

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Bibhas Ranjan De

F.M.A 1956 of 2013

Sahim Banu @ Sahin Banu

Vs.

National Insurance Company Limited & Anr.

For the Appellant/ :Mr. Krishanu Banik, Advocate

Claimant

For the Respondent No. 1/ :Ms. Sucharita Paul, Advocate

National Insurance Co. Ltd.

Hearing concluded on : December 02, 2022

Judgment on : January 03, 2023

Bibhas Ranjan De, J.

1. This appeal is directed against the judgment and award passed by Ld.

Motor Accident Claims Tribunal, Fast Track, 1st Court, Asansol in Motor

Accident Claim Case No. 49 of 2006 whereby, Ld. Tribunal awarded compensation to the tune of Rs. 40,000/- to the claimant.

2. This claim case arose out of an application under Section 166 of the Motor Vehicles Act, 1988, on account of injury sustained by claimant, Md. Murshid, a boy of fifteen (15) years.
3. On 17.06.2006 at about 6.00 p.m. one Pick Up Van bearing no. WB-37A/9401 running with high speed and in rash and negligent manner dashed Md. Murshid near Damagoria while he was walking through National Highway-2. As a result, said boy sustained injury and lost his working ability forever being physically disabled to the extent of 45% according to Medical Board.
4. That is why, mother of injured Md. Murshid filed the claim petition with a prayer for compensation to the tune of Rs. 2,55,000/-.
5. Though, owner of the vehicle did not contest the case but National Insurance Company entered appearance and contested the case by filing a written statement denying all averments of the claim petition contending, inter alia, that the alleged pick up van was not insured with the Insurance Company and the said pick up van was not also involved in the accident. Therefore, Insurance Company is not liable to pay any compensation.
6. To prove the case, Sahin Banu, claimant of the case examined herself as PW-1 and she corroborated the factum of accident for which Kulti PS Case no. 134/06 dated 20.06.2006 under Section 279/338/427 of the Indian Penal Code was started and ended with charge sheet against the

driver of the said pick up van. She further stated the age of her son and to incur the expenditure for treatment she had to spend more than Rs. 50,000/-. In course of her evidence, certified copy of FIR, charge sheet, seizure list, disability certificate, copy of Policy, R/C Book, Tax token etc. were admitted in evidence as exhibit 1 to 10.

7. One Mr. Md. Ali Iman, has been examined as PW-2, who claimant himself as eye-witness, has testified that on 17.06.2006 at about 6.00 p.m. the injured Md. Murshid was crossing the road and suddenly one Max Pick Up Van bearing reg. no. WB 37A/9401 coming from the side of Asansol with high speed dashed Md. Murshid. In effect, he sustained injury all over his body. He was taken to nearby nursing home and thereafter to Bokaro General Hospital. In cross-examination PW-2 testified that the injured was walking through Zebra crossing on foot and PW-2 himself witnessed the accident with his own eyes. He took the injured to hospital.
8. One Nurul Amin, claiming himself a teacher of Ranitala Maqtar Free Primary School, deposed to prove the date of birth of the injured Md. Murshid after verifying the school register. Certificate issued by the PW-3 was admitted as exhibit-9. From the cross-examination, it appears he could not say whether the injured was then studying in that school or not but he was their student. From his cross-examination it is further seen that PW-3 could not say when Md. Murshid left the school.
9. Dr. Shyamal Sanyal, has been examined as PW-4, who claimed himself as Medical Officer attached to blood bank of S.D. Hospital, Asansol. He

stated that, he being superintended of the hospital was a member of the Medical Board. They examined Md. Murshid and issued handicapped certificate (exhibit-10). In cross-examination, he stated that, Neuro Surgeon was the best specialist in this regard. They examined the patient, but did not use any instrument. They issued certificate in compliance with the standard guidelines of the Government.

10. Ld. Tribunal ignored the disability certificate on the fact that injured being a student did not suffer any loss of income and in view of the structural formula for assessment of compensation under Section 163A of the Motor Vehicles Act, 1988. Ld. Tribunal relied on the guidelines framed by the Hon'ble Apex Court in the case of ***R.D. Hattangadi vs. M/s Paste Control (India) Pvt. Ltd. & Anr.*** reported in ***AIR 1985***. Ld. Tribunal refused to grant any compensation towards a head of 'pecuniary loss', but considering the permanent defect due to spinal injury according to disability certificate (exhibit-10) Ld. Tribunal granted compensation of Rs. 40,000/- under the head of non-pecuniary loss.

11. Therefore, it appears that Ld. Tribunal ignored any compensation under the head of 'pecuniary loss' as the injured was a student having no income.

12. In course of argument, Ld. Advocate Mr. Krishanu Banik appearing on behalf of the appellant/claimant has submitted that Ld. Tribunal awarded only a sum of Rs. 40,000/- instead of applying multiplier with monthly notional income of the injured. Mr. Banik has further submitted

that Ld. Tribunal also did not consider future prospect in view of the principle laid down by the Hon'ble apex Court. According to Mr. Banik, Ld. Tribunal ought to have considered non pecuniary damages towards expenses on difference heads i.e. loss of amenities, pain and suffering loss of expectation of life, mental shock etc. In support of his contention, he relied on the following cases:-

- ***D. Sampath Vs United India Insurance Co. Ltd. & Anr. (ACJ 2011 (vol-4)- 2466***
- ***K. Suresh Vs New India Assurance Company and others reported in (2012) 12 SCC 274***
- ***Kurvan Ansari vs Shayam Kishore Murmu and Anr. (2022) 1 Supreme Court Cases 317***
- ***Meena Devi Vs Nunu Chand Mahto @ Nemchand Mahto (2022) SCC OnLine Sc 1393***

13. In opposition to that, Ld. Advocate, Ms. Sucharita Paul, appearing on behalf of the Insurance Company has seriously raised a question of credibility of the disability certificate (exhibit-10). According to her so called Medical Board failed to assess the percentage of disability in absence of any Neuro Surgeon who would be the best person to assess the extent of disability. In support of his contention he referred to cross-examination of one of the member of the Board (PW-4). She has further relied on the observation of the Hon'ble Apex Court in ***D. Sampath*** (supra) to the following extent:

“.....We are not saying that under all circumstances, the Court has to blindly accept the Disability Certificate produced by the claimant. The Court has the discretion to accept either totally or partially or reject the Certificate so produced and marked in the trial but, that, can be done only by assigning cogent and acceptable reasons....”

14. MS. Paul has further argued that, injured being a boy of 15 (fifteen) years cannot be expected to have income in absence of any cogent evidence. Referring to the evidence of PW-3 Ms. Paul has contended that claimant hopelessly failed to prove that injured was a student of any school and therefore, according to Ms. Paul, the award passed by the Ld. Tribunal on the basis of non pecuniary loss was correct and reasonable.

15. Both Mr. Banik and Ms. Paul on behalf of the parties to this appeal were *ad-idem* in respect of the accident when injury sustained by a minor of 15 years due to rash and negligent driving of a pick up van bearing registration no. WB 37A/9401 which was duly insured with National Insurance Company Limited.

16. **D. Sampath** (supra) observed as follows:

“5. We do not intend to disturb the judgment and order passed by the High Court except to a limited extent. The High Court, while assessing the compensation payable to the claimant, has arrived at the loss of earning capacity in a sum of ` 8,16,000/- and, thereafter, though the Doctor has assessed 75% disability, has

taken into account 50% disability while calculating the loss of income without any rhyme or reason. In our view, this is a mistake committed by the High Court. It is no doubt true that, **while making assessment, there is an element of guess work, but that guess work again must have reasonable nexus to the available material/evidence and the quantification made. In the instant case, the claimant had not only examined himself to sustain the claim made in the petition but also Dr. J.R.R. Thiagarajan, PW-3, who has stated that the claimant has suffered 75% disability, by referring to the Disability Certificate issued by a competent Doctor who had treated the claimant. Though the Doctor is cross-examined at length by learned Advocate for the Insurance Company, nothing adverse to the interest of the claimant is elicited.** Therefore, the Tribunal has rightly accepted the evidence of the Doctor-PW-3. However, the High Court has taken 50% disability into account while calculating the loss of income. This, in our view, is the mistake committed by the High Court. We hastened to add that we are not saying that under all circumstances, the Court has to blindly accept the Disability Certificate produced by the claimant. The Court has the discretion to accept either totally or partially or reject the Certificate so produced and marked in the trial but, that, can be done only by assigning cogent and acceptable reasons. In this view of the matter, we take the disability suffered by the claimant at 75% and calculate the loss of income of the claimant keeping in view the loss of earning capacity of the claimant assessed by the High Court. Accordingly,

we arrive at the loss of earning capacity of the claimant at `6,12,000/-."

17. K. Suresh (supra) lays out the following guidelines:-

"7. The conception of "just compensation" is fundamentally concretized on certain well established principles and accepted legal parameters as well as principles of equity and good conscience. In Yadav Kumar v. Divisional Manager, National Insurance Company Limited and another[9], a two-Judge Bench, while dealing with the facet of "just compensation", has stated thus: - "It goes without saying that in matters of determination of compensation both the tribunal and the court are statutorily charged with a responsibility of fixing a "just compensation". It is obviously true that determination of just compensation cannot be equated to a bonanza. At the same time the concept of "just compensation" obviously suggests application of fair and equitable principles and a reasonable approach on the part of the tribunals and the courts. This reasonableness on the part of the tribunal and the court must be on a large peripheral field.

10. It is noteworthy to state that an adjudicating authority, while determining quantum of compensation, has to keep in view the sufferings of the injured person which would include his inability to lead a full life, his incapacity to enjoy the normal amenities which he would have enjoyed but for the injuries and his ability to earn as much as he used to earn or could have earned. Hence, while computing compensation the approach of the tribunal or a court has to be broad based. Needless

to say, it would involve some guesswork as there cannot be any mathematical exactitude or a precise formula to determine the quantum of compensation. In determination of compensation the fundamental criterion of “just compensation” should be inhered.

18. In Ramesh Chandra (supra) the learned Judges proceeded to address the issue of difficulty or incapacity to earn and how it stands on a different footing than pain and suffering affecting enjoyment of life and stated as under: - “The inability to earn livelihood on the basis of incapacity or disability which is quite different. The incapacity or disability to earn a livelihood would have to be viewed not only in praesenti but in futuro on reasonable expectancies and taking into account deprivation of earnings of a conceivable period. This head being totally different cannot in our view overlap the grant of compensation under the head of pain, suffering and loss of enjoyment of life. One head relates to the impairment of person’s capacity to earn, the other relates to the pain and suffering and loss of enjoyment of life by the person himself.

19. After referring to the said passage, the Bench proceeded to state that it is true that compensation for loss of earning power/capacity has to be determined based on various aspects including permanent injury/disability, but at the same time, it cannot be construed that that compensation cannot be granted for permanent disability of any nature. It has been mentioned by way of an example that in a case of a non-earning member of a family who has been injured in an accident and sustained permanent disability due to amputation of leg or hand, it cannot be construed that

no amount needs to be granted for permanent disability. It cannot be disputed that apart from the fact that the permanent disability affects the earning capacity of the person concerned, undoubtedly, one has to forego other personal comforts and even for normal avocation they have to depend on others.”

Ramesh Chandra V. Randhir Singh (1990) 3 SCC 723.

24. It is worthy noting that the Bench referred to the pecuniary damages and non-pecuniary damages and opined thus: - “Pecuniary damages (Special damages) K. Suresh vs New India Assurance Co.Ltd & Anr on 19 October, 2012 (i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food, and miscellaneous expenditure. (ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising: (a) Loss of earning during the period of treatment; (b) Loss of future earnings on account of permanent disability. (iii) Future medical expenses. Non-pecuniary damages (General damages) (iv) Damages for pain, suffering and trauma as a consequence of the injuries. (v) Loss of amenities (and/or loss of prospects of marriage). (vi) Loss of expectation of life (shortening of normal longevity).”

18. In Kurvan Ansari (supra) Hon’ble Apex Court held as under:-

“11. As the claim was made under Section 163-A of the Motor Vehicles Act 1988, since the deceased child was not an earning member, the Tribunal has considered notional income as per Schedule-II for the purpose of fixing compensation. The Tribunal has awarded

compensation by taking notional income of the deceased at Rs.15,000/- per annum by applying multiplier '15', awarded compensation of Rs.2,25,000/- towards loss of dependency with interest @6% per annum from the date (2009) 14 SCC 1 (2014) 1 SCC 244 (2020) 7 SCC 256 of judgment. When the appeals are preferred by the Insurance Company as well as the appellants herein, by the impugned common judgment, the High Court has dismissed the appeal preferred by the Insurance Company, and in the appeal preferred by the claimants, while confirming the compensation awarded for loss of dependency at Rs.2,25,000/-, has awarded a further sum of Rs.15,000/- towards funeral expenses and accordingly granted a total compensation of Rs.2,40,000/- with interest @6% per annum payable by respondent No.2 - Insurance Company and by permitting it to recover the same from Respondent No.1 - owner of the motorcycle.

14. In this case, it is to be noted that the accident was on 06.09.2004. In spite of repeated directions, Schedule-II is not yet amended. Therefore, fixing notional income at Rs.15,000/- per annum for non-earning members is not just and reasonable. 15. In view of the judgments in the cases in Puttamma & Ors.1, R.K. Malik & Anr.2 and Kishan Gopal & Anr.3, we are of the view that it is a fit case to increase the notional income by taking into account the inflation, devaluation of the rupee and cost of living. In view of the same, the judgment in the case of Rajendra Singh & Ors.4 relied on by the learned counsel for respondent No.2-Insurance Company would not render any assistance to the case of the insurance company.

16. In view of the above, we deem it appropriate to take notional income of the deceased at Rs.25,000/- (Rupees twenty five thousand only) per annum. Accordingly, when the notional income is multiplied with applicable multiplier '15', as prescribed in Schedule-II for the claims under Section 163-A of the Motor Vehicles Act 1988, it comes to Rs.3,75,000/- (Rs.25,000/- x Multiplier 15) towards loss of dependency. The appellants are also entitled to a sum of Rs.40,000/- each towards filial consortium and Rs.15,000/- towards funeral expenses. Thus, the appellants are entitled to the following amounts towards compensation:

- (a) Loss of Dependency : Rs. 3,75,000-00
- (b) Filial Consortium : Rs. 80,000-00 (Rs.40,000/- x 2)
- (c) Funeral Expenses : Rs. 15,000-00

Total : Rs. 4,70,000-00”

19. Meena Devi (supra) held as follows:-

“2. The facts relevant for disposal of the present case are that the child, namely; Bankee Bihari, aged about 12 years on the date of accident i.e. 29.7.2003, while playing in front of his house, was dashed by the Commander Jeep bearing registration No. JH-11A 6894 and died on the way, while being taken to a hospital in Dhanbad. A Claim Petition under Sections 140, 166 read with Section 171 of Motor Vehicles Act, 1988 (for short, “the M.V. Act”) seeking compensation to the tune of Rs. 2,00,000/- with interest was Signature Not Verified Digitally signed by SONIA BHASIN filed by the

appellant, who is the mother of the deceased Date: 2022.10.13 14:37:18 IST Reason:

12. In view of the foregoing decisions, it is apparent that in the cases of child death, the notional income of Rs. 15,000/- as specified in the IInd Schedule of M.V. Act has been enhanced on account of devaluation of money and value of rupee coming down from the date on which the IInd Schedule of M.V. Act was introduced and the said notional income was treated as Rs. 30,000/- in the case of Kishan Gopal (supra) and Rs. 25,000/- in Kurvan Ansari (supra) in age group of 10 and 7 years respectively. 13. Thus applying the ratio of the said judgments, looking to the age of the child in the present case i.e. 12 years, the principles laid down in the case of Kishan Gopal (supra) are aptly applicable to the facts of the present case. As per the ocular statement of the mother of the deceased, it is clear that deceased was a brilliant student and studying in a private school. Therefore, accepting the notional Meena Devi vs Nunu Chand Mahto @ Nemchand Mahto on 13 October, 2022 earning Rs. 30,000/- including future prospect and applying the multiplier of 15 in view of the decision of this Court in Sarla Verma (supra), the loss of dependency comes to Rs. 4,50,000/- and if we add Rs. 50,000/- in conventional heads, then the total sum of compensation comes to Rs. 5,00,000/-. As per the judgment of MACT, lump sum compensation of Rs. 1,50,000/- has been awarded, while the High Court enhanced it to Rs. 2,00,000/- up to the value of the Claim Petition. In our view, the said amount of compensation is not just and reasonable looking to the computation made hereinabove. Hence, we determine

the total compensation as Rs. 5,00,000/- and on reducing the amount as awarded by the High Court i.e. Rs. 2,00,000/-, the enhanced amount comes to Rs. 3,00,000/-."

Krishan Gopal (2014) 1 SCC 244

20. In our case, if I go through the evidence of PW-4 (Doctor) being a member of the Medical Board to assess the disability of the injured, I find that it was opinion of that particular doctor (PW-4) that Neuro Surgeon was the best specialist in this regard. It further appears from the evidence of PW-4 that none of the member of the Board ever treated the injured boy. Thereby, I am in a fix to place any reliance on the disability certificate (exhibit-10).
21. ***D. Sampath*** (supra) Hon'ble Apex Court dealt with a disability certificate which was issued by a competent doctor who had treated the claimant and nothing adverse was elicited from the cross-examination of the said doctor unlike the case in my hand.
22. ***K. Suresh*** (supra) denied the principles for computing 'just compensation' which is neither a bonanza nor a windfall, and simultaneously, should not be a pittance.
23. ***Kurvan Ansari*** (supra) & ***Meena Devi*** (supra) also dealt with a case under Section 163-A of the Motor Vehicles Act, on account of death of a child that too unlike our case.
24. Aforesaid discussion clearly culminates that the cases relied on behalf of the appellant can not assist this Court to accept the disability

certificate which was issued by a group of doctors and none of those doctors was Neuro Surgeon to assess the disability of the injured.

25. In this conjecture, no option is left to this Court but to pry into the track of compensation in terms of non-pecuniary damages i.e. damage for pain and suffering and trauma as a consequence of the injuries, loss of amenities, loss of expectation of life.

26. We are dealing with an accident of 2007 i.e. 15 years back and in the mean time child has already attained majority by lapse of time. Considering entire evidence on record, I am of the humble view that injured is entitled to Rs. 1,00,000/- for pain and suffering, Rs. 1,00,000/- towards loss of amenities and Rs. 50,000/- towards loss of expectation of loss of life.

27. Thus, injured is entitled to compensation of Rs. 2,50,000/- towards non pecuniary damages along with interest @ 6% per annum from the date of the filing of the application till the date of deposit thereof. Respondent/ Insurance Company is directed to pay the amount after deducting the awarded amount of Rs. 40,000/-, if already paid, along with interest @ 6% per annum from the date of filing of the claim petition till the date of deposit with office of the Ld. Registrar General, within 6(six) weeks from date.

28. Ld. Registrar General is requested to disburse the amount to the injured Md. Murshid on proper identification and proof.

29. With the above observation, the appeal, F.M.A. 1956 of 2013 is being disposed of without any order as to cost.

- 30.** All pending applications, if any, stand disposed of accordingly.
- 31.** Let the records of the Tribunal along with a copy of this order, be transmitted back at once.
- 32.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]