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F.M.A. 1533 of 2018
CAN 1 of 2021

Jahanara Begam
Vs.
Sri Paritosh Ghosh & anr.

Ms. Susmita Saha Dutta
Mr. Niladri Saha
... For the appellant/claimant

Mr. Debnarayan Roy
... For the respondent No.2/Insurance Co.

Challenging the compensation as awarded by the learned Judge, Motor Accident Claims Tribunal (hereinafter referred to as the Tribunal), Fast Track Court-I, Raiganj, Uttar Dinajpur in M.A.C.C. No. 106 of 2015 as the inadequate compensation, the appellant Jahanara Begam, has preferred the instant appeal.

By the judgement dated 8th February, 2017, the learned Tribunal directed the respondent no.2, the National Insurance Company Limited, to pay compensation of Rs.2,70,000/- to the appellant, who happens to be the mother and guardian of the injured Firdous Alam.

The background 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 10th December, 2014 at about 16:00 hours, Firdous Alam with his father was returning home from their relative's house via Itahar by a bicycle. His father was riding the bicycle. They were on the left side of the road and when they reached at Saraidighi on the eastern side of *kancha* portion of the road, at that time a truck bearing registration No.WGR-1457 which was proceeding towards Itahar from Malda at a high speed and driven in rash and negligent manner, went to the wrong side of the road and dashed them. Because of the impact of the tremendous force of the truck, they were thrown off the road and the truck ran over Firdous Alam. Both his legs were crushed by the wheel of the truck. His father was also run over by the truck and died on the spot.

The injured Firdous Alam was taken to Raiganj Sadar Hospital in a serious condition on the same day. On the next day he was referred to North Bengal Medical College and Hospital. He was admitted there for the period from 11th December, 2014 to 13th December, 2014. From North Bengal Medical College and Hospital he was referred to S.S.K.M. Hospital and he was admitted there on 14th December, 2014 and treated there upto 5th February, 2015. During his treatment there, he had undergone surgical operations on his legs. Because of the serious injuries sustained by him on his person, the injured has sustained disability to the extent of 90%.

It is alleged by the claimant that due to rash and negligent driving on the part of the offending vehicle, the accident took place and the injured became disabled to the above extent.

On the allegation of rash and negligent driving on the part of the offending vehicle, one F.I.R. was lodged at Itahar Police Station and the F.I.R. was registered as Itahar Police Station Case No.383 of 2014 dated 12th December, 2014 under Sections 279/338/304A of the Indian Penal Code, for investigation.

At the time of the accident, the offending vehicle was insured with the aforesaid Insurance Company.

On the facts as above, the claimant sought for compensation of Rs.4,00,000/- on pecuniary and non-pecuniary loss and interest thereon.

However, the Insurance Company by filing its written statement denied the allegations as made in the claim application and sought for dismissal of the claim case.

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.

As I find, no appeal or cross-objection has been preferred by the Insurance Company against the findings recorded by the learned Tribunal. On assessment of the evidence especially the evidence of the eye-witness, the

learned Tribunal has held that due to rash and negligent driving on the part of the offending vehicle, the accident took place and the injured sustained injuries to the extent as indicated above because of the accident. The findings as recorded by the learned Judge remaining uncontroverted, establish the factum that due to rash and negligent driving on the part of the driver of the offending vehicle, the accident took place.

Admittedly, the offending vehicle, at the time of accident, was insured with the National Insurance Company Limited.

As it appears from the impugned judgement, the learned Tribunal has held that the monthly income of the injured would be held Rs.3,000/- per month notionally.

Learned lawyer appearing for the respondent no.2, National Insurance Company Limited, vehemently submits that since the injured was minor, the notional income cannot be Rs.3,000/- per month. It may be Rs.15,000/- per year.

On the other hand, learned lawyer appearing for the appellant/claimant by referring to the decision in the case of ***Kajal Vs. Jagdish Chand & ors.***, reported in **2020(4) SCC 413**, submits that the Hon'ble Apex Court has held that contemplating a minor would be major, the minimum wages would be applicable to the minor also.

According to the learned lawyer for the Insurance Company, the Court may assess the notional income of

the injured as of Rs.15,000/- per year. That being the submission of the learned lawyer of the Insurance Company, this inference comes out that notional income in case of a minor may be calculated.

Considering the submissions of the learned lawyers appearing for the parties and in view of the catena of decisions of this court, I find that if the monthly income is calculated as Rs.4,000/- per month, it will meet the interest of justice.

Therefore, the monthly income of the injured would be of Rs.4,000/-. As admitted by the learned lawyer appearing for the Insurance Company before the learned Tribunal, multiplier 15 would be adopted.

But the learned Tribunal did not assess any compensation on the count of 'future prospects'.

In view of the proposition of law as enunciated by the Hon'ble Apex Court in the case of ***National Insurance Company Ltd. Vs. Pranay Sethi***, reported in ***2017(16) S.C.C. 680*** and having regard to the notional income of the injured and his age, future prospects to the extent of 40% should be added to his income.

Learned lawyer appearing for the appellant submits that in view of the decision in the case of ***Mallikarjun Vs. Divisional Manager, National Insurance Company Limited and another***, reported in ***(2014) 14 S.C.C. 396***, the injured is entitled to get Rs.5,00,000/- as compensation on non-pecuniary damages, i.e., due to his

suffering from mental pains, agonies and deprivation of all the amenities in life.

Having considered the totality of the facts and circumstance of the case on hand, I feel that a sum of Rs.1,50,000/- may be assessed on the count of non-pecuniary damages.

Therefore, in view of the above, the compensation as awarded by the learned Tribunal requires modification to the following extent :

<u>Particulars</u>	<u>Amount</u>
Monthly income	Rs.4,000/-
Annual Income Rs.4,000 X 12	Rs.48,000/-
Percentage of disability (Loss of earning capacity) 90%	Rs.43,200/-
Adopting multiplier of 15 (Rs.43,200 x 15)	Rs.6,48,000/-
Adding 40% on future prospects	Rs.2,59,200/-
Adding Non-pecuniary damages	<u>Rs.1,50,000/-</u>
	Rs.10,57,200/-

Admittedly the appellant/claimant on behalf of her injured son has received the awarded amount of Rs. 2,70,000/-. Therefore the appellant is entitled to get further amount of Rs.7,87,200/-. The claimant is entitled to get interest @ 6% per annum on this further awarded amount of Rs.7,87,200/- from the date of filing of the claim application i.e. from 1st July, 2015.

Besides, the claimant is entitled to get interest @ 6% p.a. on the amount of Rs.2,70,000/- as

awarded by the learned Tribunal from the date of claim application, that is, 1st July, 2015 till the amount was deposited with the learned Tribunal.

It is trite to say that if a claimant is entitled to get more compensation than that of the compensation he/she has sought for in the claim application, the Tribunal or Court may award the enhanced compensation which has been justly assessed by it.

Accordingly, the respondent no.2, the National Insurance Company Limited, is directed to deposit the further awarded amount of Rs.7,87,200/- together with interest @ 6% p.a. as indicated above from the date of filing of the claim application by way of cheque with the learned Registrar General of this High Court within six weeks from date.

After such amount of money is deposited, the learned Registrar General shall release the amount to the claimant/appellant as expeditiously as possible, after being satisfied with her identity.

Since the injured, Firdous Alam, has meanwhile attained majority, the appellant being the mother is directed to give or transfer the awarded amount of money in favour of her son the injured Firdous Alam, immediately after receipt of the awarded amount of money by her.

With the aforesaid directions, 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 certified copy of this Order, if applied for, be given to the parties upon compliance with all requisite formalities.

(Rabindranath Samanta, J.)