S/L No. 16
24.11.2022
Ct-297
(PA.RD)

FMA 457 of 2013
Marjina Bibi
Vs.
ICICI Lombard General Inurance Co. Ltd. & Anr.

Mr. Krishau Banik

… for the Appellant / Claimant.

Mr. Parimal Kr. Pahari

… for the respondent/ Insurance Co.

Judgement and award passed by Ld. Motor Accident Claim Tribunal, Additional District Judge, Purba Medinipur, in connection with Motor Accident Claim Case No. 349 of 2009 has been challenged in this appeal on the ground of assessment of compensation by the Ld. Tribunal.

On 17.09.2009 at about 7.00 a.m. while injured Marjina Bibi was standing at the Ranichak bus stand, one bus bearing no. WB 29A/0301coming with high speed from the side of Ranichak dashed the victim. As a result, victim sustained injury and she was treated in Durgachak Sub Divisional Hospital & N.R.S Medical College & Hospital.

Over the incident Haldia PS Case No. 119/ 2009 dated 21.09.2009 under Section 279/ 337/338 I.P.C was started and ended with charge sheet. The said mini bus was duly insured with ICICI Lombard General Insurance Company Ltd. Appellant/Claimant filed the claim petition with prayer for compensation to the tune of Rs. 3,00,000/-.

Owner of the bus did not contest but Insurance Company contested the claim petition by filing a written statement denying all statement of the claim petition contending, inter alia, that accident alleged in the claim petition did not take place due to negligent driving of the bus.

To prove the case injured examined herself as PW-1. She narrated the entire incident alleged in the claim petition. She also stated about her treatment at Medinipur District Hospital and N.R.S Medical College & Hospital. In her evidence, she has stated that at the time of accident she was 34 years of age and used to earn Rs. 4,500/- per month as paddy and rice seller and she had to incurred of Rs. 1,50,000/- towards treatment. She denied suggestions put to him during cross-examination.

In course of evidence PW-1, certified copy of FIR, charge sheet, seizure list, disability certificate, insurance policy, Voter ID Card, outdoor ticket, discharge certificate, injury report and O.P.D patient Card were admitted evidence as exhibit 1-10. Ld. Tribunal after appreciating evidence of record assessed the compensation to the tune of Rs. 1,98,000/- in terms of Notional Income of Rs. 3.000/- per month.

Mr. Krishanu Banik, Ld. Advocate appearing on behalf of the appellant/ claimant submitted that Ld. Tribunal did not consider the future prospect of the claimant, medical expenditure and non-pecuniary damages.

Mr. Parimal Kr. Pahari, Ld. Advocate on behalf of the respondent/ Insurance Company submitted that there was no pecuniary loss as claimant could not proof the income stated in the claim petition. It is also submitted on behalf of the Insurance Company that disability certificate (exhibit-4) has not been substantiated by any of the doctors of the board.

As a matter of fact, no argument was advanced on behalf of the appellant regarding income. Ld. Tribunal rightly assessed monthly income notionally as Rs. 3,000/- per month. With regard to disability certificate I find that it was admitted in evidence without any objection and more so, Insurance Company did not make any effort to rebut the presumptive value of the disability certificate (exhibit-4) in the case under beneficial legislation.

In this case, Ld. Tribunal did not consider non-pecuniary damage in terms of suffering a trauma for not being able to do her normal work for a considerable period and medical expenditure as it appears from a good number of vouchers kept in the record.

From the aforesaid view of the circumstances, I find it necessary to modify the compensation in terms of several decisions of the Hon'ble Apex Court, as follows:

Monthly Income	: 3,000.00
Annual Income (Rs. 3,000 x 12)	: 36,000.00
Add: Future Prospects @ 40%	: 14,000.00
	50,400/-
40% loss of Income	: 20,160.00
Use of Multiplier as per victim/ injured age 34 (20,160 X 16)	:3,22,560.00
Medical Bill	: 19,861.00
Total	3,42,421/-
Non- Pecuniary Damages	: 50,000.00
	3,92,421/-
Less awarded amount received	: 1,98,600.00
Balance amount	: 1, 93,821.00

It is reported that claimant already received the amount of Rs. 1,98,600/- awarded by the Ld. Tribunal. Therefore, appellant /injured is entitled to balance amount of Rs. 1,93,821/- towards balance compensation along with interest @ 6% per annum from date of the filing of the claim petition till the date of deposit of amount before the office of the Ld. Registrar General.

Respondent/ Insurance Company is directed to deposit the balance amount of Rs. 1,93,821/- along with interest @ 6% per annum from the date of filing of the claim petition, before the office of the Ld. Registrar General, within 6(six) weeks from the date of this order.

Ld. Registrar General is requested to disburse the amount to the appellant/claimant on proper identification proof.

Let the record of the tribunal along with a copy of this order, be send back, at once.

F.M.A 457 of 2013 is being disposed of without any order as to cost.

All pending application, if there be any, stand disposed of.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Bibhas Ranjan De)