01.02.2022
Item No.14
Ct. No.7
CHC
(disposed of)

F.M.A.861 of 2008
IA NO: CAN/1/2014 (Old No: CAN/8029/2014)
(Physical Hearing)

Md. Tajuddin
Vs.
National Insurance Company Limited & anr.

Mr. Subir Banerjee,
Mr. Sandip Bandyopadhyay,
Mrs. Ruxmini Basu Roy
...for the appellant/claimant

Mr. Parimal Kumar Pahari
...for the respondent no.1/
Insurance Company

Learned advocate for both the parties are ad idem on the issue that the instant appeal may be disposed of giving a go-bye to the technicalities involved in the process and the appeal may be instantly disposed of even without consulting Lower Court Records.

It is submitted by the learned advocate for the appellant, since the appellant has been suffering from financial distress for want of sufficiency of money for her sustenance, the appeal may be disposed of on the basis of materials furnished by both the parties to this case, which is not even opposed by the learned advocate for the respondent no.1/Insurance Company.

When learned advocate for both the parties are agreeable to the expeditious disposal of the instant appeal, the Court should not stand in the way.

The instant appeal has emerged out against the judgement and award dated 24.05.2007, passed by the learned Judge, Motor Accident Claims Tribunal, Fast Track Court No.2, Islampur, Uttar Dinajpur, in M.A.C. Case No.301 of 2005, on a claim under Section 166 of the Motor Vehicles Act, 1988 for injury of the claimant/appellant, aged about 35 years, on 27.04.2005.

The insurance company is represented. The facts of the case are not in dispute.

The learned advocate of the appellant submits that the instant claim application has been filed thereby praying compensation for the injury suffered by the claimant/appellant arising out of the use of the motor vehicle. The claimant/appellant was a manager under a Government Contractor at the time of accident and used to earn Rs.4,000/- per month from his employer. After the accident the claimant/appellant was admitted at Lodhan P.H.C. and thereafter in Maya Sanyal Nursing Home at Siliguri for his treatment. Due to the accident, the appellant became permanently disabled, and the medical board after medical examination issued the disablement certificate declaring that the appellant has become disabled to the extent of 55%.

Mr. Subir Banerjee, the learned advocate appearing for the appellant urges several grounds to challenge the award in this appeal. According to Mr. Banerjee, despite the disability of the petitioner/appellant being assessed to the tune of 55% by the medical board, the learned Tribunal granted only a lump sum compensation of Rs.70,000/-, which included loss of income, medical expenses, financial loss, pain and suffering, without considering the future loss of income based on the income and percentage of disability.

The learned advocate for the appellant/claimant submits that the claimant was not also granted any amount under 'future prospect' and learned Tribunal also has erred in law not granting interest on the compensation amount from the date of filing of the claim application. Accordingly, it is argued that a lesser quantum of compensation has been wrongfully awarded by the learned Tribunal.

In support of the arguments, the learned advocate of the appellant has placed reliance upon the following judgements of the Apex Court: ***Mr. R. D. Hattangadi vs. M./s. Pest Control (India) Pvt. Ltd. & ors.*** reported in **(1995) 1 SCC 551**, ***Raj Kumar vs.***

Ajay Kumar and another, reported in **(2011) 1 SCC 343**, ***Jagadish vs. Mohan and others*** reported in **(2018) 4 SCC 571**, ***Smt. Sarla Verma and others vs. Delhi Transport Corporation and another***, reported in **(2009) 6 SCC 121** and ***National Insurance Company Limited vs. Pranay Sethi & ors.*** reported in **(2017) 16 SCC 680**.

In the case of ***Mr. R. D. Hattangadi,*** as sought to be relied upon by appellant, the Apex Court proceeded to cover damages with respect to its two components thereunder. While one is pecuniary damages, the other one is special damages. Thus the damages include both the components, which have to be addressed while deciding the award.

Together with this, if there is any special circumstances attended thereby leading to the consequence of the accident, that have also to be addressed by the Court in deciding the compensation to be awarded with.

The decision rendered in the case of ***Raj Kumar (Supra)*** propounded that whenever a disability certificate was given by duly constituted medical board, such certificate has to be accepted in evidence in the absence of genuineness of the certificate being challenged in any manner whatsoever.

In the case at hand, the disability certificate was issued by Board after due constitution, and there lies nothing to challenge the authenticity and genuineness of such certificate being issued by the Board.

Mr. Pahari, at this stage, is not supported with any materials to convince the Court that it was the product of doubt, and as such, the same should not be relied upon.

So far as the decision of ***Jagdish vs. Mohan and others,*** as referred hereinabove (Supra), is concerned, the Apex Court addressed the issue regarding the probable components to be addressed by the Tribunal, without deciding any straight jacket formula therefor, and in paragraph '8' of such decision, some of the considerations requiring address by the Tribunal is mentioned, as hereunder:'

"8. *In assessing the compensation payable the settled principles need to be borne in mind. A victim who suffers a permanent or temporary disability occasioned by an accident is entitled to the award of compensation. The award of compensation must cover among others, the following aspects:*

(i) Pain, suffering and trauma resulting from the accident;

(ii) Loss of income including future income;

(iii) The inability of the victim to lead a normal life together with its amenities;

> *(iv) Medical expenses including those that the victim may be required to undertake in future; and*
>
> *(v) Loss of expectation of life.***"**

Per contra, the learned advocate representing the Insurance Company/respondent no.1 argues that in the facts and circumstances of the case, the award is just and reasonable and there is no future scope of enhancement of the same.

The appellant/victim was 35 years old man having his family members to maintain from his income earned to the extent of Rs.4,000/- per month from his the then occupation as a Manager from his employer. Admittedly, deceased was not in permanent employment. The Tribunal has decided the award on a lump sum basis without selecting the multiplier, and the future prospects, liable to be granted and the interest component etc. in terms of the decision rendered in the case of ***Sarla Verma & ors. (Supra)*** *and* ***Pranay Sethi & ors. (Supra).***

Without any controversy the accident was held on 27th April, 2005, when a person, not being in permanent employment, may safely considered to be having an income of Rs.3,000/- per month, and it is quite reasonable to assume that such assessment cannot by any probability to be exorbitant.

The point travelling round the future prospects, said to be inappropriate, needs to be revisited in context with the decision rendered in the case of ***National Insurance Company Limited vs. Pranay Sethi & ors.*** reported in **(2017) 16 SCC 680.**

Applying the ratio decided by the Apex Court in the case of ***Pranay Sethi (Supra),*** *40%* should be added as future prospect to the income of the injured claimant.

The Apex Court while addressing the question of just compensation time and again observed that in deciding the just compensation, the Tribunal has to take into account all the elements that would put the victim almost near to a situation, as to her or she was before the accident. Though no amount of money can erase trauma or pain and sufferings, sustained by the victim consequent upon the accident.

Non pecuniary damages is thus a matter to be considered, while awarding just compensation simply to redress the trauma, loss of amenities, loss of expectation of life, mental shock, pain and sufferings etc.

Since several aspects/considerations/components are liable to be addressed by the Tribunal, while deciding the compensation, this Court is of the view that keeping in view the price index, the then prevailed at the time of accident, Rs.50,000/- however, should be granted on account of pecuniary damages in terms of the propositions of the law already referred hereinabove.

There is strong force in the submission advanced by the learned advocate for the appellant so far the appeal is concerned.

Having considered the rival submission, thus advanced by both the parties, and bearing in mind the general practice and precedent of this Court, the award passed by the learned Tribunal needs modification after a revisit to the impugned order and judgement in context with the points raised in the appeal so as to make it just and proper, and with this modification, there will be no prejudice caused to either of the parties to this case.

Accordingly, the impugned award is modified and recalculated in the manner referred hereinabove:-

Particulars	**Amount (Rs.)**
Monthly Income	Rs.3,000/-
Annual Income	X 12
	Rs.36,000/-
Add: Future Prospect @ 40%	Rs.14,400/-
	Rs.50,400/-
Less: Deduction of 45% (Since the deceased was disabled to the extent of 55%)	Rs.22,680/-
Total Loss of Income	Rs.27,720/-
Multiplier 16	X 16
	Rs.4,43,520/-

Add: Medical Expenses	Rs.45,000/-
	Rs.4,88,520/-
Add: pain and suffering	Rs.50,000/-
	Rs.5,38,520/-
Less: Award of the Learned Tribunal	Rs.70,000/-
Balance enhanced amount	**Rs.4,68,520/-**

The claimant acknowledges receipt of the awarded amount of Rs.70,000/- in terms of the direction of the learned Tribunal. Accordingly, the balance enhanced sum of Rs.4,68,520/- would become payable to the appellant 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 advocate for the appellant will forward the bank account details of the appellant within a fortnight from date to advocate for the Insurance Company. The payment shall be made to the claimant's bank account directly.

With the aforesaid directions, the instant appeal is disposed of.

L.C.Records be returned forthwith, if received in the meantime.

In view of the disposal of this appeal, connected applications, if any, are also disposed of.

The concerned department is directed to tag the application, if any, with the main appeal.

There shall be no further order as to costs.

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

(Subhasis Dasgupta, J.)