon considering the evidence of P.W. 3 who is the superintendent of Raiganj District Hospital it appears that the claimant/appellant was clinically examined by Medical Board of which P.W.3 was the Chairman. He further stated that the disability of the claimant was assessed to the extent of 85 per cent as a result of right above knee of amputation. In cross-examination of PW3 stated that the assessment of the treatment was by following some guideline of the department. According to guideline there is no chance of variation of percentage of disability.
8. Thus, the evidence of PW3 will go to show that percentage of disability will not be followed for review and disability was assessed following the medical guidelines.
9. Now the point for consideration is whether the Learned Trial Court ought to have granted compensation apart from the cost of artificial limb and pain and sufferings and secondly whether compensation awarded on account of pain and suffering and cost of artificial limb is adequate.

10. The Hon'ble Supreme Court in the Case of ***Raj Kumar vs. Ajay Kumar*** (supra) observed as follows:

'19. 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.'

11. The Hon'ble Court further observed as follows:-

> *'18. 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.'

18. In the case of ***Arvind Kumar Mishra*** vs ***New India Assurance Co. Ltd.*** (supra) Hon'ble Supreme Court observed as follows:-

'7. We do not intend to review in detail state of authorities in relation to assessment of all damages for personal injury. Suffice it to say that the basis of assessment of all damages for personal injury is compensation. The whole idea is to put the claimant in the same position as he was in so far as money can. Perfect compensation is hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the court must take care to give him full and fair compensation for that he had suffered. In some cases for personal injury, the claim could be in respect of life time's earnings lost because, though he will live, he cannot earn his living. In others, the claim may be made for partial loss of earnings. Each case has to be

considered in the light of its own facts and at the end, one must ask whether the sum awarded is a fair and reasonable sum. The conventional basis of assessing compensation in personal injury cases - and that is now recognized mode as to the proper measure of compensation - is taking an appropriate multiplier of an appropriate multiplicand.'

19. The main stand taken by the respondent no.1/Insurance Company is that the claimant/appellant did not suffer any financial loss as he is still in service.

20. As damages do not only mean pecuniary damage but also loss of amenity disruption of normal functioning with regard to discharge of official duties the same should also be taken into consideration to assess non-pecuniary damage. All parts of the body are necessary for normal functioning, thus when a particular portion of the body is amputed the normal body movement is affected. Right to healthy body and right to move and work freely and smoothly with the essential parts of the body is a basic right. A person in his work place has a reasonable expectation to work sincerely, comfortably without any pain on his body and by fully utilising the parts of his body without obstruction and thereby gain reputation in work place by performance. The claimant/appellant being an

employee of Court is also presumed to be discharging responsible duties for smooth functioning of the Court. Thus non-existence of natural leg and working with artificial limb to some extent may affect normal smooth working which in result will not earn him future reputation which an employee reasonably expects.

21. Thus, while considering loss of earning by a person in any establishment or organisation narrow pedantic view should not be taken by only considering that there is no loss of employment but a broad pragmatic view has to be taken by considering future performance and reputation in working place. Further when there is permanent disability future medical expenses and subsequent purchase of artificial limb cannot be ruled out. Thus compensation should be awarded on this head also.

22. Thus, Considering the nature of disability period of pain and sufferings future medical expenses, future discomfort, future expenses for artificial limb and future performance in work place this court is of the view that compensation of Rs. 6 lakhs. (rupees six lakhs only is just and reasonable).

23. Hence this appeal FMA 1318/2016 stands disposed. Judgment and award dated 23.03.2012 passed by Learned Additional District Judge, 2nd Court, Raiganj, Uttar Dinajpur

in MAC Case no. 133/2019 stands modified to the extent that the appellant/claimant is entitled to compensation of Rs. 6,00,000/- (Rupees six lakhs) along with interest @ 6% per annum from the date of filing of claim case till today. The respondent no. 1 Reliance General Insurance Company Limited shall deposit before the Registrar General, High Court Calcutta Rs. 6,00,000/- along with interest @ 6% per annum from the date of filing claim case till realisation. It is however made clear that in the event amount awarded by Learned Trial Court is deposited the balance amount shall be deposited. Such deposit shall be made within 8 weeks from the date of communication of this order. The appellant/claimant will be entitled to withdraw the sum deposited including accrued interest upon compliance of necessary formalities.

Urgent photostat certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(Biswaroop Chowdhury, J.)