

28.11.2022
KC(25)

F.M.A. 51 of 2012
Sandhya Mondal
-versus-
The New India Assurance Company
Limited and Ors.

Mr. Jayanta Kumar Mondal.....For the appellant.

Ms. Gopa Das Mukherjee....For the respondent no. 1/
insurance company.

This is an appeal directed against the judgment and award passed on 31st January, 2011 by the learned Judge, Motor Accident Claims Tribunal, 14th Additional District Judge, Alipore in M.A.C. Case No.82 of 2010.

The claim case arose on account of injuries sustained by the victim on 1st April, 2006 by the involvement of offending auto rickshaw bearing registration No. WB 19B 3225 near Budge Budge. At the relevant point of time due to rash and negligent driving of the auto rickshaw it turned upside down near Kayeth Beltala. As a result, the claimant sustained fracture injury and she was shifted to Budge Budge E.S.I. Hospital for treatment.

By this claim petition, the claimant claimed Rs. 5,00,000/- as compensation.

The insurance company contested the case by filing written statement denying all averments in the claim petition contending *inter alia* that the claimant is not entitled to any compensation.

In course of trial, total six witnesses were examined on behalf of the claimant.

P.W. 1, Clerk-in-charge of E.S.I. Hospital, Budge Budge has stated nothing in connection with this case excepting filing original documents.

P.W. 2 is the claimant herself who stated about the manner of the accident and injury sustained by her. She has stated at the relevant point of time she used to earn Rs. 2,000/- per month and at the time of accident she was aged about 26/27 years.

P.W. 3, claiming to be an eye witness to the accident, has stated that at the relevant point of time he was going along the place of occurrence by cycle. He found one auto rickshaw was running on high speed and it ultimately overturned. As a result, the passengers of the auto rickshaw sustained injury.

P.W. 4, Medical Officer attached to Budge Budge E.S.I. Hospital deposed about the long treatment of the injured claimant and various documents were marked as exhibits in course of his evidence.

P.W. 5, Manager, Fort Export (P) Limited came to the court and proved the salary slip of the injured claimant.

P.W. 6, Dr. S. J. Bhattacharya issued the disability certificate.

Learned Tribunal after assessing entire evidence on record came to his finding by promulgating an award of Rs. 1,82,800/-.

In course of argument Mr. Jayanta Kumar Mondal, learned advocate appearing on behalf of the claimant has contended that learned Tribunal did not consider future prospect and pain and sufferings of the claimant for which Mr. Mondal has referred to evidence of P.W. 4, Medical Officer attached to Budge Budge E.S.I. Hospital. It is contended that learned Tribunal should have considered the long treatment of the injured claimant in the E.S.I. Hospital at Budge Budge before assessing non-pecuniary loss. It has been further contended that learned Tribunal did not consider also the future prospect.

In this appeal only issue to be decided is as to whether the learned Tribunal should have allowed more compensation under the head of non-pecuniary loss and whether the learned Tribunal should have considered the future prospect to the extent of 40% of income of the victim.

None of the learned advocates on behalf of the parties to this appeal raised any issue regarding accident on account of rash and negligent act of the offending auto rickshaw or income of the injured claimant.

In view of the age, as disclosed by the claimant herself in her evidence that at the relevant point of time she was 26/27 years of age and that is why multiplier of '17' should be applied to assess compensation in terms of principles laid down by the Hon'ble Apex Court.

That apart from the evidence it appears that the claimant had to suffer a lot due to her treatment for a considerable period at the E.S.I. Hospital and for that reason her service was terminated.

Accordingly, I modify the compensation as follows:

Monthly Income	Rs. 2,000/-
Annual Income (Rs.2,000/- x 12)	Rs. 24,000/-
Add 40% future prospect	Rs. 9,600/-
Multiplier by 17 (Rs.33,600 x 17)	Rs. 5,71,200/-
Disability to the extent of 40% as per order of the Tribunal (40% of Rs. 5,71,200)	Rs. 2,28,480/-
Pain and Suffering	Rs. 1,00,000/-
Total :	<u>Rs. 3,28,480/-</u>
Less – Already received	Rs. 1,82,000/-
Enhancement:	Rs. 1,46,480/-

For the reasons, it is seen that the appellant/claimant is entitled to the total compensation to the tune of Rs.3,28,480/- . It is reported that the appellant/claimant has already received Rs.1,82,000/- from the learned Tribunal.

Thereby, the appellant/claimant is entitled to the balance compensation amount of Rs.1,46,480/- along with interest @ 6% per annum from the date of filing of the claim petition till the deposit of the amount.

The New India Assurance Company is directed to deposit the balance amount of Rs.1,46,480/- along with interest @ 6% per annum from the date of filing of the claim petition till the actual deposit of the amount before the office of the learned Registrar General of this Court, within six weeks from the date of this order.

The insurance company is directed to deposit the amount with the office of the learned Registrar General within the aforesaid time limit.

The learned Registrar General is requested to disburse the amount to the appellant/claimant on proper identification.

With the above observation, the appeal, being FMA 51 of 2012 is disposed of.

All pending applications, if there be any, also stand disposed of.

Records of the learned Tribunal along with a copy of this order be transmitted back immediately.

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

(BIBHAS RANJAN DE, J.)

