

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE RABINDRANATH SAMANTA

FMA 531 of 2011

IA No. CAN 1 of 2011 (Old No. CAN 3850 of 2011)

**1. Abul Hossian@ Sk.Abul Hosen..Appellants/Claimants
Vs
1. *Oriental Insurance Company Ltd.*
2. *Sri Anukul Kapri & 2 others owners*
.....Respondents**

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Mr. Krishanu Banik, Adv.

..... for the Appellant

Ms. Sucharita Paul, Adv.

.....for the Respondent No.1

Heard On : 06.07.2022

Judgment on : 27.07.2022

Rabindranath Samanta, J:-

1. Aggrieved by the judgment and award dated 6th April, 2010 passed by the learned Judge, Motor Accident Claims Tribunal (hereinafter be referred to as the Tribunal), 2nd Fast Track Court, Tamluk, Purba Medinipur in MAC Case No. 64 of 2008 arising out of MAC Case No. 13 of 2008, the appellant has preferred the instant appeal. By the judgment the learned Tribunal directed the respondent No.1, Oriental Insurance Company Limited to pay an amount of Rs. 3,05,362/- as compensation to the appellant/claimant within two months from date

- of receipt of a copy of the award, failing which the amount shall carry interest at the rate of 9% per annum till realization of the amount. Assailing the compensation as awarded as inadequate compensation, the appellant by presenting this appeal seeks enhancement of the compensation.
2. The background facts which led the filing of the claim application under Section 166 of the Motor Vehicles Act may be adumbrated as under:

On 26.11.2007 at about 12:45 PM Abul Hossian @ Sk. Abul Hosen son of Sk. Apnser Ali @ Apser Ali of village Bar Basudevpur, P.S- Sutarehata, District- Purba Medinipur and other passengers were going to Haldia from Bagnan along Durgachak-Mahishadal Metal Road by a bus bearing No. WB-29-8005. The said bus was running with excessive speed endangering to human life and safety. When the bus reached at Dwariberia Ashram Morh under P.S- Sutarehata at that time, the driver of the bus lost his control and dashed against a road side tree and capsized there. As a result, Abul Hossian @ Sk. Abul Hosen sustained grievous injuries all over his body, especially on his head, forehead. He sustained fractures on spinal cord at C2-C3 level. The victim was initially taken to Durgachak S.D.Hospital on 26.11.2007 and thereafter he was shifted to Medical College & Hospital, Kolkata on 27.11.2007. He was medically treated there from 27.11.2007 to 08.12.2007. The doctor advised the victim that his spinal cord would be operated. The victim is still under medical treatment. Towards medical expenditure he has already spent Rs.1,00,000/-.

3. The victim has now become paralysed on account of the injuries sustained by him on his spinal cord.
4. The accident took place due to rash and negligent driving on the part of the offending bus. The victim was a tailor and supplier of

readymade garments at different market. He used to earn Rs.4,500/- per month. After he became paralysed, he now cannot carry on his business. As a result, his family members are suffering immense financial distress.

5. At the time of the accident the victim was aged about 39 years.
6. On the allegations of rash and negligent driving on the part of the driver of the offending vehicle, an FIR was lodged at Sutahata Police Station and the FIR was registered as Sutahata PS Case No. 65 of 2007 dated 26.11.2007 under Sections 279/337/338 of the Indian Penal Code. At the time of the accident the offending bus was insured with the respondent No.1, Oriental Insurance Company Limited.
7. On the facts as stated above, the claimant sought for compensation of Rs. 5,50,000/- and interest thereon.
8. The respondent No.1, Oriental Insurance Company Limited contested the claim case by filing a written statement wherein it denied the averments/allegations as made in the claim application and sought for dismissal of the case.
9. Upon the pleadings of the parties the following issues were framed by the learned Tribunal.
 - i) Whether the case is maintainable in its present form and prayer?
 - ii) Whether the injury of the victim was caused due to rash and negligent driving by the driver of the offending vehicle being No. WB-29-8005 on the aforesaid date and time?
 - iii) Whether the petitioner is entitled to get compensation, if any, as prayed for?
 - iv) To what other relief/reliefs, is the claimant entitled?

10. To prove his case the claimant Abul Hossian @ Sk. Abul Hosen got himself examined as P.W. 1 and he examined Dr. Sandipan Bhattacharya as P.W. 2. The claimant relied on some documents which were marked as Exhibits 1 to 10.
11. Upon hearing the learned Advocates appearing for the parties and on assessment of the evidence on record the learned Tribunal partly allowed the claim application and awarded the compensation as indicated above.
12. The victim Abul Hossian @ Sk. Abul Hosen(P.W.1) who is the injured and saw the accident in his evidence has unequivocally stated that due to rash and negligent driving on the part of the driver of the offending bus, the bus dashed against a road side tree and capsized. As a result of which he sustained severe injuries on his person. Initially he was taken to Durgachak S.D. Hospital on 26.11.2007 and therefrom he was shifted to Medical College & Hospital, Kolkata where he was admitted for medical treatment from 27.11.2007 to 08.12.2007. His spinal cord was operated. Thereafter, he was treated by different private doctors and his treatment is still going on. He has obtained a disablement certificate to the extent of 50% from Haldia S.D. Hospital. Nothing has been elicited from the cross-examination of this witness to discredit the evidence as adduced by him in chief. Rather the victim in cross-examination has deposed that at present he has partial paralysis on his right hand and right leg.
13. Therefore, I agree with the finding of the learned Tribunal that due to rash and negligent driving on the part of the offending vehicle the victim met with the accident and he sustained severe injuries on his person resulting in partial disablement. P.W. 2 Dr. Sandipan Bhattacharya who was one of the members of Medical Board has deposed that the Medical Board issued handicap/disablement certificate to the victim Abul Hossian @ Sk. Abul Hosen after examining him and on consideration of the medical papers. This

witness has proved a disablement certificate which has been marked as Exhibit 11. It appears from the disablement certificate that the disablement of the victim is to the extent of 50%. Since no appeal or cross-objection has been filed by the Insurance Company, the findings recorded by the learned Tribunal remain unchallenged. Under such factual scenario, it can safely be held that due to the accident as above the victim sustained severe injuries resulting in disablement to the extent of 50%.

14. It appears from the judgment of the learned Tribunal that the learned Tribunal has held that the income of the victim was Rs.4,500/- per month from his tailoring and garment business. But, from the evidence on record I do not find any iota of document admitted in evidence which will evince that the victim used to earn Rs.4,500/- per month. However, Mr. Krishanu Banik, learned lawyer appearing for the appellant/claimant fairly submits that his client could not prove that he used to earn Rs.4,500/- per month by documentary evidence. But, learned lawyer points out that in view of a catena of decisions of this Hon'ble Court, the income of a workman or labourer shall be held to be of Rs.3,000/- per month upto the year 2010 in the absence of any documentary evidence. Learned Advocate appearing for the Insurance Company does not contend the submission of the learned lawyer for the appellant on assessing the monthly income of the victim as of Rs.3,000/-. Therefore, it is held that the monthly income of the victim before the accident was Rs.3,000/- per month.
15. Mr. Banik, learned lawyer submits that the learned Tribunal erred in not making any assessment on the count of future prospects. Placing reliance on a decision in the case of **Jagdish-Vs-Mohon & Ors** reported in **AIR 2018 SC 1347** and decision in the case of **Pappu Deo Yadav-Vs-Naresh Kumar and Ors** reported in **AIR 2020 SC 4424** learned lawyer submits that the Hon'ble Apex Court in these

- two decisions has held that on sustaining disablement by an injured person of a road traffic accident, future prospects would be allowed to him following the decision rendered in the case of ***National Insurance Company Limited -Vs- Pranay Sethi and Ors*** reported in ***(2017) 16 SCC 680***.
16. On reading of the decisions reported in ***AIR 2018 SC 1347 (Jagdish-Vs-Mohon & Ors)*** and ***AIR 2020 SC 4424 (Pappu Deo Yadav-Vs-Naresh Kumar and Ors)*** I find that the Hon'ble Apex Court has held that an injured afflicted with disability is entitled to future prospects following the decision of ***Pranay Sethi*** (supra).
 17. But, the learned Tribunal erred in not allowing any compensation to the victim on the count of future prospects. As pointed out by learned lawyer appearing for the Insurance Company, the learned Tribunal wrongly adopted the multiplier 16 instead of multiplier 15. At the time of the accident the victim was aged about 39 years. In terms of paragraph 42 of the decision in the case of ***Sarla Verma and Ors -Vs- Delhi Transport Corporation and Ors*** reported in ***(2009) 6 SCC 121*** multiplier 15 will be adopted for the age group of 36 years to 40 years.
 18. The Hon'ble Apex Court in the decision in the case of ***Raj Kumar-Vs- Ajay Kumar & Anr*** reported in ***(2011) 1 SCC 343*** has held that no amount will be deducted towards the personal and living expenses in case of an injured afflicted with permanent or partial disability. The claimant is entitled to get compensation on the count of non-pecuniary damages, but the learned Tribunal grossly erred in not awarding such compensation. Learned lawyer submits that the claimant is entitled to a compensation of Rs.1,00,000/- on such count. In support of his submission learned lawyer has cited a decision in the case of ***R.D. Hattangadi-Vs- M/s. Pest Control (India) Pvt. Ltd*** reported in ***AIR 1995 SC 755***. The Hon'ble Apex Court at paragraph 9 of the decision has held as under:

“9. Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which is capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit upto the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk run or sit; (iii) damages for the loss of expectation of life, i.e. on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment frustration and mental stress in life.”

19. As prophetically stated at paragraph 10 in ***R.D. Hattangadi*** (supra) it is the truth for all time to come that no amount of compensation can restore the physical frame of the victim and that is why it has been said by Courts that whenever any amount is determined as the compensation payable for any injury suffered during an accident, the object is to compensate such injury so far as money can compensate because it is impossible to equate the money with the human sufferings or personal deprivations. Money cannot renew a broken and shattered physical frame.
20. Admittedly, there is no rule of thumb to determine the compensation on non-pecuniary damages. In a catena of decisions the Hon'ble Supreme Court as well as this Court has assessed the compensation on non-pecuniary damages considering the facts and

circumstances of each case. In such context a decision of this Court in the case of **Anamika Mondal -Vs- United India Insurance Co. Ltd. and another** reported in **2010 ACJ 65** may be referred. In this decision an assistant school teacher of a secondary school who suffered 50% permanent disablement, but did not lose her job was given compensation of Rs.1,00,000/- towards pain and suffering. This High Court rendered this decision placing reliance on the principles as enunciated by the Hon'ble Apex Court at paragraphs 9 and 10 in **R.D. Hattangadi** (supra). Bearing in mind the principles enunciated by the Hon'ble Apex Court in the decision in the case of **R.D. Hattangadi-Vs- M/s. Pest Control (India) Pvt. Ltd** reported in **AIR 1995 SC 755** and the quantum of compensation given by this High Court to a lady teacher afflicted with disablement to the extent of 50% I think that the victim who has suffered disablement to the extent of 50% should be awarded compensation on the count of pains and sufferings. As directed by the Hon'ble Apex Court in the case of **Pranay Sethi** (supra) compensation on the count of future prospects to the extent of 40% would be added since the victim then aged about 39 years was a self-same employed person. I think that it will be wise if compensation of Rs.1,00,000/- is given to the claimant on the count of non-pecuniary damages i.e. pains and suffering.

21. Therefore, in view of the findings as recorded above, the award passed by the learned Tribunal needs modification in the following manner.

1) Monthly Income to be assessed=	Rs. 3,000/-
2) Annual Income to be assessed=	Rs. 36,000/-
(Rs.3000 x 12)	
3) Future Prospects to be assessed at the =	Rs. 14,400/-
rate of 40%	
4) Total=	Rs. 50,400/-

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| 5) 50% loss of income due to suffering=
from disablement to the extent of 50% | Rs.25,200/- |
| 6) Adopting Multiplier 15 as per=
the age of the victim of 39 years
(Rs.25,200 x 15) | Rs. 3,78,000/- |
| 7) Medical Expenses incurred by the
victim= | Rs.17,362/- |
| 8) Non-pecuniary damages i.e. pains
and sufferings= | Rs.1,00,000/- |
| 9) Total compensation comes to= | Rs.4,95,362/- |
22. Admittedly the claimant has already received compensation of Rs.3,05,362/- as awarded by the learned Tribunal.
23. Therefore, the claimant is entitled to get further compensation of Rs.1,90,000/-. The claimant is also entitled to get interest at the rate of 6% per annum on the awarded amount of money.
24. Therefore, the appeal merits success and accordingly the appeal is allowed on contest against the respondent No.1 and ex parte against the respondent No.2.
25. The respondent No.1 is directed to pay Rs.1,90,000/- as further awarded amount of money and to pay interest at the rate of 6% per annum on this amount of money from the date of filing of the claim application on 05.01.2008. The respondent No.1 is further directed to pay interest at the rate of 6% per annum on the awarded amount of Rs.3,05,362/- from the date of filing of the claim application till this amount was deposited with the learned Tribunal.
26. The respondent No.1 is directed to deposit the awarded amount of money and the interest as indicated above with the learned Registrar General, High Court, Calcutta within five weeks from date.

27. After the awarded amount is deposited the learned Registrar General shall release the money to the claimant after being satisfied with his identity.
28. With the aforesaid direction the appeal and connected application if any stand disposed of.
29. No order as to costs.
30. Send down the LCR along with a copy of this judgment to the learned Tribunal for information.
31. Urgent certified website copies of this judgment, if applied for, be given to the parties upon compliance with all requisite formalities.

(Rabindranath Samanta,J.)