18.02.2022
Item No.13
Ct. No.7
CHC
(disposed of)

F.M.A.T.1593 of 2013
IA NO: CAN/1/2021
CAN/2/2021
(Physical Hearing)

Sri Mukesh Agarwal Alias Mukesh Agarwala
Vs.
The Oriental Insurance Company Limited & anr.

Mr. Subir Banerjee,
Mr. Sandip Bandyopadhyay,
Mrs. Ruxmini Basu Roy
...for the appellant/claimant

Mrs. Sucharita Paul
...for the respondent no.1/ Insurance Company

In Re: CAN 1 of 2021

The present CAN application is relatable to a prayer for condonation of delay.

Learned advocate for the appellant has attempted to explain the delay caused in preferring the appeal thereby explaining the delay in the relevant averments of application.

Mrs. Sucharita Paul, learned advocate representing the respondent no.1/Insurance Company submits that there has been delay caused in preferring the appeal, which must be taken in view, while considering the prayer for condonation of delay.

Upon perusal of the relevant averments contained in the pleadings, it appears that the delay has been successfully explained and appellant/claimant was prevented by sufficient causes from preferring the appeal within the statutory period of limitation. The delay being sufficiently explained, the delay caused in preferring the appeal stands condoned.

Accordingly, the application for condonation of delay being C.A.N.1 of 2021 stands disposed of.

In Re: F.M.A.T.1593 of 2013

Learned advocates for both the parties are ad idem on the issue that the instant appeal may be disposed of giving a go by to the technicalities involved in the process and the appeal may be instantly disposed of even without consulting lower court records.

It is submitted by the learned advocate for the appellant/claimant that 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 appeal has emerged out against the judgement and award dated 31st January, 2013, passed by the learned Motor Accident Claims Tribunal cum Additional District Judge, Islampur, Uttar Dinajpur in M.A.C.Case No.31 of 2008 on a claim petition under Section 166 of the Motor Vehicles Act, 1988, granting an award to the tune of Rs.17,19,807/- to claimant/appellant namely, Mukesh Agarwal @ Mukesh Agarwala for the injuries suffered by him in a vehicular accident, which occurred on 06.07.2007, by reason of involvement of vehicle bearing No.WB-59/7652 in consequence of rash and negligent driving

Mr. Subir Banerjee, learned advocate representing the appellant/claimant primarily urges grounds in support of this appeal, which are three-folds. It is contended by the appellant that Tribunal has erred in law, in not awarding any future prospect to the claimant.

The second ground urged by the appellant is that the learned Tribunal has erroneously applied a multiplier of 17 to assess the compensation amount. The correct multiplier should be 18 in the instant case for the injuries sustained by the 24 years old victim.

The third ground urged by the appellant/claimant is that the damages component though granted, however, it was allowed ignoring the settled proposition of law thereby causing deprivation to the valuable rights of the claimant.

Reliance is placed by the appellant on some decisions rendered by the Apex Court in cases of ***Raj Kumar vs. Ajay Kumar anr.,*** reported in ***(2011) 1 SCC 343, Yadava Kumar vs. Div. Mangr., National Insurance,*** reported in ***2010 (10) SCC 341, Smt. Sarla Verma & ors. vs. Delhi Transport Corporation & anr.*** reported in ***(2009) 6 SCC 121, National Insurance Company Ltd. vs. Pranay Sethi & ors.*** reported in ***(2017) 16 SCC 680*** and ***Jagdish vs. Mohan & ors.,*** reported in ***(2018) 4 SCC 571*** so as to challenge the award in terms of the points raised, mentioned hereinabove.

Mrs. Sucharita Paul, learned advocate appearing on behalf of the Insurance Company/respondent no.1 submits that the award has been rightly decided by learned Tribunal upon considering pros and cons of the case. She strongly opposes the case made out by the appellant/claimant. According to Insurance Company/respondent no.1, 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 a 24 years old businessman. Victim was treated at various hospitals due to the above accident and his treatment is submitted to be still continuing. The Disability Certificate issued by the Medical Board, North Bengal Medical College, was proved in evidence, and in the Disability Certificate, the extent of disablement suffered by the victim was shown to 50% disability. P.W.2, being the Principal of North Bengal Medical College and also a member of the Medical Board gave evidence to prove the 50% permanent disability of the claimant.

In the instant case, the Disability Certificate was issued by Medical Board upon assessing disability to the extent of 50%. There lies nothing to dispute with the genuineness of such Disability Certificate.

The Apex Court while addressing the question of just compensation, time and again observed that in deciding the just compensation the Tribunal has to take into account all the elements that would place the victim almost near to a position, as he or she was in before the accident. Though, no amount of money can erase the trauma or pain and sufferings sustained by the victim consequent upon the accident.

Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. A person who has suffered injuries arising out of accident and cannot move freely to attend to his ordinary duties should not be compared to the earning of one who is healthy and bodily abled.

Considering the arguments advanced by both the parties and also the extent of the permanent disablement that the appellant/claimant has suffered, this Court is of the view that he is entitled to a further consolidated principal amount of Rs.50,000/- towards trauma; loss of amenities, loss of expectation of life, mental shock, pain and sufferings, etc.

The award granted by the learned Tribunal therefore, needs modification and the claimant is found entitled to '40% future prospect', and a multiplier of 18 needs to be applied instead of 17, as erroneously chosen while modifying the compensation amount for proper quantification of award.

Accordingly, the order passed by the learned Tribunal is modified to the extent mentioned hereinabelow and recalculated as hereunder:

Particulars	**Amount (Rs.)**
Annual Income	Rs.1,04,894/-
Add: Future Prospect @ 40%	Rs.41,958/-
	Rs.1,46,852/-
50% loss of earning capacity/disability	Rs.73,426/-
	Rs.73,426/-
Multiplier 18	X 18
	Rs.13,21,668/-
Medical expenses and incidental expenditure (granted by the learned Tribunal)	Rs.7,28,242/-
	Rs.20,49,910/-
Future Medical Expenses (granted by the learned Tribunal)	Rs.1,00,000/-
	Rs.21,49,910/-
Add Rs.50,000/- on various non-pecuniary damages	Rs.50,000/-
	Rs.21,99,910/-
Less: Awarded amount	Rs.17,19,807/-
Balance enhanced amount	**Rs.4,80,103/-**

The claimant acknowledges the receipt of the awarded amount of Rs.17,19,807/- along with interest in terms of the direction of the learned Tribunal. Accordingly, the balance enhanced sum of Rs.4,80,103/- would become payable to the appellant/claimant by the Insurance Company, together with interest assessed at the rate of 6% per annum on and from the date of filing (i.e. from

11.03.2008) of the claim petition within a period of 45 days from the date of receipt of the bank account particulars of the appellant/claimant.

Learned advocate for the appellant/claimant will forward the bank account details of the appellant/claimant within a period of three weeks from date to the learned advocate for the respondent no.1/Insurance Company. The payment shall be made to the bank account of the claimant/appellant directly.

With the aforesaid directions, the instant appeal is disposed of.

In view of the disposal of this appeal, connected CAN application being C.A.N.2 of 2021 is also disposed of.

The concerned department is directed to tag the applications, if any, with the main appeal.

There shall 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.)