

14.12.2022
Sl. No. 62
Ct No. 654
Ali

F.M.A.T(MV) 421 of 2022
IA No: CAN/1/2022

Md. Imam Alias Mahahimam
Vs
Magma HDI General Insurance Co. Ltd. & Anr.

Mr. Saidur Rahaman
....for the appellant-claimant.

Mr. Parimal Kumar Pahari
.....for the respondent No.1-Insurance Co.

Re: CAN 1 of 2022

This is an application for condonation of delay under Section 5 of the Limitation Act readwith Section 173 of the Motor Vehicles Act, 1988.

Mr Saidur Rahaman, learned advocate for appellant-claimant submits that there has been a nominal delay of only 4 days in preferring the appeal and he prays for condonation of such delay.

Mr Parimal Kumar Pahari, learned advocate appears for respondent no.1-insurance company.

It appears from the report of Additional Stamp Reporter dated 20.9.2022 that there is a delay of 4 days in preferring the appeal. The cause shown is sufficient to condone such delay. Thus the delay of 4 days in preferring the appeal stands condoned.

The application being **CAN 1 of 2022** stands allowed and disposed of.

Accordingly the appeal is formally admitted and registered.

FMAT (MV) 421 of 2022

This appeal is directed against the judgement and award dated 27th April, 2022 passed by learned Additional District Judge cum Judge, Motor Accident Claims Tribunal, 2nd Court, Islampur, Uttar Dinajpur in M.A.C Case no. 154 of 2018 under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 14th May 2018 at about 0.00 hours while the victim was travelling in vehicle bearing registration no. NL-02N/6822 (truck) from Chopra side as a *Khalasi* of the said vehicle and when it reached near Teesta More under Islampur PS on NH31 at that time the driver lost control over the vehicle and dashed behind another moving truck with great force as a result of which the victim sustained serious injuries and was treated at different hospitals. On account of such injury the injured-claimant filed application under Section 166 of the Motor Vehicles Act, 1988 claiming compensation.

Upon hearing and considering the materials on record the learned tribunal granted compensation in favour of the injured-claimant to the tune of Rs. 12,05,600/-along with interest.

Being aggrieved by and dissatisfied with the impugned judgement and award the claimant has preferred the present appeal.

Mr Saidur Rahaman, learned advocate for appellant-claimant submits that the present appeal is precisely on a short point challenging the determination of income of the claimant @ Rs. 3000/-per month by the learned tribunal and as such the calling for of lower court records and preparation of informal paper books be dispensed with. Mr Parimal Kumar Pahari, learned advocate for respondent no.1-insurance company also concedes to such submissions. In view of the above, calling for of lower court records and preparation of informal paper books is dispensed.

Now the appeal is taken up for hearing.

Mr Rahaman, learned advocate for appellant-claimant submits that the learned tribunal erred in considering the income of the claimant @ Rs.3000/- per month which should have been considered @ Rs 5000/- per month in view of several decisions of this court. In light of his aforesaid submissions he prays for enhancement of the compensation amount. He fairly submits that as the victim at the time of accident was 42 years hence an amount equaling 25% of annual income should be considered towards future prospect.

Mr Parimal Kumar Pahari, learned advocate for respondent no.1-insurance company opposes such prayer for enhancement of the compensation.

The service of notice of appeal upon respondent no.2-owner of the offending vehicle is dispensed with since he did not contest the claim application before the learned tribunal and the case was disposed of *exparte* against him.

From the impugned judgment it is found that the learned tribunal considered the income of the claimant-injured to the extent of Rs.3000/- per month. The owner of the vehicle under whom the claimant-injured was employed deposed before the court as PW2 and stated that he used to pay Rs. 5000/- per month to the claimant-injured. However, no document was produced by the witness to show monthly payment of such amount. Be that as it may, bearing in mind the price index prevailing on the relevant date of accident in the year 2018 as well as catena decisions of this court as the accident has taken place in the year 2018, the income of the deceased should be considered @ Rs.5000/- per month.

It appears that the learned tribunal has considered an amount equalling to 40% of the annual income towards future prospect. Be that as it may, as the victim is admittedly aged 42 years at

the relevant time and was on fixed salary as *Khalasi* hence an amount equaling to 25% be taken into account towards future prospect.

The other findings of the learned tribunal namely the multiplier adopted, the percentage of disablement considered has not been challenged in this appeal.

Now keeping in mind the above aspects the calculation of compensation is made hereunder:-

Calculation of compensation

Monthly Income.....	Rs.5,000/-
Annual Income.....(Rs.5,000/- X 12).....	Rs. 60,000/-
Add: Future Prospects @ 25% of total Income...	<u>Rs.15,000/-</u>
Total.....	Rs.75,000/-
100% loss of Income due to disablement of 91%.	Rs.75,000/-
Adopting multiplier 14 (Rs.75,000/- X 14)..<	Rs.10,50,000/-
Non-pecuniary damages towards pain & suffering.....	<u>Rs.5,00,000/-</u>
Total Compensation.....	Rs.15,50,000/-

Thus the total compensation comes to Rs.15,50,000/-. It is informed that the injured-claimant has already received the amount of compensation of Rs.12,05,000/-alongwith interest as directed by the learned tribunal.

Accordingly, the respondent no.1-Magma HDI General Insurance Company Limited is directed to deposit the balance amount of Rs.3,45,000/- alongwith interest @ 6% per annum from the date of filing of the claim application till deposit, by way of

cheque with learned Registrar General, High Court, Calcutta within a period of six weeks from date. The learned Registrar General upon deposit of the aforesaid amount shall release the said amount to the injured-claimant on satisfaction of his identity.

The appeal accordingly stands allowed on contest. No order as to cost.

Appellant claimant is directed to deposit *ad valorem* court fees on the enhanced amount, if not already paid.

With the aforesaid direction the appeal, stands disposed of.

All connected applications stand disposed of.

Interim order, if any, also stands vacated.

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

(Bivas Pattanayak, J.)