

Item No. 05

Ct 09

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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMAT (MV) 268 of 2024

Subhasree Saha
Vs
The National Insurance Company Limited & Anr.

Mr. Amit Ranjan Ray,
... for the appellant.

Mr. M.P. Chakraborty,
Ms. Ratnadipa Karmakar.
... for the respondent/insurance Co..

Learned advocates for the parties are present.

Heard learned advocates.

The appellant before this Court was a claimant in a case under Section 166 of the Motor Vehicle Act, 1988 and is aggrieved by the judgment and award dated 22nd December, 2023 passed by the Learned Additional District Judge, 1st Court, Krishnagar, Nadia, in M.A.C. Case No. 65 of 2010.

The case of the claimant before the Learned Trial Court may be summed up thus:

“On 21.10.09 the claimant along with her other family members was proceeding towards Nabadwip on N.H.34 from Kolkata by a Maruti Van being no. WB-42 N/2079 at about 1:00 hours at night. At that time the said vehicle dashed against

the tree and the passengers inside the van got seriously injured. Subsequently Sarajit Saha died and other co passengers including claimant was shifted to J.N.M. Hospital, Kalyani. Thereafter the claimant was referred to N.R.S. Medical College & Hospital, Kolkata for better treatment and she was admitted at Apollo Gleneagles Hospital at Kolkata from 21.10.09 to 28.10.09.

The accident took place due to rash and negligent driving of the driver.”

Pursuant to the institution of this case, notice was issued upon the opposite parties. The opposite party/vehicle owner did not contest the case. However, the opposite party National Insurance Company Limited contested the case by filing written statement. Issues were framed and evidence was adduced. Learned Trial Judge upon considering the evidence and upon hearing the learned advocates for the parties, was pleased to dispose of the claim case by observing and directing as follows:

“Hence, It is

ORDERED

that the M.A.C.C. No. 65 of 2010 be and the same is allowed on contest without cost against the O.P. No. 2 and allowed ex-parte against the O.P. No. 1.

The O.P. No. 2 The National Ins. Company is hereby directed to pay compensation of Rs. 7,82,794/- in the name of the claimant.

The O.P. No. 2 The National Ins. Company Limited is hereby directed to issue one A/c payee cheque of Rs. 7,82,794/-in the name of the petitioner within three months from this day. In default, the entire amount shall carry interest @ 9% per annum from the date of order till full and final realization.

The payment of compensation is subject to payment of deficit court fees, if any.

Let copy of this judgment be handed over to both the parties free of cost for information and necessary action.”

The appellant/claimant being aggrieved by the judgment and award dated 22.12.2023 passed by the Learned Trial Judge has come up with the instant appeal.

Heard learned advocates for the appellant/claimant and learned advocates for the respondent/National Insurance Company Limited. Perused the evidence adduced and materials on record.

Learned advocates for the appellant/claimant submits that Learned Trial Judge erred in considering the notional income to be Rs.3000/-.

Learned advocate further submits that the Learned Trial Judge erred in not considering the future prospect of the claimant/victim, which ought to have been considered. Learned advocate also submits that the compensation awarded on account of pain and suffering is meagre.

Learned advocate for the respondent/National Insurance Company Limited submits that the claimant prayed for Rs.3,00,000/- and thus, the Learned Trial Judge has awarded reasonable compensation of Rs.7,82,794/-. Learned advocate submits that the compensation awarded is reasonable.

Upon perusing the materials on record and upon hearing the learned advocates, this Court is of the view that as on date of accident the claimant was a student, the Learned Trial Judge did not consider any error in considering the notional income to be Rs.3000/-. However, with regard to the future prospect, this Court is of the view that future prospect ought to have been awarded in the compensation.

As the Courts and Tribunal are empowered under Section 168 of the Motor Vehicle Act to award just and reasonable compensation the mere prayer of the claimant is not factor in taking into consideration what would be just and reasonable

compensation.

In the event monthly income of the claimant is considered as Rs.3000/- the annual income comes to Rs.36,000/- and taking the percentage of disability to be 30% along with the multiplier of 18, the total loss of earning capacity comes to Rs.1,94,400/-. The future prospect of 40% being added, the net total loss of earning capacity comes to Rs.2,72,160/-. However, the medical expenses of Rs.2,79,194/- being added brings the total compensation of Rs. 5,51,354/-. Considering the period of stay in the hospital, this Court is of the view that compensation of Rs. 2,00,000/- is just and reasonable. Thus, the total compensation of Rs. 7,51,354/- comes by arithmetical calculation.

However, this Court is of the view that compensation of Rs.8,00,000/- is just and reasonable.

Hence, the claimant is entitled to Rs.8,00,000/- along with interest @ 6% p.a. from the date of filing of the claim case till today from the National Insurance Company Limited.

The National Insurance Company Limited shall deposit Rs.8,00,000/- along with interest @6% p.a. before the Registrar General, High Court, Calcutta within eight weeks from the date of communication of the order.

In the event, compensation awarded by the Learned Trial Judge is already paid or deposited the balance amount be deposited.

The appellant/claimant will be entitled to withdraw the compensation upon compliance of all necessary formalities.

The deficit court fees on the enhanced amount be paid within period of four weeks.

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Biswaroop Chowdhury, J.)