

30 17.03.
2022

AGM
/RKB
Ct
07

FMAT 2831 of 2007
IA No: CAN 1 of 2012 (Old No. 2808 of 2012)

Basudev Basu @ Mahata
Vs
The National Insurance Co. Ltd. & Anr.

Mr. Amit Ranjan Roy. ... for the appellant.

Mrs. Sucharita Paul,
... For the respondent/Insurance Company.

Learned advocates 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 the learned advocate for the appellant that since the appellant/claimant has been suffering from financial distress for want of sufficiency of money for their 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 appeal has emerged out impugning the judgment and award dated 10th day of August, 2007, passed by learned Additional District Judge, Claims Tribunal, 2nd Court, Midnapore (W), in M.A.C. Case

No 732 of 2005, on a claim under Section 163A of the Motor Vehicles Act, 1988, granting award to the tune of Rs.1,64,000/- to the claimant/appellant, namely, Basudev Basu @ Mahata for the injuries suffered by him in a vehicular accident, occurred on 31st day of August, 2005, by reason of involvement of vehicle bearing No. WB-33/4881.

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

It is contended by Mr. Roy that learned Tribunal has erred in law in assessing the income of the victim at Rs. 2,000/- per month, instead of considering the actual income of the claimant, which was earned at the relevant time of accident. The employer of the victim while deposing as PW2 specifically stated that she was paying a sum of Rs. 3,000/- per month to the injured victim, who was her employee. Accordingly, Rs. 3,000/- should have been considered by the learned Court below in deciding the quantum of compensation.

The second ground urged by the appellant/claimant is that the Tribunal has erred in law by deducting 1/3rd as 'personal expenses' of the injured claimant while awarding the compensation.

While making elaboration of such issue regarding deduction, it is submitted by Mr. Roy that

deduction to the extent of 1/3rd towards personal expenses of the deceased would be applicable in the case where the victim ultimately succumbed to injuries. Therefore, such deduction to the extent of 1/3rd towards personal expenses of the injured/claimant in the instant case is erroneous resulting in awarding improper quantification of the award.

Lastly, Mr. Amit Ranjan Roy further submits that the 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, since the victim's right leg below the knee had to be amputated and the injured had to be admitted to several hospitals for treatment, and subjected to incurring even some expenses, what was quite difficult for injured khalasi to arrange such money, and as such, an amount of Rs. 15,000/- ought to have been granted most rationally.

Mr. Roy also argues that the learned Court below awarded inadequate compensation on the head of pain and sufferings of the injured. It is submitted that only Rs. 800/- was awarded on such head, whereas a sum of Rs. 5,000/- should have been awarded as per second schedule under section 163A of the Motor Vehicles Act, 1988.

Mrs. Sucharita Paul, learned advocate

representing the Insurance Company/respondent No. 1 submits that award has been rightly decided after considering the pros and cons of the case. She strongly opposes the case made out by the appellant. Thus, according to Insurance Company/respondent No. 1, there lies nothing to be interfered with in the impugned judgment and as such there is no scope for making any interference by this Court.

Facts involved leading to the injury of the claimant is not disputed.

The injured/appellant suffered the instant accident, when he was 23 years old having reasonable income. The Disability Certificate (Exhibit. 6) issued by the Medical Board, Midnapore College & Hospital was proved in evidence, confirming 60% permanent disablement suffered by the victim due to amputation of his right leg below the knee, 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 judgment, it appears that

the Tribunal has assessed the monthly income of the injured at the rate of Rs. 2,000/- per month, but the oral evidence adduced in this case revealed that at the time of accident, victim had an earning of Rs. 3,000/- per month being a khalasi. Admittedly, no documentary evidence could be produced in support of the income of the injured. But to establish the income of the injured, the employer was taken to witness box and examined as PW3, who testified the income of the injured to the extent of Rs.3,000/- per month at the time of accident. Upon considering the evidence disclosed by such witnesses, and also bearing in mind the price index of the concerned year, the then prevailed, the income of the claimant should have been assessed at the rate of Rs. 3,000/- per month giving a holistic approach therefor.

The deduction of 1/3rd on account of personal expenses of the injured victim is also erroneous and not in accordance with the second schedule under Section 163A of the Motor Vehicles Act, 1988. There should have been no such deduction. The award should have been assessed on the basis of 60% loss of earning capacity of the injured claimant.

The victim would also be entitled to Rs. 15,000/- under medical expenses and Rs. 5,000/- as pain and sufferings, 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 precedence of this Court, the award passed by the learned Tribunal needs modification after a revisit to the impugned judgment 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:

<u>Particulars</u>	<u>Amount (Rs.)</u>
Monthly Income	Rs.3000/- <u>X12</u>
Annual Income	Rs.36,000/-
Multiplier of 17	Rs.6,12,000/-
60% loss of earning capacity/ disability	<u>x 60%</u> Rs. 3,67,200/-
Add Rs. 15,000/- as medical Expenses	<u>Rs. 15,000/-</u> Rs. 3,82,200/-
Add Rs. 5,000/- as pain and Sufferings	<u>5,000/-</u> Rs. 387,200/-
Less : awarded amount	<u>Rs. 1,64,000/-</u>
Differential amount	Rs. 2,23,200/-

The claimants acknowledge receipt of the entire awarded amount of Rs. 1,64,000/- along with interest. The balance sum of Rs. 2,23,200/- would be

paid to the appellant by the insurance company together with interest assessed at the rate of 6% per annum on and from the date of filing of the claim petition.

Insurer is directed to make such payment in the bank accounts of the claimants, in the same proportion as direction by the Court below, through RTGS/NEFT with in the period of 45 days form the date of receipt of bank account particulars of the appellants. For such purpose advocate for the appellants will forward the bank account details of the appellants within a fortnight from date to advocate for the insurance company.

With the aforesaid direction the instant appeal is disposed of.

In view of this appeal, the connected applications if any, are also disposed of.

. Department is directed to send down the Lower Court Records immediately, if received.

There shall be no order as to costs.

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)

