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Ct. No.237
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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURICTION
APPELLATE SIDE

FMAT 1336 of 2012
with
IA No. CAN 1 of 2013 (CAN 6825 of 2013)

Pran Krishna Mondal
Vs.
The National Insurance Company Limited & Ors.

Mr. Amit Ranjan Roy
… For the appellant/claimant

Mr. Arabinda Kundu
… For the respondent no.1/National Insurance Company Limited

Ms. Gopa Das Mukherjee
… For the respondent no.2/New India Assurance Company Limited

Being aggrieved and dissatisfied with the judgment passed on 4th June, 2012 by the learned Judge, 1st Motor Accident Claims Tribunal, Howrah, in MAC Case No.255 of 2004 under Section 166 of the Motor Vehicles Act, 1988 awarding a sum of Rs.1,50,000/-, the appellant/claimant has preferred this appeal.

The claim petition arose out of an application filed under Section 166 of the Motor vehicles Act, 1988 on account of an accident occurred on 4th February, 2004 at about 12.30 hours on the Diamond Harbour Road near Khirishtala by the involvement of the vehicle (Trekker) bearing registration no.WB-19/C-3044. At the relevant point of time, the appellant/injured was returning to his house from Nishchintapur riding on his own motorbike bearing registration no.WB-20D/7984, suddenly a Trekker coming from the Diamond Harbour side with high speed and in rash and negligent manner dashed the claimant/injured from behind after overtaking a vehicle. As a result, the appellant/claimant sustained severe injury in his left leg and he was taken to Ramkrishna Mission Seva Pratisthan and ultimately his left leg was amputated. After the accident, Kakdwip Police Station Case No.8 of 2004 dated 4th February, 2004 under Sections 279/338/427 of the Indian Penal Code was started against the driver of the Trekker.

In the aforesaid view of the matter, the claimant/injured filed the claim petition with a prayer for compensation to the tune of Rs.4,50,000/-.

Both the Insurance Companies contested the claim petition by filing their respective written statements denying all material allegations in the claim petition.

To justify the claim, the appellant/claimant himself examined as PW-1 and one eye-witness, namely, Swapan Kumar Mondal, was examined as PW-2. In course of evidence, Disability Certificate issued by the Board of District Hospital, Howrah, was admitted in evidence.

Learned Tribunal returned his finding by observing, inter alia, that the claimant had no income at the time of accident and, therefore, considering the life expectancy, loss of income and pain and suffering, awarded Rs.1,50,000/- as compensation.

Learned advocate appearing on behalf of the appellant/claimant assailed the judgment by advancing submission that the learned Tribunal did not pass any award on the pecuniary loss save and except insufficient amount in respect of non-pecuniary loss. Learned advocate appearing on behalf of the appellant/claimant advanced his argument mainly centering around the observation of the Hon'ble Apex Court in **Govind Yadav v. New India Insurance Company Limited**, **2012 (1) TAC 1 (SC)** wherein the Hon'ble Apex Court awarded both the pecuniary and non-pecuniary damages for the injury sustained by a person aged about 24 years.

In **Govind Yadav** (supra), the Hon'ble Apex Court actually dealt with an injury of left leg amputation in respect of a person of 24 years. From that point of view, the Hon'ble Apex Court awarded Rs.5,00,000/- towards non-pecuniary loss unlike our case where we are dealing with a case of amputation of leg of the claimant who was in the age group of 50 to 60 years.

In opposition to that, learned advocate appearing on behalf of the respondent no.1/National Insurance Company Limited, the insurer of the trekker, has advanced his argument to that effect that there was no pecuniary loss as the appellant/claimant could not prove his income at all in course of evidence and, therefore, the learned Tribunal from the humanitarian point of view granted award of Rs.1,50,000/- which may be considered as non-pecuniary loss. It is further submitted that no documents showing expenditure towards treatment has ever been filed in this case.

This is an application under Section 166 of the Motor Vehicles Act, 1988 and the claimant took the responsibility of proving the accident due to rash and negligent driving of the Trekker, by adducing evidence. He himself examined as PW-1 and stated all the details and the manner of accident by the involvement of the vehicle (Trekker) bearing registration no. WB-19/C-3044 and it is also deposed by the claimant that the accident took place due to rash and negligent driving of the Trekker. On careful perusal of his cross-examination, I do not find anything contrary to the evidence regarding rash and negligent act of the vehicle, bearing registration no. WB-19/C-3044. Further, PW-2, being an eye-witness, corroborated the same incident. In fact, before this Court, factum of accident has not been denied by the side of the Insurance Companies.

In view of the principles set out in **Govind Yadav** (supra), I find that I have to consider both pecuniary and non-pecuniary loss in this case.

The appellant/claimant in the claim petition has stated that he used to earn Rs.3,000/- per month and also stated in his evidence that his monthly earning was Rs.3,000/-. In the cross-examination, he has stated that he used to earn Rs.7,000/- to Rs.8,000/- per month from his cycle garage. After the accident, he handed over the garage to his son-in-law and he was receiving Rs.500/- per month from his son-in-law.

However, considering the minimum wages and all the evidences regarding income of the appellant/claimant, I find it justified to assess the monthly income as Rs.3,000/-. Considering the age of the claimant and percentage of disability showing in the certificate issued by the Howrah District Hospital, I find it proper to assess pecuniary damages as follows:-

Annual Income (Rs.3,000/- x 12)	Rs. 36,000/-
Multiplier 9 (Rs.36,000/- x 9) (Age 50 to 60 years)	Rs.3,24,000/-
Disability 70% (70% of Rs.3,24,000/-)	Rs.2,26,800/-
Add: Future prospect 10% of Rs.2,26,800/-	Rs. 22,680/-
Total Pecuniary Loss	Rs.2,49,480/-

So far as the non-pecuniary damages is concerned, I am not unmindful as to the age of the appellant/ claimant and also the pain and suffering for the rest of life due to amputation of one leg. Considering all facts and circumstances, I find it justified to award of Rs.2,00,000/- towards non-pecuniary damages. Therefore, total compensation comes to Rs.4,49,480/- (Rs.2,49,480/- + Rs.2,00,000/-).

It is reported that the appellant/claimant has already received Rs.1,50,000/- as awarded by the learned

Tribunal. Therefore, the appellant/claimant is now entitled to the balance amount of Rs.2,99,480/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e., on 28th June, 2004, till the deposit of the amount before the office of the learned Registrar General.

The respondent no.1/National Insurance Company Limited is directed to deposit the balance compensation amount of Rs.2,99,480/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e., on 28th June, 2004, till the actual deposit of the amount before the office of the learned Registrar General of this Court within six weeks from the date of this order.

The appellant/claimant will be entitled to withdraw the entire amount with interest.

The learned Registrar General will disburse the amount to the appellant/claimant on proper identification.

With the above observation, the appeal, being FMAT 1336 of 2012, stands disposed of.

All pending applications, if there be any, also stand disposed of.

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

(Bibhas Ranjan De, J.)