Ct. No. 26

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F.M.A. 1393 of 2013
(Via Video Conference)
Uttam Bhandari
Vs.
National Insurance Co. Ltd. & Anr.

Ms. Sima Ghosh **...For the Appellant/Claimant**

Mr. Afroze Alam **...For the Respondent/Insurance Co.**

This appeal is directed against the judgment and award dated March 18, 2013 passed by the learned Judge, Motor Accident Claims Tribunal, 3rd Court, Suri, Birbhum, in M.A.C. Case No. 82 of 2008.

Various points have been raised by the claimant in the instant appeal challenging the quantum of compensation.

It is submitted on behalf of the appellant that the learned Tribunal committed error in law while assessing the income of the victim as Rs. 3,000/- per month, instead of Rs.5,000/- per month. Claimant alleges that the victim suffered 80% disability, lost his job and had been unemployed, yet learned Tribunal accepted such disability at 30% only. Claimant further prays for compensation for future medical expenses and under non-pecuniary heads, including pain and suffering, loss of amenities and enjoyment of life. Lastly, the claimant asks for cost of ‘artificial limb’. To buttress his argument, the appellant relies upon the decision in the case of ***Govind Yadav Vs. New India Insurance Co. Ltd.,*** reported in **2012 (1) TAC 1 (SC).**

In reply, Mr. Afroze Alam, learned Counsel for the respondent/Insurance Company submits that the award passed by the learned Tribunal is absolutely just and there is no scope of interference and/or modification of award. Mr. Alam further submits that since the claimant failed to establish the income of the deceased, the learned Tribunal rightly assessed the annual income of the deceased as Rs.3,000/- notionally.

However, following the precedence of this Court on point of monthly income, I find substance in the arguments of the appellant. Victim was a 'Barbar' in 2008. In a claim under Section 166 of the Motor Vehicles Act, 1988 an amount of Rs.4,000/- per month as future income and the disability of the victim to be assessed at 60% instead of 30% does not appear to be exorbitant. Accordingly, the impugned award is modified and recalculated in manner referred hereinafter:-

Monthly Income	**Rs. 4,000/-**
Annual income to the 60% disablement	**Rs. 28,800/-**
Multiplier of '16' –	**Rs. 4,60,800/-**
Total Medical Expenses	**Rs. 1,00,000/-**
Future Medical Expenses	**Rs. 30,000/-**
Compensation due to pain and sufferings	**Rs. 1,00,000/-**
Loss of amenities and enjoyment of life	**Rs. 1,00,000/-**
Compensation for living cost and artificial limbs	**Rs. 1,00,000/-**
TOTAL Compensation	**Rs. 8,90,800/-**

The award shall carry interest at the rate of 6 per cent per annum as per Motor Vehicles Act, 1988 on and from the date of filing the claim petition till the actual satisfaction of award money.

The claimants acknowledge receipt of the awarded amount of Rs.3,18,800/- along with interest.

Accordingly, the balance enhanced sum of

Rs.5,72,000/- would become payable to the appellant/claimant by the Insurance Company, together with interest assessed at the rate of 6 per cent 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.

Learned Counsel for the appellant will forward the bank account details of the appellant within a fortnight from date to the learned Counsel for the Insurance Company.

With the aforesaid directions the instant appeal is disposed of.

There shall be no further order as to costs.

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

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.)