04.02.2022
Item No.1
Ct. No.7
CHC
(disposed of)

**F.M.A.1817 of 2014**
**(Via Video Conference)**

**Ranjit Sarkar**
**Vs.**
**The New India Assurance Co. Ltd. & anr.**

Ms. Sima Ghosh
...for the appellant/claimant

Mrs. Sucharita Paul
...for the respondent no.1/
Insurance Company

Learned advocates for both the parties are ad idem on the point that the instant appeal may be disposed of giving a go-bye to the technicalities involved in the process.

It is submitted by the learned advocate for the appellant/claimant that claimant has been suffering from financial distress for want of sufficiency of money for his sustenance in this pandemic and urges the Court for disposing of the appeal on the basis of materials furnished by both the parties to the case, which is not opposed by the learned advocate representing the Insurance Company/respondent no.1.

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

The appeal has emerged out against the judgement and award dated 13th September, 2013, passed by learned Judge, Motor Accident Claims Tribunal, 2nd Court, Murshidabad, in M.A.C. Case No.329 of 2010, on a claim case under Section 166 of the M.V. Act, 1988, granting an award to the tune of Rs.50,000/- to claimant/appellant namely, Ranjit Sarkar for the injuries suffered by him in a vehicular accident, which occurred on 15th day of April, 2007, by reason of involvement of vehicle bearing No.WB-57/7902 in consequence of rash and negligent driving.

Facts leading to the accident and injuries received by the claimant are not at all disputed.

The compensation was awarded on a lumpsum basis only on the head of 'pain and suffering', upon considering the injuries sustained by the injured/claimant, with which the appellant was not satisfied. Hence this appeal.

In course of hearing of this appeal all the points are squeezed into three points.

Ms. Sima Ghosh, learned advocate representing the appellant/claimant submits that Tribunal has erred in law in not assessing the loss of earning capacity, or the loss of future earning capacity of the claimant due to the accident.

It is contended that the Tribunal should have assessed the compensation amount on the basis of monthly income of Rs.3,000/- of the victim.

Ms. Ghosh further submits that the loss of earning capacity rendering the injured/claimant to a permanent disabled person should have been assessed in accordance with the disability certificate, issued by the Medical Board, and no future prospect having granted by the learned Tribunal while computing the compensation amount, the award cannot termed to be 'just".

Ms. Ghosh incidentally submits that the victim suffered the accident when he was around 41 years old on the date of accident, and as such a multiplier of 14 should have been adopted by the learned court below for perfect quantification of award.

Mrs. Sucharita Paul, learned advocate representing the Insurance Company/respondent no.1 without disputing with the facts leading to the injury sustained by the victim submits that the award has been rightly decided by Tribunal upon considering pros and cons of the case. She however strongly opposes the case made out by the appellant. According to Insurance Company/respondent no.1, there lies nothing to be interfered with in this appeal, and as such, there is no scope for making any interference by this Court.

Reliance is placed by the appellant on some decisions rendered by the Apex Court in cases of ***Raj Kumar vs. Ajay Kumar & anr.*** reported in ***(2011) 1 SCC 343, Yadava Kumar vs. Div. Mangr., National Insurance,*** reported in ***2010 (10) SCC 342, Smt. Sarla Verma &***

***ors. vs. Delhi Transport Corporation & anr.*** reported in ***(2009) 6 SCC 121, National Insurance Company Ltd. vs. Pranay Sethi & ors.*** reported in ***(2017) 16 SCC 680*** *and* ***Jagdish vs. Mohan & ors.,*** reported in ***(2018) 4 SCC 571*** so as to challenge the award in terms of the points raised, mentioned hereinabove.

The injured/appellant met with accident, when he was about 41 years old and was a kirtan singer having substantial income by performing at different places throughout West Bengal. While adducing evidence as P.W.1, the claimant had stated that he had been rendered physically unable to do any work due to the above accident. The Disability Certificate (Exhibit.1) issued by the Medical Board, Sub Divisional Hospital, Lalbagh, Murshidabad, was proved and in the Disability Certificate, the extent of disablement suffered by the victim was shown to 50% disability. P.W.2, being one of the doctors attending the Medical Board adduced evidence to prove the 50% permanent disability of the claimant. P.W.2 also confirmed that victim would have difficulty in travelling in bus or train.

The authenticity or genuineness of such certificate goes unchallenged. 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 place the victim almost near to a position, as he or she was in before the accident. Though no amount of money can erase the trauma or pain and sufferings sustained by the victim consequent upon the accident.

Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the consequent effect, and impact of such permanent disability on his earning capacity. A person, who has suffered injuries arising out of an accident, and cannot move freely to attend to his ordinary function/performance as a stage performer artist/singer of kirtan, can not reasonably match with the earning with the one, who is healthy and bodily abled person. In the instant case, victim being a kirtan singer, his movement has been restricted to a considerable extent, as already assessed by Board, due to the accident.

This Court therefore feels that considering the 50% permanent disability of the victim in the referred accident, he should be entitled to future loss of earning capacity. Considering the price index and the year of accident being 2007, it will be most reasonable for all purposes for the Court to hold the income of the injured victim at Rs.3,000/- per month to assess the loss of earning capacity of the appellant. The assessment of the award, as reached by the Tribunal, does not appear to be on sound footing.

Having considered the submissions, thus advanced by both the parties and bearing in mind the precedent of this Court, together with the decisions referred above, the award passed by the learned Tribunal needs modification after a revisit to the impugned judgement in context with the points raised in the appeal, for the peculiarity of circumstances involved in this case, which however, can neither be straight jacketed, nor generalised in any manner whatsoever, 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 above order passed by the learned Tribunal is thus modified to the extent mentioned hereinabove and recalculated as follows:

| **Particulars** | | **Amount (Rs.)** |
|---|---|---|
| Monthly Income | | Rs.3,000/- |
| Add 25% future prospect | + | Rs.750/- |
| | | Rs.3,750/- |
| | | X 12 |
| | | Rs.45,000/- |
| Multiplier of 14 to be used | | X 14 |
| | | Rs.6,30,000/- |
| 50% loss of earning capacity/disability | | X 50% |
| | | Rs.3,15,000/- |
| Add compensation granted by the Tribunal on non-pecuniary heads | + | Rs.50,000/- |
| Total entitlement | | Rs.3,65,000/- |
| Less: Awarded amount | - | Rs.50,000/- |
| Differential amount | | **Rs.3,15,000/-** |

The claimant acknowledges receipt of the entire awarded amount of Rs.50,000/- minus interest. Respondent no.1/Insurance Company is directed to pay the differential amount of Rs.3,15,000/- to the claimant together with interest thereon at the rate of 6% per annum from the date of filing of the claim petition, within a period of 45 days from the date of receipt of the bank account particular of the claimant. Insurance Company is also directed to pay 6% interest on the principal awarded sum of Rs.50,000/-, if not already disbursed, to be calculated from the date of lodging of the claim case till the date of payment. Learned advocate for the claimant will forward the bank account details of the claimant within a fortnight from date to the learned advocate for the Insurance Company/respondent no.1.

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

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

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

There shall be no order as to costs.

L.C.R., if any, may be returned back to the court below, if received in the meantime.

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.)**