IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 608 of 2007

Sri Sukumar Sadhukhan

VERSUS

Mr. Radheysham Biswas & Anr.

For the Respondent: Mr. P. K. Pahari, Adv.

Last Heard on: August 20, 2026

Judgment on: September 15, 2026

Biswaroop Chowdhury, J:

The appellant before this Court was an applicant in a case for compensation on account of injury, under Workmen's Compensation Act and is aggrieved by the Judgment and Award dated 14th January 2003 passed by the Learned Judge in the Court of the Commissioner Workmen's Compensation (3rd Court) West Bengal in claim Case No-186 of 1999.

The case of the workman/appellant before the Learned Commissioner may be summed up thus:-

The applicant, a workman is employed by the opposite party, received personal injury by accident arising out of and in the course of his employment on the 27th day of March 1999. The cause of the injury was that while bus no. WGE. 1360 was coming to Krishnanagar, another vehicle no. WB-19-0915 (Luxury Bus) coming from opposite direction and dashed the Bus No-WGE-1360 on NH-34, P.S. Kotwali, District Nadia and the driver of the Bus No. WGE-1360 Sukumar Sadhukhan got serious injury in course of his employment vide P.S. Case No. 112/99 dated 27-03.99 U/S. 279/337/338/427 IPC.

The applicant sustained the following injuries:

i) Chest injury, Bone injury fracture of RT. Upper ribs,

ii) Underline spaces scary Lessions contaphoric, angles are obliterated.

The monthly wages of the applicant is Rs. 2,000/-

Pursuant to filing of the case notice was issued upon the opposite parties.

Opposite party no-1 Employer did not contest the case. Opposite party no-2 United India Insurance Company Limited contested the case by filing written statement. ISSUES were framed and evidence was adduced.

Learned Trial Court upon considering the evidence adduced and upon hearing the Learned Advocates was pleased to dispose of the application by observing and directing as follows:-

'In the result the case succeeds in part. Hence ORDERED that the claim case be allowed on contest, with proportionate costs. Subject to payment of Court fees the Applicant do get Rs. 11,374/- (Rupees Eleven thousand three hundred and seventy four only) as compensation from the Opposite Party No. 1 who is directed to deposit the said amount with the commissioner within 30 days from the date of this judgment. The opposite party No. 2 is directed to indemnify the opposite party No. 1 by way of depositing the said compensation with the Commissioner within 60 days from the date of this order. In default it will carry a simple interest at the rate of 12 percent per annum from the date of filing of this case.

The hearing fees are assessed at Rs. 200/-. The Applicant is to pay Court Fees on the amount awarded.'

The appellant being aggrieved by the Judgment and Award passed by the Learned Trial Court/Workmen's Compensation Commissioner has come up with the instant appeal.

Heard Learned Advocate for the appellant and Learned Advocate for respondent no-2 perused the materials on record.

Learned Advocate for the appellant submits that the Learned Trial Judge erred in awarding compensation of Rs. 11,374/- (Rupees Eleven thousand three hundred and seventy four only) although the disability of the applicant is 100%.

Learned Advocate further submits that to establish injury and disability the appellant filed discharge certificate and disability certificate which was not considered at the time of awarding compensation.

Learned Advocate also submits that as per Section 4 of the Employee's Compensation Act 1923 in clause (c) Explanation II provides as follows:-

'in assessing the loss of earning capacity for the purpose of sub-clause (ii), the qualified medical practitioner shall have due regard to percentage of loss of earning capacity in relation to different injuries specified in schedule I". Thus the provision contained in the clause provides that non-schedule injury can be assessed by Medical Practitioner and qualified medical practitioner' means any person registered under any Central, Provincial Act or an Act of the Legislature of the state providing for the maintenance of register of medical practitioners or in any area where no such Last mentioned Act, is in force, any person declared by State Government, by notification in official Gazette to be a qualified medical practitioner for the purpose of this Act."

Learned Advocate relies upon the following judicial decisions:-

National Insurance Co. Ltd. VS Bhim Dey.

Reported in 2002(1) TAC. 591 (Cal).

Shanti and others. VS National Insurance Company

2025(1) TAC. 741 (S.C.).

Raj Kumar VS Ajay Kumar

Reported in 2011 ACJ.1.

Learned Advocate for the respondent no-2 submits that initially the appellant filed the case claiming 40% disablement but subsequently amendment was carried out and the appellant claimed that he has sustained 100% loss of earning capacity and claimed Rs. 2,27,472/-.

Learned Advocate further submits that Discharge Certificate of Nadia District Hospital where the appellant was admitted will go to show that the appellant did not suffer any fracture injury.

Learned Advocate also submits that Dr. H.C. Mukherjee issued the Disablement Certificate after clinically examining the victim after three years from the date of accident without suggesting the victim for X Ray.

Learned Advocate relies upon the following judicial decisions:-

New-India Assurance Co. Ltd VS Ram Kishan Singh and Anr.

Reported in 2001(1) TAC.130 (Cal).

Barun Kumar Das. VS New India Assurance Co. Ltd. and Anr.

2005(1) TAC-225 (Cal).

Rajesh kumar VS Yudhivr Singh and anr.

Before proceeding to decide the material in ISSUES it is to be remembered that by different judicial decisions it is well settled that in case of disability what requires to be assessed by the Tribunal is the effect of the permanent disability, on the earning capacity of the injured and after assessing the loss of earning capacity in terms of a percentage of the income it has to be quantified in terms of money to arrive at the future loss of earning.

In the case of Raj Kumar VS Ajay Kumar and anr. reported in 2011 ACJ it was observed as follows:-

'13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but

could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.'

With regard to the nature of disablement and loss of earning capacity it is to be remembered that loss of earning capacity depends on the nature of occupations and type of disability. A person suffering from disability may be able to do office work but the same may not be possible in case of a driver. Unless a person is medically fit to drive a vehicle he is not inducted as driver. Moreover the safety of the passengers in vehicle as well as pedestrians depend upon the skill and ability of a driver. In the instant case the doctor who issued the disability certificate was examined. The doctor being P.W. 2 stated that he issued the Certificate after clinical examination of the patient. In cross examination he stated that he examined previous treatment papers including X ray plates. Although he stated that he is not having any specialized knowledge in orthopedic Surgery but the fact he was resident Surgeon General and Orthopedic Surgery of Mahulpahari Christian Hospital Santhal Parganas Bihar is reflected in his letter head.

In the findings of clinical Examination he stated as follows:-

i) The person having pain over chest with breathlessness over right side upper chest.

ii) Heaviness in both the lower chest.

iii) Persistant pain, swelling tenderness and deformity of right foot.

iv) Restriction of movement with stiffness of muscles around right ancle joint.

v) Painful walking on right knee joint.

vi) He will not be able to take up the job of a driver in his future life.

Thus from the observation made after clinical examination it will appear that the claimant is suffering pain on right knee joint stiffness of muscles around right ancle joint and tenderness and deformity of right foot.

Hence there is problem in right limb which is very vital to discharge the function of a driver. A.W. 2 upon clinical examination and on being satisfied about disability has stated with responsibility that the claimant has suffered permanent total disability of 100% and will not be able to take up job of a driver in his future life. Thus the certificate of the Doctor should be accepted and Workmen's Compensation Act being a beneficial legislation the loss of earning capacity of the claimant should be considered as 100%.

In the event total disability is 100% as per Section 4(1)(D) of the statute 60% of monthly wages should be multiplied by relevant factor.

Schedule IV factor of 38 years of age is 189.56. Thus Actual monthly wages should be Rs. 86X30- Rs. 2,580/- per month. As the ceiling limit was Rs. 2,000/- it should be 2000X60%.

Thus Rs. 1,200/- multiplied by Apply factor 189.56 the compensation comes to Rs. 2,27,472/-.

Hence this Appeal FMA-608 of 2007 stands disposed. The Judgment and Award dated 14th January 2003 passed by Learned Judge in the Court of the Commissioner Workmen's Compensation (3rd Court West Bengal) in claim case no. 186 of 1999 stands modified to the extent that the appellant will be entitled to compensation of Rs. 2,27,472/- from the respondents. As respondent no. 2 is the insurer of vehicle for which respondent no. 1 is owner the respondent no. 2 shall deposit compensation of Rs. 2,27,472/- before the Registrar General High Court Calcutta. Such deposit shall be made within 8 weeks from the date of communication of this Order. In the event the compensation awarded by the Learned Court of Commissioner Workmen's Compensation is deposited the balance deposit shall be made. In the event the compensation amount is not deposited within 2 months from the date of communication of the Order the Respondent no. 2 will have to pay interest @12% per annum from the date of the Order.

The appellant will be entitled to withdraw the compensation 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.)