

Ct. 14.7
No. 26 2021
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akb

F.M.A.T. 133 of 2016
(Via Video Conference)
Monoranjan Biswas
Vs.
Jarjis Biswas & Anr.

Mr. Muktakesh Das
Ms. Sreemayi Roy

...For the Appellant/Claimant

Mr. Sanjay Paul

...For the Respondent/Insurance Co.

On the oral prayer of the learned Counsel appearing on behalf of the appellants/claimants, the delay in filing the appeal is condoned. No serious objection has been raised by Mr. Sanjay Paul, learned Counsel appearing on behalf of the respondents/Insurance Company.

The application for condonation of delay is disposed of. The concerned Department is directed to trace out the application and tag the same with this appeal.

The appeal is directed against the judgment and award dated January 27, 2015 passed by the learned Additional District Judge, Motor Accident Claims Tribunal, 5th Court, Krishnanagar, Nadia, in M.A.C Case No. 169 of 2009.

The facts of the case are not in dispute. The claim was filed under Section 166 of the Motor Vehicles Act, 1988 for the injuries suffered by the appellant in a road traffic accident occurred on 05.11.2008. The learned Advocate for the appellant/claimant submits that the learned Tribunal committed error in law while reducing the assessed compensation from Rs.6,74,000/- to Rs.5,00,000/- on the ground that the claimant claimed Rs.5,00,000/- in the claim application but fact remains that in the case of *Nagappa –Vs- Gurdayal Singh & Ors.*, reported in (2003) 2 SCC 274 the

Hon'ble Apex Court held that it is the duty of the Court to pay just compensation after considering materials on record upon the claimant irrespective of claim amount as mentioned in the claim application.

The learned Tribunal also committed error in law while not granting 10% additional amount towards future prospect of the victim.

In turn the learned Advocate for the respondent Insurance Company submits that the learned Tribunal also committed error in law while assessing monthly income of the victim Rs.5,000/- without any cogent evidence.

The learned Advocate for the respondent Insurance Company further submits that the learned Tribunal also committed error in law while assessing 85% permanent disability by upholding disability certificate but fact remains that as per schedule appended in Workmens' Compensation Act actual percentage of disability shall be 60% since right leg of the victim was amputated from below knee.

Be that as it may, considering the rival submissions of the parties as well as decision of Hon'ble Apex Court, I am not inclined to interfere with the compensation as assessed by the Tribunal below but only modify the award to the extent of Rs.5,00,000/- to Rs.6,74,000/- considering the ratio as decided in the case of *Nagappa (Supra)*.

Learned Advocate for the appellant acknowledges that his client has already received the entire amount of Rs.5,00,000/- together with interest that has been awarded by the Court below that has been paid by the

Insurance Company. Therefore, the differential amount which comes to Rs.1,74,000/- together with 6% interest from the date of claim application till the payment which shall be paid to the victim by the Oriental Insurance Co. Ltd. within 45 days of receipt of particulars of bank account of the claimant to be supplied by his Counsel to the Counsel for the Insurance Company.

It is made clear that the payments shall be made by NEFT/ RTGS in the proportion as ordered by the Court below.

With the aforesaid directions the instant appeal is disposed of. In view of disposal of this appeal, connected application, if any, is also disposed of.

There shall be no further order as to costs.

LCR, if any, may be returned back to the court below.

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.)