

S/L 19
26.7.2021
Court No.26
SD

FMA 671 of 2021
(Via Video Conference)

Sushil Bayen @ Sushil Bain
Vs.
The National Insurance Co. Ltd. & Anr.

Mr. Amit Ranjan Roy

...for the Appellant/Claimant.

Ms. Sucharita Paul

...for the Respondent/Insurance Co.

The instant appeal has been filed by the claimant against the judgment and award dated February 24, 2016 passed by the learned Judge, Motor Accident Claims Tribunal, Fast Track Court, Suri, Birbhum, in M.A.C. Case No.41 of 2014 on a claim under section 166 of the Motor Vehicles Act, 1988.

The main grievance of the appellant is that the learned Tribunal had not granted an adequate amount of compensation on account of permanent disability, pain, suffering and trauma as a consequence of the injuries, future medical expenses, loss of amenities, etc. in spite of holding that the 41 years old injured van rickshaw puller had suffered 100% loss of earning capacity due to the severe injuries suffered by him in an accident dated 15.09.2010. The claimant claims that though the Tribunal held the income of the victim to be Rs.3,000/- per month, yet a lump sum amount of Rs.3,00,000/- was awarded for the 80% disability suffered by him as per the Disability Certificate, issued by the Medical Board, Rampurhat S.D. Hospital. The appellant further points out that he is also entitled to 25% on account of future prospects. However, the Tribunal erred in not allowing the same.

The appellant relies upon the judgments passed by Hon'ble Supreme Court in the cases of ***R D Hattangadi***

Vs. Pest Control (India) (Pvt) Ltd, reported in ***(1995) 1 SCC 551***, ***Raj Kumar Vs. Ajay Kumar & Anr.***, reported in ***(2011) 1 SCC 343***, ***Jagdish Vs Mohan & Ors.***, reported in ***(2018) 4 SCC 571***, ***National Insurance Company Ltd. Vs. Pranay Sethi & Ors.***, reported in ***(2017) 16 SCC 680***, ***Smt. Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr.*** reported in ***(2009) 6 SCC 121***.

From the records, it is found that the injured victim remained admitted at different government hospitals for a reasonable amount of time. After being discharged from the hospital, his treatment continued at the OPD department of Burdwan Medical College and Hospital. Victim had produced documents in support of his treatment and the said documents have been marked as exhibits by the learned Court below. PW2, being the Superintendent of Rampurhat District Hospital, proved the Disability Certificate, being exhibit 11, issued by the Medical Board of the said Hospital.

The Insurance Company is represented and opposes the case made out by the claimants.

The Hon'ble Supreme Court has time and again observed that "just compensation" should include all elements that place the victim in as near a position as she or he was in, before the accident. Though no amount of money can erase the trauma or the pain and suffering that a victim undergoes after a serious accident, monetary compensation is the manner known to law, which assures some measure of restitution to those who have survived have to face their lives.

This Court therefore feels that by present standards, an amount of Rs.50,000/- on account of future medical expenses, loss of amenities, pain and suffering and loss of expectation of life, can be granted to the claimant, considering that he suffered disability to the extent of 80 per cent.

The Tribunal has given reasons for accepting the income of the victim to be Rs.3,000/- per month for the above accident dated 15.09.2010. Since the reasons appear to be cogent and worthy and also as per the usual practice of this Court, no interference is called for in such regard.

Accordingly on such basis and after considering the submissions as advanced by the learned advocates for the parties, the impugned award is modified and reassessed as follows:

<u>Particulars</u>	<u>Amount (Rs.)</u>
Monthly income	3,000.00
Add 25% future prospect	<u>(+) 750.00</u>
	3,750.00
	<u> x 12</u>
	45,000.00
Multiplier of 14 to be used	<u> X 14</u>
	6,30,000.00
80% loss of earning capacity/disability	<u> X 80%</u>
	5,04,000.00
Non pecuniary expenses	<u>(+) 50,000.00</u>
	5,54,000.00
Less: awarded amount	<u>(-) 3,00,000.00</u>
Differential amount	<u>2,54,000.00</u>

The claimants acknowledge receipt of the entire awarded amount of Rs.3,00,000/- along with interest. The balance amount of Rs.2,54,000/- would become payable to the claimants by the Insurance Company together with interest assessed @ 6 per cent per annum, 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 claimants. Advocate for the claimants will forward the bank account details of the claimants within a fortnight from date to the Advocate for the insurance company.

The informal paperbook, handed over by the learned Advocate for the appellant, be kept on record.

With the aforesaid directions, the instant appeal is disposed of.

There shall be no order as to costs.

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

The Registry is directed to send down the lower court records at once, if received by this time.

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.)