

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 3890 of 2015

Banti Singh
Vs.
Rajbinder Singh & Anr.

Mr. Krishanu Banik
Mr. Tapan Kumar Jana
... For the appellant/claimant

Mr. Parimal Kumar Pahari
... For the respondent no.2/Insurance Co.

This appeal is directed against the judgment and order passed on 5th June, 2012 by the learned Judge, Motor Accident Claims Tribunal, Additional District Judge, 3rd Fast Track Court, Alipore, 24-Parganas (South) in connection with MAC Case No.184 of 2006 under Section 166 of the Motor Vehicles Act, 1988 whereby the learned Judge awarded compensation to the tune of Rs.1,05,520/-.

The claim petition arose out of an accident occurred on 17th December, 2005 at about 21.20 hours while the claimant/injured Banti Singh was walking towards Ananda Banerjee Lane from the south to north direction, the offending Scooter bearing registration no.WB-01T/0831 coming with high speed, dashed him. As a result, he sustained fracture injury of his right leg. He was shifted to SSKM Hospital, Kolkata and admitted there for treatment till 7th January, 2006. At the time of accident, he was aged about 22 years having income of

Rs.6,000/- per month. That is why the claim petition has been filed with a prayer for compensation to the tune of Rs.6,62,000/-.

The owner of the Scooter did not contest the claim petition but the respondent no.2/National Insurance Company Limited contested the claim petition by filing written statement contending, inter alia, that the claimant is not entitled to any compensation from the Insurance Company.

In course of trial, three witnesses were examined, namely, the claimant himself as PW-1 who narrated before the learned Tribunal regarding accident whereby he sustained injury and he also disclosed his income as Rs.6,000/- per month and his age. He has filed a good number of documents in course of evidence and those were marked as Exhibit-1 to Exhibit-14, including copy of First Information Report, charge sheet, disability certificate, document relating to offending vehicle and insurance policy.

PW-2 claiming himself to be an eye-witness has stated the manner of accident wherein the appellant/claimant sustained leg injury and he shifted the injured to the SSKM Hospital for treatment.

PW-3 Dr. Binati Das issued Disability Certificate to the extent of 42% after examining him clinically on 11th September, 2006. She admitted that she did not treat the patient, i.e., the appellant/claimant.

Learned Tribunal after considering the entire evidence on record assessed the monthly income of the victim as Rs.3,000/- and disability to the extent of 21%.

None of the learned advocates appearing on behalf of the parties to this appeal contended anything on the issue of accident and assessment of disability and monthly income. In fact, Mr. Krishanu Banik, learned advocate appearing on behalf of the appellant/claimant has submitted that the learned Tribunal did not consider the future prospect and also did not consider the medical expenses and non-pecuniary damages.

Therefore, in this appeal I am to determine the question of further award in respect of future prospect, medical expenses and non-pecuniary damages.

From the record, it appears that a good number of medical bills were submitted before the learned Tribunal but those were not considered, presumably due to non-admission of those documents. But from the evidence, including the discharge certificate (Ext.-2), I find that he was admitted in SSKM Hospital for a considerable period and from that point of view I cannot disregard the medical bills filed before the learned Tribunal only because of non-admission in evidence. Therefore, I find it justified to grant medical expenses to the tune of Rs.25,000/-. That apart, the appellant/claimant is also entitled to future prospect to the extent of 40% of the income and I find it justified to award Rs.30,000/- regarding non-pecuniary damages.

In the aforesaid view of the matter, I modify the award to the following extent:-

Monthly Income	Rs. 3,000/-
Annual Income (Rs.3,000/- x 12)	Rs. 36,000/-
Add: Future Prospect (40% of Rs.36,000/-)	Rs. 14,400/-

	Rs. 50,400/-
Loss of income 21% (Rs.50,400/ x 21%)	Rs. 10,584/-
Multiplier by 18 (as per age)	<u> x 18 </u>
	Rs.1,90,512/-
Add: Non-Pecuniary Damages	Rs. 30,000/-

	Rs.2,20,512/-
Add: Medical Expenses	Rs. 25,000/-

	Rs.2,45,512/-
Less – Awarded by ld. Tribunal	<u>Rs.1,30,520/-</u>
ENHANCEMENT	Rs.1,14,992/-

For the reasons, it is seen that the appellant/claimant is entitled to the total compensation of Rs.2,45,512/- along with interest @ 6% per annum from the date of restoration of the claim petition, i.e. on 11th April, 2008 till the deposit of the amount.

It is reported that the appellant/claimant has already received Rs.1,30,520/- as awarded by the learned Tribunal, including the award passed under Section 140 of the Motor Vehicles Act, 1988.

Therefore, the appellant/claimant is entitled to the balance amount of Rs.1,14,992/- along with interest @ 6% per annum from the date of restoration of the claim

petition, i.e., on 11th April, 2008 till the deposit of the amount.

Accordingly, the respondent no.2/Insurance Company is directed to deposit the enhanced amount of Rs.1,14,992/- along with interest @ 6% per annum from the date of restoration of the claim petition, i.e. on 11th April, 2008 till the 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 appellant/claimant is entitled to withdraw the balance amount with interest.

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 3890 of 2015, stands disposed of.

All pending applications, if there be any, 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.)