

28.02.2022
Item No.29
Ct. No.7
CHC
(disposed of)

F.M.A.T.83 of 2015
IA NO: CAN/1/2019 (Old No:CAN/12719/2019)
CAN/2/2019 (Old No:CAN/12720/2019)
(Physical Hearing)

Dhirendranath Das Alias Dhiren Das
Vs.
The Oriental Insurance Co. Ltd. & 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

In Re: CAN 1 of 2019(Old No. CAN/12719/2019)

The present CAN application is relatable to a prayer for condonation of delay.

Learned advocate, Mr. Subir Banerjee, appearing for the appellant/claimant has attempted to explain the delay caused in preferring the appeal thereby explaining the delay in the relevant averments of application.

Mr. Parimal Kumar Pahari, learned advocate representing the respondent no.1/Insurance Company submits that there has been delay caused

in preferring the appeal, which must be taken in view, while considering the prayer for condonation of delay.

Upon perusal of the relevant averments contained in the pleadings, it appears that the delay has been successfully explained, and appellant/claimant was prevented by sufficient causes from preferring the appeal within the statutory period of limitation. The delay being sufficiently explained, the delay caused in preferring the appeal stands condoned.

Accordingly, the application for condonation of delay being CAN/1/2019(Old No:CAN/12719/2019) stands disposed of.

In Re: F.M.A.T.83 of 2015

Learned advocate for both the parties are ad idem on the point that the instant appeal may be disposed of giving a go-by 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/claimant, since the appellant/claimant has been suffering from financial distress for want of sufficiency of money for his sustenance, the appeal may be disposed of on the basis of materials furnished by both the parties to this case, is not even opposed by the learned advocate for the respondent no.1/Insurance Company.

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 instant appeal has emerged out against the judgement and award dated 07.04.2014, passed by the learned Judge, Motor Accident Claims Tribunal Judge-cum-Additional District Judge, Islampur, Uttar Dinajpur in M.A.C. Case No.92 of 2008 on a claim petition under Section 166 of the Motor Vehicles Act, 1988, granting an award to the tune of Rs.2,86,000/- to appellant/claimant namely, Dhirendranath Das alias Dhiren Das for the accidental injuries suffered by him in a vehicular accident, which occurred on 05.04.2008, by reason of involvement of vehicle bearing No.WB-03-B/7351 in consequence of rash and negligent driving.

Mr. Subir Banerjee, learned advocate representing the appellant/claimant primarily urges grounds in support of this appeal, which are two folds.

It is contended by the appellant/claimant that learned Tribunal has erred in law in not awarding any future prospect to the claimant/appellant.

The second ground urged by the appellant/claimant is that the damages component, though granted, however, it was allowed ignoring the

settled proposition of law thereby causing deprivation to the valuable rights of the claimant.

Reliance is placed by the appellant/claimant 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. Divisional Manager, National Insurance***, reported in ***2010 (10) SCC 341***, ***Smt. Sarla Verma and ors vs. Delhi Transport Corporation and anr.***, reported in ***(2009) 6 SCC 121***, ***National Insurance Company Limited vs. Pranay Sethi & ors.*** reported in ***(2017) 16 SCC 680*** and ***Jagadish vs. Mohan & ors.*** reported in ***(2018) 4 SCC 571*** so as to challenge the award in terms of the points raised, mentioned hereinabove.

Mr. Parimal Kumar Pahari, learned advocate appearing on behalf of the Insurance Company/respondent no.1 submits that the award has been rightly decided by learned Tribunal upon considering pros and cons of the case.

Mr. Pahari, learned advocate 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.

Mr. Pahari, without filing any COT further submits that considering the age of the victim, the correct multiplier should have been selected at 14, and not 15, which has been erroneously applied by the learned Tribunal.

There cannot be a controversy on the issue that selection of multiplier in a case for determination of compensation is of immense potentiality.

Mr. Banerjee taking the step forward submits that erroneous selection of multiplier would certainly lead to erroneous assessment of the award. When Mr. Banerjee does not raise any dispute without regard to the selection of suitable multiplier, and when it is the proposition of law already decided in several cases, addressed by the Apex Court, the multiplier in the given circumstances of the case, should be selected as 14.

The injured/appellant suffered the instant accident, when he was 43 years old, and was a rickshaw van puller and used to earn Rs.3,000/- per month from his occupation. Victim was treated at various hospital due to the above accident and his treatment is still continuing. In the disability certificate, issued by the medical board, Raiganj District Hospital, the extent of disablement suffered by the victim was shown to 50% disability, P.W.3 from Islampur Sub-Divisional Hospital adduced

evidence to prove the 50% permanent disability of the claimant.

In the instant case, the Disability Certificate i.e. Exhibit.11 was issued by Medical Board upon assessing disability to the extent 50%. There lies nothing to dispute with genuineness of such disability certificate.

The Apex Court, while addressing the question of just compensation, time and again observed that in deciding the just compensation the learned Tribunal has to take into account all the elements, that would place the victim almost near to a position, as he 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 earning, would depend upon the effect and impact of such permanent disability on his earning capacity. A person, who has suffered injuries arising out of accident and cannot move freely to attend to his duties, may not match the earning in comparison with the one, who is healthy and bodily abled.

Considering the arguments advanced by both the parties and also the extent of permanent

disablement, that the appellant has suffered, this Court is of the view that he is entitled to a further consolidated principal amount of Rs.50,000/- towards trauma, loss of amenities, loss of expectation of life, mental shock, pain and sufferings etc.

The award granted by the learned Tribunal therefore needs modification and the claimant is found entitled to 25% future prospect.

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

<u>Particulars</u>	<u>Amount (Rs.)</u>
Monthly Income	Rs.3,000/-
Annual Income (Rs.3000/- X 12)	Rs.36,000/-
Add: Future Prospect @ 25%	Rs.9,000/- Rs.45,000/-
Less: Deduction 50% (since the victim was disabled to an extent of 50%)	Rs.22,500/- Rs.22,500/-
Multiplier 14	X 14 Rs.3,15,000/-
Add: Medical expenses (granted by the ld. Tribunal)	Rs.16,000/- Rs.3,31,000/-
Add: Pain and suffering	Rs.50,000/- Rs.3,81,000/-
Less: Awarded amount	Rs.2,86,000/-
Balance enhanced amount	Rs.95,000/-

The claimant/appellant acknowledges the receipt of the awarded amount of Rs.2,86,000/- in terms of

the direction of the learned Tribunal. Accordingly, the balance enhanced sum of Rs.95,000/- would become payable to the appellant/claimant by the Insurance Company/respondent no.1, together with interest assessed at the rate of 6% 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/claimant.

With the aforesaid directions, 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.)