Sl. No.1

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice Ananya Bandyopadhyay

FMAT (MV) 106 OF 2022

Bangshi Badan Midya
Versus
National Insurance Co. Ltd. & Anr.

For the Appellant	:	Mr. Subhankar Mandal
For the Respondent No.1	:	Mr. Afroze Alam
Heard on	:	23.08.2022
Judgment on	:	**12.12.2022**

Ananya Bandyopadhyay, J.:-

This appeal has been filed against the impugned judgment and order dated 15.02.2021 passed by the Additional District Judge, M.A.C Tribunal, Fifth Court, Paschim Medinipur in M.A.C.C case no. 444 of 2016 wherein the aforesaid Tribunal has awarded compensation of Rs. 18,14,219/- along with simple interest at the rate of 5 per cent per annum from 05.09.2016 till payment.

The aforesaid motor accident claim case arose out an application under Section 166 of the Motor Vehicles Act, 1988 filed by Smt. Kalpana Midya on behalf of her injured husband, Bangshi Badan Midya who suffered mental disability as a consequence of the accident which took place on

15.03.2016 at about 4 pm when the said Bangshi Badan Midya was approaching towards Garhbeta from Mayrkata on foot on the extreme left side of the road. The offending vehicle bearing registration number, WB-34AC/0991 in motion, hit the aforesaid Bangshi Badan Midya in a rash and negligent manner resulting in his fall on the ground. Thereafter, he was taken to Garhbeta, B.P.H.C, wherefrom he was removed to Midnapur Medical College and Hospital and subsequently admitted in C.M.R.I, Kolkata as an indoor patient on 16.03.2016. He was discharged on 20.03.2016 and was further admitted in the Institute of Neuroscience, Kolkata on 20.03.2016 and had been under continuous treatment of different doctors and nursing home. As a consequence of the accident, the aforesaid injured suffered permanent disability to the extent of 80%. The injured was self employed and used to deal in potato business with a monthly income of Rs. 6,000/-.

The Ld. Advocate for the appellant submitted that the compensation awarded in favour of the claimant was inadequate and sought for enhancement of the same. It was further submitted that the Ld. Tribunal ought to have considered the monthly income of the injured to be Rs. 5000/- instead of Rs. 4500/-. Moreover, the Ld. Tribunal did not consider an additional income for future prospect in view of future loss of income and the loss of earning capacity with regard to the physical and mental disability suffered by the victim. It was further urged that the injured aged below 48 years with 80% permanent functional disability was entitled to a compensation of additional income towards future prospect to the extent of

25% and the rate of interest of 5% be enhanced to 8% per annum to be awarded from the date of filing.

The Ld. Advocate for the Insurance Company submitted that the Ld. Tribunal considering each and every aspect has rightly awarded the compensation and as such the interference of this Court is not required.

The aforesaid M.A.C Tribunal after assessing the evidence on record including the deposition of the witnesses and the exhibited documents awarded the compensation in the following manner:-

The Ld. Tribunal while computing the loss of future income in paragraph 30 of the impugned judgement dated15.02.2021 calculated the compensation to the extent of Rs 5,61,600/- in the following manner:-

Serial Number	**Heads**	**Amount**
1.	Loss of future income due to injury	Rs.5,16,600/-
2.	Loss of income during treatment period	Rs.9,000/-
3.	Pain and Suffering	Rs.3,00,000/-
4.	Attendant charges during the treatment period	Rs.13,000/-
5.	Transportation charges during the treatment period	Rs.6,000/-
6.	Medical expenses	Rs.6,56,619/-
7.	Expenses made on special diet and nutrition and during treatment	Rs.13,000/-
8.	Loss of amenities, happiness and enjoyment of life due to the injury caused	Rs.1,00,000/-
9.	Future Medical expenses	Rs.2,00,000/-
	TOTAL	Rs.18,14,219/-
	Rate of interest Simple	5% per annum

*"As per **Sarla Verma and others Vs. Delhi Transport Corporation and Another** (2009) 6 SCC 121, in the present case the appropriate multiplier will*

be 13. Thus, total loss of future income to the injured will be 54000 x 13 x 80/100 = Rs.5,61,600/- (Rupee Five Lakh sixty one thousand six Hundred Only). I have of the view that claimant is entitled to get Rs.5,61,600/- (Rupee Five Lakh sixty one thousand six hundred only) only towards loss of future income due to injury caused to claimant."

The amount stated in the table above for the head "Loss of future income due to injury" is Rs 5,16,600/- and the "Total" stated is Rs. 18,14,219/-. Apparently, there is an inadvertent error during the final determination of the compensation amount of Rs. (561600-516600) = Rs. 45000/-.

The compensation amount in the impugned judgement shall therefore be Rs. (18,14,219 + 45,000) = Rs.18,59,219/-.

It is a fact that the opposite party the Insurance Company did not dispute the occurrence of the accident. Therefore, this Court will only determine the issues raised by the appellant with regard to the enhancement of the compensation amount granted by the Ld. Tribunal. The claim application filed before the Ld. Tribunal mentioned the monthly income of the injured victim to be Rs.6,000/- who at the relevant time must have been a vendor dealing in transactions of potatoes. The victim must not have been a businessman transacting bulk quantity of the vegetable to earn an income subjected to payment of income tax. The vegetable vendors and people dealing with similar avocation cannot be expected to prove their income through cogent evidence. It is imperative that they deal with commodities on a daily basis and their earning is dependent on daily sale of such commodities entailing the generation of income of a meager amount, at the prevailing fiscal scale. Accordingly, I am inclined to consider the monthly income of the injured victim to be Rs.5000/- per month instead of Rs.4500/-.

The evidence of the PW 6 Dr. Abdul Latif issuing the disability certificate marked as Ext. 22 determining the disability suffered by the victim to the extent of 80 per cent revealed that the injured victim sustained locomotory disability and speech disorder which could be progressive in nature and might decrease in the long run. The disability certificate marked as Ext. 22 did not specifically stipulate any extent of mental retardation or mental illness.

PW 1 during her evidence and cross-examination stated that her husband was suffering from mental disorderness and had undergone treatment at the Institution of Neuroscience, Kolkata. Head injury is one of the ailments treated by the said Institution which might cause neurological disorder restraining the movement of the injured, however, such injury might not cause mental illness. Any extent of mental illness or mental retardation in absence of medical evidence cannot be considered. The same has not been proved either through oral or documentary evidence of a medical expert. Therefore, the observation of the Ld. Tribunal to appoint a guardian for the injured victim under the Mental Health Act, 1987 or the National Trust of Welfare of Persons with autism, Cerebral Palsy, Mental Retardation and Multiple Retardation and Multiple Disability Act, 1999 cannot be accepted. Considering the object of beneficial legislation to secure benefit to the injured victim the status of the appellant is not disturbed.

In the case of **Sidram vs. Divisional Manager, United India Insurance Co. Ltd. And Another**[1], the Hon'ble Supreme Court has observed that,

"POSITION OF LAW

29. *The process of determining the compensation by the court is essentially a very difficult task and can never be an exact science. Perfect compensation is hardly possible, more so in claims of injury and disability. As rightly pointed out in H. West & Son Ltd. v. Shephard, (1958) 65 ACJ 504 (HL, England): "…money cannot renew a physical frame that has been battered."*

30. *The principle consistently followed by this court in assessing motor vehicle compensation claims, is to place the victim in as near a position as she or he was in before the accident, with other compensatory directions for loss of amenities and other payments. These general principles have been stated and reiterated in several decisions. [Govind Yadav v. New India Insurance Co. Ltd., (2011) 10 SCC 683.]*

31. *It is now a well settled position of law that even in cases of permanent disablement incurred as a result of a motor-accident, the claimant can seek, apart from compensation for future loss of income, amounts for future prospects as well. We have come across many orders of different tribunals and unfortunately affirmed by different High Courts, taking the view that the claimant is not entitled to compensation for future prospects in accident cases involving serious injuries resulting in permanent disablement. That is not a correct position of law. There is no justification to exclude the possibility of compensation for future prospects in accident cases involving serious injuries resulting in permanent disablement. Such a narrow reading is illogical because it denies altogether the possibility of the living victim progressing further in life in accident cases - and admits such possibility of future prospects, in case of the victim's death.*

32. *This Court has emphasised time and again that "just compensation" should include all elements that would go to place the victim in as near a*

[1] **2022 SCC OnLine SC 1597**

position as she or he was in, before the occurrence of the accident. Whilst no amount of money or other material compensation can erase the trauma, pain and suffering that a victim undergoes after a serious accident, (or replace the loss of a loved one), monetary compensation is the manner known to law, whereby society assures some measure of restitution to those who survive, and the victims who have to face their lives...........

34. *In Jagdish v. Mohan, (2018) 4 SCC 571, the victim, a carpenter, suffered permanent disablement, and his claim for compensation including for loss of future prospects was considered by a three-Judge Bench which included, incidentally, the judges who had decided National Insurance Company.........*

36. *Yet later and in near past, in an accident case, which tragically left in its wake a young girl in a life-long state of paraplegia, this Court, in Kajal v. Jagdish Chand, (2020) 4 SCC 413, reiterated that in addition to loss of earnings, compensation for future prospects too could be factored in,..........."*

In view of the aforesaid observation of the Hon'ble Supreme Court and applying the essence of the same in the instant case, it can be opined that the injured victim for the rest of his life would be subjected to restriction of movement preventing him to earn for the livelihood of himself and his family and compelled to suffer from various degenerative processes in the body, mental agony and pain. He has been prevented by the unfortunate incident to lead a normal life and to improvise the quality and quantity of his income generation. There are several instances where vegetable vendors in future may enhance their income through other sources of financial engagement. The injured victim in his case could have availed other opportunities of supplementing his income and prospered further. Accordingly in the opinion of this Court the injured victim deserves the benefit of future prospect to the extent of 25 per cent. The monthly income of the injured victim has been considered by this Court to be Rs. 5000/- and 25 per cent of the same being accorded for the future prospect. The monthly income comes to be Rs. 6250/-, therefore, the future income towards loss shall be Rs.6250x12x13x80/100=Rs.7,80,000/-

It further appears that the Tribunal has not awarded any amount for litigation charges to the injured victim and this Court is of the opinion that a sum of Rs. 30,000/- be paid towards litigation charges in view of the observation of the Hon'ble Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and Another*** *(2009) 6 SCC 121*. The other components under the heads remaining the same, the total amount of compensation to be paid to the injured victim is Rs.21,07,619/-which would be fair, just and reasonable under circumstances of this Court case.

Serial Number	**Heads**	**Amount**
1.	Loss of future income due to injury	Rs.7,80,000/-
2.	Loss of income during treatment period	Rs.9,000/-
3.	Pain and Suffering	Rs.3,00,000/-
4.	Attendant charges during the treatment period	Rs.13,000/-
5.	Transportation charges during the treatment period	Rs.6,000/-
6.	Medical expenses	Rs.6,56,619/-
7.	Expenses made on special diet and nutrition and during treatment	Rs.13,000/-
8.	Loss of amenities, happiness and enjoyment of life due to the injury caused	Rs.1,00,000/-
9.	Future Medical expenses	Rs.2,00,000/-
10.	Litigation charges	Rs. 30,000/-
	TOTAL	Rs.21,07,619/-
	Rate of interest Simple	6% per annum

The rate of interest is increased from 5 per cent to 6 per cent per annum to be paid from the date of filing of the petition before the Tribunal till the date the payment is made.

The award passed by the Tribunal is modified to the extent above.

A joint bank account be instituted in a nationalised bank in the name of the victim Bangshi Badan Midya and his wife the appellant Smt. Kalpana Midya which can be operated by either of them and the aforesaid amount of compensation including the aforesaid interest be deposited in the said bank account by the opposite party Insurance Company within two weeks of passing of this order. The appellant wife shall be responsible for the transactions with the said bank causing detriment to the interest of the victim.

The appeal is allowed with the aforesaid observation and direction. No separate order as to costs.

Pending applications, if any, stands disposed of accordingly.

Photostat certified copy of this judgment, if applied for, be supplied to the applicant expeditiously subject to compliance of all the required formalities.

Let a copy of this judgment be sent to the Ld. Trial Court of information and record.

(Ananya Bandyopadhyay, J.)