Ct. No. 14

41 akb

26.8 2022

F.M.A. 1218 of 2008

Motijan Bibi

-Versus-

1.The United India Insurance Co. Ltd.

2. Sri Manash Dhara ....Respondents

Mr. Subir Banerjee
Mr. Sandip Bandyopadhyay
Ms. Ruxmini Basu Roy

...For the Appellant/Claimant

Mr. Arabinda Kundu

...For the Respondent No.1, the United India Insurance Company Limited

The appeal is taken up for further hearing.

I have heard learned Lawyers appearing for the parties at length.

Hearing stands concluded.

This appeal has been preferred against the judgment and award passed by the learned Judge, Motor Accident Claims Tribunal (hereinafter be referred to as the Tribunal), 1st Court, Paschim Medinipur in MACC No. 286 of 2002. By the impugned judgment dated 17th May 2006, the learned Tribunal directed the respondent No. 1, the United India Insurance Company Ltd. to pay compensation of Rs. 1,08,077/- to the claimant within one month from the date, failing to pay the amount, the amount would carry interest at the rate of 7% per annum.

The facts emanating from the claim application under Section 166 of the Motor Vehicles Act and which are necessary for adjudication may be summarized as under :

On January 03, 2002 at about 10.30 a.m. while the appellant Motijan Bibi of Village – Mamudpur, P.O. & P.S. Daspur, District – Medinipur along with her husband

and grandson were proceeding towards Daspur Bazar by the left side of the morum road of Tamluk-Panskura road, then a bus bearing No. WB-29/3283 which was coming from Panskura side with excessive speed and driven in rash and negligent manner dashed her from behind. As a result of which, she sustained deep blood injuries on her person. With the help of the local people, she was admitted to Daspur Hospital on the date. Thereafter, she was shifted to Calcutta Medical Research Institute (CMRI). She was admitted there upto 26th January, 2002. In order to save her life, she had to undergo four major surgical operations at CMRI. Her condition of health is deteriorating and she is passing her days with pains. For the purpose of her medical treatment, she spent Rs.4,50,000/-.

At the time of the accident, the injured was aged about 47 years. She was a housewife and would assist her husband in agricultural work and in his business. By this way, she used to earn Rs. 4,000/- per month.

The claimant / injured sustained fatal injuries on her person due to rash and negligent driving on the part of the driver of the offending vehicle. On the allegations of the rash and negligent driving, an FIR was lodged at Daspur Police Station and the FIR was registered as Daspur Police Station Case No. 03 of 2002 dated 3rd January, 2002. Narrating the facts as above, the claimant sought for compensation of Rs. 7,80,000/-.

The respondent No. 1, the United India Insurance Company Ltd. contested the claim application by filing a written statement wherein it denied the averments and allegations as made by the claimant in the application and sought for dismissal of the application.

In order to prove her case, the claimant, Motijan Bibi got herself examined as PW-1. She examined Rathindranath Chakraborty, an employee of CMRI hospital as PW-2. The certified copies of the FIR, charge sheet, seizure list, discharge certificate and the medical vouchers/bills upon which the claimant placed reliance were marked as Exhibits 1 to 5(b).

No oral or documentary evidence was adduced from the side of the respondents before the learned Tribunal. Upon hearing the learned Advocates for the parties and on consideration of the oral and documentary evidence, the learned Tribunal partly allowed the claim application and awarded the compensation as indicated above.

As it appears, no appeal or cross objection has been preferred by the Insurance Company against the findings recorded by the learned Tribunal. The uncontroverted findings recorded by the learned Tribunal show that due to rash and negligent driving on the part of the driver of the offending vehicle, the claimant Motijan Bibi sustained injuries on her person. However, on analyzing the evidence of PW-1, Motijan Bibi, the injured, who witnessed the entire accident, I find that she has been able to prove that due to rashness and negligence on the part of the driver of the offending vehicle, the accident took place and she became fatally injured because of the accident.

In this case, no disablement certificate was produced before the learned Tribunal. However, the learned

Tribunal awarded the compensation based on the medical vouchers/bills.

Learned Lawyer appearing for the appellant submits that the learned Tribunal while calculating the compensation did not properly analyze the medical vouchers/bills. If the medical vouchers/bills which have been admitted in evidence are analyzed properly, it will be found that the medical vouchers/bills amount to Rs. 3,01,766.05. Learned Lawyer also submits that from the evidence on record it will be found that the injured was bedridden and jobless for 26 months. Learned Lawyer submits that the injured in her evidence has stated that she used to earn Rs. 4,000/- per month by assisting her husband in agricultural work and also in his business. In such context, learned Lawyer submits that in the absence of any document, the monthly income of a labourer or workman or workwoman should be assessed at Rs. 3,000/- per month upto 2010. Besides, according to the learned Lawyer the claimant is also entitled to get Rs. 4 lakhs towards her sufferings from mental pains.

Per contra, learned Lawyer appearing for the respondent No.1, the Insurance Company submits that the learned Tribunal was justified in awarding compensation after going through the medical vouchers/bills produced before the learned Tribunal. He submits that the victim at the time of the accident was aged about 47 years and this is not probable that she at that age used to assist her husband in agricultural work. On such score learned Lawyer vehemently opposes the prayer of the claimant that she used to earn Rs. 3,000/- or Rs. 4,000/- per month. He further submits that since there is no disablement certificate, the claimant is not entitled to get compensation on her suffering from mental pains. Based on such submission learned Lawyer urges that the appeal preferred by the appellant is liable to be dismissed.

The claimant in her evidence has stated that she used to assist her husband in agricultural work and by this way she used to earn Rs. 4,000/- per month. It is our common experience that in rural Bengal women from poor family work as day labourer in agricultural field, at brick field, at tea garden, at factory etc. This is also our common experience that women of poverty stricken family assist their husbands in agricultural field. In the month of rainy season, many women are seen working at agricultural field and planting supplings of paddy. That being so, the submission advanced by the learned Lawyer for the respondent No. 1 that the claimant excepting household work did not earn any money is not acceptable.

As has been held by this Court in a catena of decisions, in the absence of any documentary evidence, the monthly income of a workman / labourer upto the year 2010 shall assessed at Rs. 3,000/- per month.

It is the fact that no disablement certificate has been produced on behalf of the appellant/claimant before the learned Tribunal. But the fact which comes from the evidence of PW-1, the medical vouchers/bills and other medical papers, the claimant became jobless for 26 months. Therefore, during this period of her remaining jobless, she is entitled to get the compensation for the period at the rate of Rs. 3,000/- per month.

The Hon'ble Apex Court in the case of ***R.D. Hattangadi-Vs- M/s. Pest Control (India) Pvt. Ltd.,*** reported in **AIR 1995 SC 755** at paragraph 9 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."***

Considering the nature of the injuries as suffered by the injured which are evident from the medical papers (Exhibit 4 series), I feel that some amount of compensation should be awarded to her on her suffering from mental pains and loosing the normal enjoyment of life.

I feel that if an amount of Rs. 50,000/- is awarded to her as compensation on the non-pecuniary damages it will meet the interest of justice.

In view of the findings as above, the award passed by the learned Tribunal requires modification in the following manner:-

Total Medical Expenses	**Rs. 3,01,766.05**
Total loss of Income for 26 months On 3rd January 2002 to 5th Marth 2004 (3,000 X 26)	**Rs. 78,000.00**
Non-pecuniary damages due to Suffering from mental pains and deprivation of enjoyment of life	**Rs. 50,000.00**
Total compensation	**Rs. 4,29,766.05**

Admittedly, the claimant has already received the awarded amount of Rs. 1,08,077/-.

In view of the above, the appellant / claimant is entitled to get further compensation of Rs. 3,21,689/- (rounded off). Besides, the claimant is entitled to get interest @ 6% per annum on this awarded amount of money from the date of filing of the claim application till the amount is deposited.

Therefore, on modification of the award passed by the learned Tribunal, respondent No. 1, the United India Insurance Company is directed to deposit a further sum of Rs. 3,21,689/- as compensation, interest @ 6% per annum on this further amount of compensation from the date of filing of the claim application on 4th April 2002 and 6% interest on the amount of Rs. 1,08,077/- (already paid) from the date of filing of the claim application till the amount was deposited with the learned Tribunal by way of cheque with the learned Registrar General of this Court within six weeks from date.

After the aforesaid amount of money is deposited by the Insurance Company with the learned Registrar

General, the learned Registrar General shall release the amount to the claimant/appellant as expeditiously as possible after being satisfied with her identity.

With the aforesaid direction the appeal and connected application, if any, stand disposed of. No order as to costs.

Send down the LCR along with a copy of this order to the learned Tribunal for information.

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

(Rabindranath Samanta, J.)