

03-08-2022
Item no.40
Subrata

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction

FMA No.2543 of 2007

Bhim Mahato

-vs-

The Oriental Insurance Company Limited & Anr.

with

CAN No.1 of 2008

(Old CAN No.938 of 2008)

and

CAN No.2 of 2009

(Old CAN No.714 of 2009)

Mr. Krishanu Banik

...for the appellant

Mr. Rajesh Singh

Ms. Sucharita Paul

...for the insurance company

Aggrieved by the award of compensation as inadequate passed by the learned Judge, Motor Accident Claims Tribunal (in short tribunal), 2nd Court, Paschim Medinipur in MACC No.417 of 2015, the claimant has approached this court by preferring the instant appeal.

By the judgement and award dated May 31, 2007, learned tribunal directed the Oriental Insurance Company Limited to pay an amount of Rs.32,500/- as compensation to the claimant-appellant. The learned tribunal also directed the insurance company to pay interest at the rate of 5% p.a. on the awarded amount of money from the date of filing of the claim application.

The appellant in this appeal seeks enhancement of compensation as awarded by the learned tribunal.

Background facts which led to filing of the claim application under section 166 of the Motor Vehicles Act, 1988 and which are necessary for adjudication may be adumbrated as under.

On November 16, 2004 at about 8.00 hours Bhim Mahato, son of Late Mohan Mahato, of village Palaiboni, P.O. Sayadpur, P.S. Salboni, district Paschim Medinipur was proceeding with his bicycle by the side of R.M. Road. When he reached Sundra Relief Chak, at that time one bus bearing no.WB-04A/0081 coming with excessive speed and driven in rash and negligent manner suddenly dashed the bicycle of him. As a consequence thereof, he fell down on the road and sustained severe injuries on his femur bone and head. He was taken to Midnapore Medical College and Hospital. Because of the injuries sustained by him, he has been afflicted with permanent disablement. Before the accident took place, the claimant used to earn Rs.5,500/- per month as salary. At the time of the accident he was aged about 55 years. Because of sustaining injuries out of the accident, the claimant has lost his physical capacity to earn what he used to earn normally. At the time of the accident, the offending vehicle was insured with the first respondent – Oriental Insurance Company Limited.

On the facts as above, the claimant sought for compensation of Rs.3 lakh.

Upon hearing the learned advocates for the parties and on consideration of the evidence on record, learned tribunal partly allowed the claim application and awarded the compensation as indicated above.

Learned counsel appearing for the appellant submits that the learned tribunal erred in assessing the income of the claimant as Rs.15,000/- per year notionally, instead of Rs.3,000/- per month. Learned counsel also submits that the learned tribunal erred in not awarding the compensation on the count of future prospects. He also contends that the learned tribunal failed to award any

compensation on the count of non-pecuniary damages due to his suffering and mental pains. He further submits that the claimant is entitled to get interest at the rate of 6% p.a. on the awarded amount. on such score, he argues that the compensation as awarded by the learned tribunal should be enhanced.

Per contra, learned counsel for the respondent-insurance company submits that the award passed by the learned tribunal was justified. He submits that the claimant is not entitled to get the compensation as urged by the appellant.

The learned tribunal on assessment of the evidence on record has recorded the finding that the accident took place due to rash and negligent driving on the part of the driver of the offending vehicle and the claimant sustained injuries and suffered disablement to the extent of 40%.

On analysing the evidence on record, especially the evidence of the eyewitness, I find no reason to depart from the finding recorded by the learned tribunal that due to rash and negligent driving on the part of the driver of the offending vehicle, the accident took place. From the evidence of PW4, Dr Kaushik Chakraborty, and the evidence of PW6, Dr Aditya Prasad Mondal, it is evident that due to sustaining injuries, the claimant has suffered disablement to the extent of 40%. The finding recorded by the learned tribunal is to this effect. Since no cross-objection has been filed on behalf of the insurance company, the findings as recorded by the learned tribunal remain uncontroverted.

Therefore, this court is of the view that due to the accident, the claimant sustained injuries on vital parts of his body and suffered disablement to the extent of 40%.

It is the fact that no documentary evidence was adduced on behalf of the claimant before the learned tribunal to evince that he used to earn Rs.5,500/- p.m. However, it is not in dispute that in view of a series of decisions passed of this court, the income of a workman may be assessed at Rs.3,000/- p.m. in the absence of any documentary evidence.

As directed by the Hon'ble Supreme Court at para.59.4 of the decision in the case of **National Insurance Company Limited v. Pranay Sethi & Ors.** reported in **(2017) 16 SCC 680**, future prospects shall be assessed at the rate of 10% in the case of the concerned person who was aged between 50 and 60 years. That being so, the victim is entitled to get compensation on the count of future prospects at the rate of 10%. But the learned tribunal did not assess any compensation on such count.

Learned tribunal while calculating the compensation used the multiplier 8. Since the complainant/injured at the time of the accident was aged about 55 years, the multiplier 9 should be adopted in view of the observations of the Hon'ble Supreme Court at para.42 of the decision in the case of **Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.** reported in **(2009) 6 SCC 121**.

Learned counsel for the appellant also submits that the claimant seeks compensation of Rs.50,000/- in respect of non-pecuniary damages.

In view of a decision in the case of **R.D. Hattangadi v. Pest Control (India) Pvt. Ltd. & Ors.** reported in **1995 ACJ (SC) 366** and the ratio of a decision in the case of **Anamika Mondal v. United India Insurance Company Ltd. & Ors.** reported in **(2010) ACJ 65**, it would be wise if the compensation is awarded to the extent of Rs.50,000/-

on the count of non-pecuniary damages considering the disablement of the complainant to the extent of 40%.

In view of the finding as recorded above, the award passed by the learned tribunal requires modification in the following manner.

Monthly income	=Rs,3,000/-
Annual income	
Rs.3,000/- x 12	=Rs.36,000/-
Future prospects at the rate of 10% p.a. considering the age of the injured as 55 years	= Rs.3,600/-
Total	= Rs.39,600/-
Deduction will be to the extent of 40% considering the disablement of the injured,	=Rs.15,840/-
Adopting multiplier 9 considering the age of the injured Rs.15,840 x 9	=Rs.1,42,560/-
Non-pecuniary damages owing to pain and suffering by the victim	=Rs.50,000/-
Total compensation	=Rs.1,92,560/-.

Admittedly, the claimant has already received the awarded amount of money with interest thereon. Therefore, the claimant is entitled to further compensation of (Rs.1,92,560-Rs.32,500) **Rs.1,60,060/-**. The claimant is also entitled to get interest at the rate of 6% p.a. on the further awarded amount of money i.e. Rs.1,60,060/-.

Accordingly, the Oriental Insurance Company Limited, the first respondent herein, is directed to deposit Rs.1,60,060/- along with interest at the rate of 6% p.a. on this amount from the date of filing of the claim application, i.e. from May 21, 2005, by way of cheque with the learned Registrar General of this court within six weeks from date.

Once the aforesaid amount is deposited, the learned Registrar General shall release the amount to the claimant immediately after being satisfied with his identity.

With the above direction, the appeal and the connected application, if any, stand disposed of. No order as to costs.

Send down the LCR along with a copy of this order to the learned tribunal for information.

Certified copy of this order, if applied for, shall be given to the parties.

[Rabindranath Samanta, J]

