15.03.2022
Item No.14
Ct. No.7
CHC
(disposed of)

F.M.A.1108 of 2009
IA NO: CAN/2/2012 (Old No: CAN/2265/2012)
(Physical Hearing)

Krishna Pada Biswas
Vs.
The National Insurance Company Limited & anr.

Mr. Amit Ranjan Roy
…for the appellant/claimant

Mr. Rajesh Singh
…for the respondent no.1/
Insurance Company

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.

It is submitted by Mr. Amit Ranjan Roy, learned advocate for the appellant/claimant that 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, 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 instant appeal has emerged out against the judgement and award dated 21st November, 2008, passed by learned Member, Motor Accident Claim Tribunal (Additional District Judge, 5th Court), Nadia, in M.A.C. Case No.72 of 2007, on a claim under Section 163A of the Motor Vehicles Act, 1988, granting award to the tune of Rs.1,58,400/- to the claimant/appellant namely, Krishnapada Biswas for the injuries suffered by him in a vehicular accident dated 26th day of September, 2004 by reason of involvement of vehicle bearing No.WB-51/3861.

The compensation was awarded upon consideration of the injuries sustained by the injured/claimant, with which the appellant/claimant was not satisfied. Hence this appeal.

Mr. Amit Ranjan Roy, learned advocate for the appellant/claimant primarily urges grounds in support of this appeal, which are three folds.

It is contended by the appellant/claimant that learned Tribunal has erred in law, in assessing the income of the victim notionally at Rs.50/- per day, instead of considering the actual income of the claimant earned at the relevant time of accident. The income of injured, being a Van Rickshaw Puller, at Rs.1,500/- per month, according to appellant/claimant, could not be taken into account, in deciding the quantum of compensation.

The second ground urged by the appellant/claimant is that no interest was granted to the compensation awarded, leading to inadequate quantification of the award, which can hardly be regarded, just and proper. Lastly, appellant/claimant submits that learned Tribunal has committed a mistake in not granting Rs.15,000/- for 'medical expenses' as provided under second schedule of section 163A of the Motor Vehicles Act, 1988, as the injured had to admitted to hospital for a period of 50 days nearly, and subjected to operation twice incurring even some expenses, what was quite difficult for injured/Van Rickshaw Puller to arrange such money, and as such, an amount of Rs.15,000/- ought to have been granted most rationally, without requiring the claimant for production of any medical vouchers to that effect.

Mr. Rajesh Singh, learned advocate representing the respondent no.1/Insurance Company without disputing with the facts leading to the injury sustained by the victim submits that the award has been rightly decided by the learned Tribunal upon considering pros and cons of the case. He strongly opposes the case made out by the appellant/claimant.

According to respondent no.1/Insurance Company, there lies nothing to be interfered with in this appeal, and as such, there is no scope for making any interference by this Court.

The injured/appellant suffered the instant accident, when he was 38 years old having reasonable income to maintain his dependents being two minor children and wife.

The Disability Certificate (Exhibit.7) issued by the Medical Board, District Hospital, Nadia was proved in evidence, confirming 55% permanent disablement suffered by the victim, which according to the claimant was an outcome of injuries sustained in the concerned accident. The said certificate was proved by P.W.3, being one of the doctors attending the Medical Board.

The claim case being filed under Section 163A of the Motor Vehicles Act, 1988, the second schedule appended to the said section is to be followed in assessing the compensation amount in favour of the claimant.

Upon perusal of the judgement, it appears that learned Tribunal has assessed the income of the injured at Rs.1,500/- per month, ignoring the oral evidence, adduced by the witness in this case, which disclosed that at the time of the accident, victim had an income of at least Rs.110/- per month, being a Van Rickshaw Puller. Though there has been no documentary evidence adduced in support of the income of the claimant, yet when it is a piece of social legislation, the oral evidence adduced by the claimant cannot be given a complete go by. As such it would be sufficient to reveal the actual income of the victim, upon considering the general practice and precedence of this Court, and also bearing in mind the price index of the concerned year. The income of the claimant should have been assessed taking into account his income at Rs.3,000/- per month. It is evident from the impugned judgement that interest was granted on the awarded sum only under default clause. In terms of the settled proposition of law, as already decided by the Apex Court, the claimant is entitled to interest from the date of filing of claim application. The victim would also be entitled to Rs.15,000/- under medical expenses for his injuries and as such the above award needs modification.

Having considered the submission, thus advanced by both the parties and bearing in mind the general practice and precedence of this Court, 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 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 herein below, and recalculated as follows:-

Particulars	**Amount (Rs.)**
Monthly Income	Rs.3,000/-
Annual Income	Rs.36,000/-
Multiplier 16	Rs.5,76,000/-
55% Disability= 55% loss of earning capacity	Rs.3,16,800/-
Add Medical expenses	Rs.15,000/-
Total entitlement	Rs.3,31,800/-
Less awarded amount	Rs.1,58,400/-
Differential amount	**Rs.1,73,400/-**

The claimant/appellant acknowledges receipt of the entire awarded amount in terms of the direction passed by the learned Tribunal. The enhanced sum of Rs.1,73,400/- would become payable to the appellant by the Insurance Company/respondent no.1 together with interest assessed at the rate of 6% per annum on and from the date of fling of the claim petition till the date of payment. The appellant/claimant would also be entitled to the similar 6% interest on the already paid amount of Rs.1,58,400/- from the date of filing till realization.

Insurer is directed to make such payment through NEFT/RTGS, directly into the bank account of the claimant/appellant, within a period of 45 days from the date of receipt of the bank particulars of the appellant/claimant. For such purpose, learned advocate for the appellant/claimant will forward the bank account details of the appellant within a fortnight from date to learned advocate for the Insurance Company/respondent no.1.

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 will 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.)