

04.12.2023
SL No.17
Court No. 551
Ali

**IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction**

**FMAT (MV) 15 of 2023
With
IA No.:CAN/1/2023**

**Ranjit Oraw
Vs.
National Insurance Co. Ltd. & Anr.**

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

Mr. Rajesh Singh
..... for the appellant.

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In Re.: CAN 1 of 2023

Heard the learned advocate the delay in
preferring the instant appeal is hereby condoned.

Appeal be admitted.

FMAT (MV) 15 of 2023

A very short point is involved in this appeal
to consider. Thus, the instant appeal is taken up for
hearing.

Mr. Rajesh Singh appears on behalf of the
insurance company.

Heard the learned advocate for the
appellant as well as the respondent insurance
company. The owner did not contest before the
learned tribunal so his presence is dispensed with
for the purpose of hearing of this matter.

The instant appeal is preferred against the
judgment and award dated 20th May, 2022, passed

by the learned Judge, Motor Accident Claims Tribunal, 2nd Court, Balurghat, Dakshin Dinajpur, in M.A.C. Case no. 149 of 2012 under Section 166 of the M.V. Act. The appellant, being the claimants filed one petition before the learned tribunal for getting compensation on the ground that the present appellant is the injured who sustained severe injury in his right hand due to rash and negligent driving of the driver of the offending vehicle and by such accident his right hand was imputed. On considering the case before the learned tribunal, the learned tribunal has considered the disability of the appellant to be 70% and awarded the sum of Rs. 5,43,600/- in favour of the claimant including pain and suffering of Rs. 40,000/- and Rs. 50,000/- for further treatment and artificial limb.

Learned advocate for the appellant submits that the impugned award passed by the learned tribunal is not justified. The claimant appellant was a farmer; his right hand was imputed. Consequently, the disability calculated by the learned tribunal i.e. 70% is not correct. The farmer, having lost his hand became jobless and in this case his functional disability would be 100%. He further argued that the award of compensation of Rs. 90,000/- towards the non pecuniary head is not sufficient. The age of the claimant/appellant is 20 years at the time of accident so his entire life

expectancy has been jeopardized by such accident. So in that score, the claimants are entitled at least Rs. 3,00,000/- towards non pecuniary damages.

Learned advocate for the insurance company raised strong objection and submits that the income of the claimant/appellant was correctly assessed by the learned tribunal according to his prayer. The Doctor of the Medical Board has examined the disability to be 70% which was rightly calculated by the learned tribunal. The claimant has suffered accident in his right hand. The left hand is intact. So at this score, the disability was correctly assessed to be 70%. He further argued that under the non pecuniary head, Rs. 90,000/- was awarded, which is justified. The compensation under the head of the pain and suffering and for the purpose of future treatment was rightly assessed by the learned tribunal. However, Mr. Singh submits that the claimant is entitled to get the future prospects according to the observation of the Hon'ble Supreme Court passed in **Pranay Sethi**.

Heard the learned advocates perused the materials on record also perused the certified copy of the impugned award passed by the learned tribunal.

In considering the functional disability of the present claimant, it appears to me that the claimant was a farmer who lost his right hand in the

accident. It is true, that the farmer, when lost his hand has lost his actual capacity to work. However, it appears to me that the learned tribunal has considered the plea of the claimant and is of opinion that the Doctor of the Medical Board has assessed the compensation to be 70%. I have perused the observation it appears to me that the disability certificate was issued in favour of the claimant to be disability of 70%. It appears that the one hand of the claimant is intact. The loss of a hand of a farmer is obviously unfortunate, but considering the fact that the other limbs of the appellant are not affected, the functional disability cannot be equated as 100%. So considering the same; I am of the view that the observation of the learned tribunal on the basis of Medical Board's observation is very much correct. I think it necessary to observe that the 70% functional disability of the instant appellant is sufficient to consider the just and proper compensation of this case.

In considering the compensation under non pecuniary head, it appears that the learned tribunal has awarded Rs. 90,000/- in the non pecuniary head. It is true that a boy of tender age has lost his requisite youth advantages and suffered immense pain during the operation. The entire life of the claimant is left to carry on with the one hand; considering the same, I think it necessary to add

more Rs.60,000 alongwith Rs.90,000/- in the instant head of non pecuniary head. The claimant is also entitled to get 40% of his actual income towards the future prospects as per the judgment of the Hon'ble Supreme Court passed in **Pranay Sethi**.

Considering the entire aspects, I think it necessary that the just and proper compensation of this case can be assessed as follows:-

Calculation of compensation

1. Monthly IncomeRs.3,000/-
2. Annual Income (Rs.3,000 X 12)..... Rs. 36,000/-
3. Add: 40% Future prospectRs.14,400/-
Rs. 50,400/-
4. Multiplier apply 18Rs.9,07,200/-
5. 70% disability &
70% loss of earning capacity.....Rs.6,35,040/-
7. Add: Non-Pecuniary
+Medical Expenses.....Rs. 1,50,000/-
Rs.7,85,040/-
Less already paid..... Rs. 5,43,600/-
- Total balance amount..Rs. 2,41,440/-**

The insurance company is directed to pay the balance amount of Rs.2,41,440/ to the claimant alongwith interest @ 6% per annum from the date of filing of the claim application within six weeks from this date to the office of the learned Registrar General, High Court, Calcutta. On such deposit the claimant/appellant is at liberty to receive the same according to the prevalent Rules subject to ascertainment of payment of requisite Court Fees.

The instant FMAT (MV) 15 of 2023 is disposed of.

All connected applications, if any, stand disposed of.

Interim orders, if any, stand vacated.

Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)