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(Via Video Conference)

F.M.A.T. 98 of 2020
with
I.A. No. CAN 1 OF 2021

Hemanta Kumar Mondal
Vs.
The National Insurance Company Limited & Anr.

Mr. Subir Banerjee

...For the Appellant/ Claimant.

Mr. Afroze Alam

...For the Respondent Insurance Co. Ltd.

I.A. No. CAN 1 OF 2021

This is an application for condonation of delay in filing the appeal.

On perusal of the pleadings, this Court is satisfied that the cause shown for delay in filing of the appeal is sufficient and prayer for condonation of delay should be allowed.

The application for condonation of delay being I.A. No. CAN 1 of 2021 is disposed of.

F.M.A.T. 98 of 2020

The instant appeal, filed by the appellant/claimant is directed against the judgement and award dated August 5, 2019 passed by the learned Judge, Motor

Accident Claims Tribunal, Fast Track, 1st Court, Howrah in MAC Case No. 353 of 2012 (1635 of 2014) in a claim under section 166 of the Motor Vehicles Act, 1988 for the accidental injury of the appellant/claimant aged about 38 years on April 25, 2012.

The insurance company is represented. The facts of the case are not in dispute.

Counsel for the appellant submits that the instant claim application has been filed praying compensation for the injury suffered by the appellant/claimant arising out of use of the motor vehicle. The appellant/claimant was a compounder and used to earn Rs.8,000/- per month. After the accident the appellant/claimant was admitted in the hospital and nursing home. The medical board, after medical examination, issued the disablement certificate declaring that the appellant/claimant is disabled to an extent of 50%.

It appears from the award that the tribunal has assessed the monthly income of the appellant/claimant as Rs.3,500/- and granted the medical expenditure to the tune of Rs.10,750/- and Rs.40,000/- for the pain and suffering without considering the future loss of income based on the income and percentage of disability. Counsel for the appellant/claimant submits that the appellant/claimant was not granted any amount under 'future prospect' and the tribunal erroneously considered that the victim is disabled to the extent of 25% though the Medical Board assessed the disability to the extent of 50%. Accordingly, it was argued that a lesser quantum of compensation has been wrongly awarded by the tribunal.

Per contra, counsel representing the insurance company argues that in the facts and circumstances of the case, the award is just and reasonable and there is no future scope of enhancement of the same.

In support of arguments, counsel for the appellant/claimant placed reliance upon the following judgments of the Apex Court :

R.D. Hattangadi –vs.- Press Control of India reported in ***(1995) 1 SCC 551***, ***Raj Kumar –vs.- Ajay Kumar*** reported in ***(2011) 1 SCC 343***, ***Jagadish –vs.- Mohan & Ors.*** reported in ***(2018) 4 SCC 571***, ***Smt. Sarla Verma & Ors. –vs.- Delhi Transport Corporation & Anr.*** reported in ***(2009) 6 SCC 121*** and ***National Insurance Company Limited –vs.- Pranay Sethi & Ors.*** reported in ***(2017) 16 SCC 680***.

This Court is of the view that the disablement certificate is required to be considered in respect of the income of the victim and the victim is entitled to Rs.50,000/- on account non-pecuniary damages.

Considering the judgments and submission of the parties as advanced and also following the precedence of this Court on the point of monthly income, I find substance in the arguments of the counsel for the appellant/claimant. For the year 2012 in a claim under section 166 of the Motor Vehicle Act, 1988 an amount of Rs.4,000/- per month does not appear to be exorbitant. The appellant/claimant is justified in praying for 40% addition on account of 'future prospect' on the income of the victim. It is now well settled that compensation amount should carry interest from the date of filing of claim application.

The appellant/claimant, however, admit that considering the age of the victim the correct multiplier in the instant case should be '15' and not '16' as applied by the learned Judge.

Particulars	**Amount (Rs.)**
Monthly income	Rs.4,000/-
Annual income (4000x12)	Rs.48,000/-
Add future prospect @ 40%	Rs.19,200/-
	Rs.67,200/-
Less deduction of 50% (since the appellant was disabled to the extent of 50%)	Rs.33,600/-
Multiplier '15'	Rs.5,04,000/-
Medical expenses (granted by the tribunal)	Rs.10,750/-
	Rs.5,14,750/-
Add pain and suffering	Rs.50,000/-
	Rs.5,64,750/-
Less – awarded by the Tribunal	Rs.2,18,750/-
Balance (enhancement) amount	Rs.3,46,000/-

The appellant/claimant acknowledges receipt of the awarded amount of Rs.2,18,750/- in terms of direction of the tribunal. Accordingly, the balance enhanced sum of Rs.3,46,000/- would become payable to the appellant/claimant by the respondent insurance company with interest assessed @ 6% per annum on and from the date of filing of the claim petition within a period of 45 days from the date of receipt of the bank account particulars of the appellant/claimant.

Counsel for the appellant/claimant will forward the bank account details of the appellant/claimant within a fortnight from date to counsel for the respondent /insurance company. The payment shall be made to the bank account of the appellant/claimant directly.

With the aforesaid directions the instant appeal is disposed of.

In view of disposal of this appeal, connected applications, if any, are also disposed of. The department concerned is directed to tag the applications, if any, with the main appeal.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of all formalities, on priority basis.

(Shekhar B. Saraf, J.)