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# IN THE HIGH COURT AT CALCUTTA
## CIVIL APPELLATE JURISDICTION

## F.M.A. 1121 of 2013

**Sri Madhusudhan @ Sadhusudan Mondal**
**Vs.**
**The Oriental Insurance Company and Anr.**

**Mr. Krishanu Banik .... For the Appellant.**

**Ms. Sucharita Paul .... For the Respondent/Insurance Company.**

The appeal is directed against the judgement and award passed in M.A.C. Case No. 324 of 2008 under Section 166 of the Motor Vehicles Act renumbered as MAC Case No. 09 of 2010 passed by Motor Accident Claims Tribunal, 1st Court, Tamluk, passing award of Rs. 2,27, 404.59 along with interest at the rate of Rs.8% p.a from the date of filing of the claim petition.

The claim case arose out of an accident which took place on 9th April, 2008 when the victim was going to his house from his work place at Shankarpur keeping the left side moram portion of the road. One bus bearing number WB 29/6544 coming from Digha side towards Contai with extreme high speed endangering to human life and safety dashed the victim with great force. As a result he sustained grievous injuries and his left leg was

S.D.

compound fractured. He was admitted to Contai Sub-Divisional Hospital, then NRS Hospital and thereafter Medical College and Hospital at Kolkata. Again he was shifted to Sambhunath Pandit Hospital and he was treated there from 10.04.2008 to13.06.2008. The offending bus was insured with Oriental Insurance Company Limited at the relevant point of time. It was further alleged that at the time of accident the victim was aged about 41 years and he used to earn Rs.3,500/- per month. That is why the claim petition was filed before the tribunal with a claim to the tune of Rs.4,00,000/-.

To prove the claim the claimant examined himself as P.W. 1. In course of his evidence chargesheet, medical documents including disability certificate were admitted in evidence as Exhibits 1 to 11.

One doctor, namely, Dr. Tuhin Kumar Majhi claiming himself to be a member of the board issuing disability certificate was examined as P.W. 2.

Learned Tribunal, after considering the entire evidence on record including the disability certificate, reduced the disability from 50% to 40% and notional income was assessed at Rs.3,000/- per month. After applying multiplier 15, learned Tribunal assessed total compensation to the tune of Rs.2,27,404.59/-

Learned Advocate appearing on behalf of the claimant has contended before this court that the learned

Tribunal did not consider the future prospect and reduced the percentage of disability from 50% to 40% without caring the certificate of the Board of Doctors. It has been further submitted that interest was also not granted by the Tribunal and learned Tribunal awarded insufficient non-pecuniary damages.

Learned Advocate appearing on behalf of the Insurance Company contended that the disability certificate as well as the evidence of the Doctor (P.W.2) clearly shows that no review has been done at the instance of the claimant after three years, suggested by the Doctors of the Board. Therefore, it is not possible to assess the percentage of the disability of the claimant. Learned Advocate on behalf of the Insurance Company supported the judgement passed by the Tribunal.

On careful perusal of the evidence of P.W. 1 together with the chargesheet (exhibit 1 and 2) and the FIR, I do not find any reason to interfere with the observation of the learned Tribunal with regard to the accident and injuries sustained by the claimant thereby. From the disability certificate, Exhibit 11 and other medical documents together with evidence of Doctor, P.W. 2, I am unable to come to any conclusion regarding disability of 40% as observed by the learned Tribunal. In view of evidence of P.W. 2 together with all the medical documents and disability certificate, I am unable to accept the observation of the learned Tribunal to speculate percentage of this disability of 40% while Board of Doctors issued the disability certificate to the extent of 50% disability.

It is true that the claimant could not produce any evidence in support of his income and the learned Tribunal has rightly assessed the notional income of Rs.3000/- per month to calculate the compensation.

Therefore, in the aforesaid view of the matter, I find it justified to assess the compensation in the manner as follows:-

1. Monthly income be assessed as Rs.3,000/-

2. Annual income be assessed as (Rs.3,000 X 12) ..... Rs. 36,000/-

2. Future prospect be assessed 25% i.e. Rs.9,000/-

3. Total ...... Rs. 45, 000/-

4. 50% Loss of income ie. Rs.22,500/-

5. Use of multiplier as per age of victim 41(22,500 X 14) Rs.3,15,000/-

6. Medical Expenses Rs.1400/-

TOTAL Rs.3,16,400/-

Therefore, the claimant is entitled to total award of Rs.3, 16,400/- towards pecuniary damages.

In support of non-pecuniary damages, learned

Advocate appearing on behalf of the claimant has referred to a case of (R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. reported in AIR 1995 (SC) 755 and submitted that to assess the pecuniary damage the court has to consider the damage of pains suffering, loss of amenities and loss of expectation of life etc.

In the case of R.D. Hattangadi (Supra) the Hon'ble Apex Court considered mental and physical shock, pain, suffering, ordinary suffered or likely to be suffered in the future, loss of expectation of life inconvenience hardship, discomfort etc. towards the non-pecuniary damages in case of injury.

Having regard to the entire evidence on record as well as the guidelines of the Hon'ble Apex Court I find it would be justified to assess non-pecuniary damages as Rs.1,00,000/- in addition to the pecuniary damages.

Therefore, the claimant is entitled to compensation to the tune of Rs.4,16,400/- towards the non-pecuniary damages.

It is reported that the claimant has already received Rs. 2,27,404/- and therefore the claimant is entitled to award of balance of amount of Rs.1,88,996/- along with interest at the rate of 6% p.a. from the date of filing of the application till deposit of the sum. The claimant is also entitled to interest at the rate of 6% p.a. on Rs.2,27,404/- from the date of filing of the petition till the payment of that amount.

Insurance Company is directed to pay Rs.1,88,996/- along with interest at the rate of 6% p.a. before the office of the learned Registrar General within six weeks from date of this order along with interest @ 6% per annum on the amount of Rs.2,27,404/- from the date of filing of the claim petition till the date of payment of that amount.

The learned Registrar General is to disburse the amount to the claimant on proper identification and proof.

The appeal stands disposed of accordingly.

Let a copy of this order along with the tribunal records be transmitted back to the tribunal forthwith.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

**(Bibhas Ranjan De, J.)**