IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

04.10.2023
SL No.18
Court No. 551
Ali

FMA 60 of 2012
IA No.:CAN/2/2013 (Old No.:CAN/6953/2013)
CAN/3/2015 (Old No.:CAN/8954/2015)

Anirban Mazumder
Vs.
New India Assurance Co. Ltd. & Anr.

Mr. Krishanu Banik,
Mr. Tathagata Banik
……………. for the appellant-claimant.

Mr. Parimal Kumar Pahari
…for the respondent Insurance Co.

The instant appeal has been preferred against the judgment and award dated 29th day of June, 2010 passed by learned Judge, Motor Accident Claims Tribunal, Asansol, in MAC Case no. 45/200 of 2005.

The brief fact of the case is that the present appellant being the claimant preferred an application before the learned tribunal for getting compensation under Section 166 of the M.V. Act on the ground that the claimant has sustained severe physical injury in a road traffic accident due to rash and negligent driving of the driver of the offending vehicle duly insured under the policy of the insurance company.

The claim case was contested by the insurance company and after hearing both the parties the learned tribunal has awarded a sum of Rs. 73,400/- in favour of the claimant.

Being aggrieved by and dissatisfied with the said award of compensation the present appeal has been preferred for enhancement of the award.

The learned advocate for the appellant submits that the claimant has admitted to Apollo Gleneagles Hospitals, Kolkata for treatment after such accident. He was admitted there on 11.06.2005 and discharged therefrom on 22.6.2005. He sustained severe injuries and operation was held thereon. The right eye of the claimant was severely affected and he become permanently disabled. The bills of the Appollo Gleneagles Hospitals, Kolkata has been proved by PW-2 but the same was not considered by the learned tribunal. He further argued that the learned tribunal has failed to assess the compensation adding the future prospects according to the observation of the Hon'ble Apex Court passed in **Pranay Sethi** so he prayed for just and proper compensation.

Learned advocate appearing on behalf of the insurance company raised strong objection and submitted before this court that though the claimant admitted to the Hospital but his vision in the right side eye was not permanently effected. No documents are there regarding the loss of vision.

He further argued that the learned tribunal has correctly assessed the compensation. It is the submission of the learned advocate for the insurance company that the medical bills were sufficiently proved before the learned tribunal so that may be considered for assessing the just and proper compensation.

Heard the learned advocate perused the materials on record. I have also perused the discharged certificate issued by the Appollo Gleneagles Hospitals, Kolkata. It appears that the claimant was admitted to the Hospital since 11.06.2005 to 22.6.2005. The discharge certificate shows that the claimant has sustained some facture injuries over the front portion of his head and the eyes were also effected by such accident. However, it is not clear regarding the loss of eye sight of the claimant whether partial or permanent. However, in considering the fact that the award was not challenged by the insurance company, so I think it necessary that the observation of the learned tribunal regarding the monthly income of the deceased and due to the partial loss of eye sight the functional disability is correctly calculated to be 10%.

In my view, the bills of Appollo Gleneagles Hospitals, Kolkata has been sufficiently proved by the learned tribunal so the claimant/appellant is entitled to get the pecuniary damages of Rs. 1,47,224/-. Considering the entire aspects the impugned award passed by the learned tribunal need be modified.

The just and proper compensation is calculated hereunder:-

The monthly income be assessed Rs. 2,000/-. The 40% towards the future prospects is added thus the monthly income comes to Rs. 2,800/-. The functional disability is 10% thus the monthly dependency comes to Rs. 280/-. The yearly dependency comes to Rs. 3,360/- The deceased was within the age group of 20 years at the time of accident thus the applicable multiplier in this case is 18. So after applying the multiplier the award comes to Rs. 60,480. Rs. 1,47,224/- is added towards the pecuniary damages thus the award comes to Rs. 2,07,704/-.Regarding non pecuniary damages, Rs. 20,000/- was awarded in favour of the appellant by the learned tribunal. In considering the facts and circumstances of this case, the non pecuniary damages should be considered to be Rs.40,000/- so after adding all the heads the award comes to Rs. 2,47,704/-

The learned tribunal has already awarded to be Rs.73,400/- so the insurance company is directed to pay the balance amount of Rs. 1,74,304/- along with interest @ 6% per annum from the date of filling of the claim application i.e from 10.8.2005 within 10 weeks from the date of passing of this order with the office of the learned Registrar General, High Court, Calcutta. On such deposit the claimant is at liberty to receive the same on usual terms and conditions.

The instant FMA 60 of 2012 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.)