16.08.2023
Ct. 654
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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURIDICTION
APPELLATE SIDE

FMA 1413 of 2018
With
IA No. CAN 1 of 2018(Old No. CAN 6308 of 2018)

Jogeswar Bin
-Vs-
National Insurance Company Limited & Anr.

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

Mr. Rajesh Singh
... for the respondent no.1-insurance company

This appeal is preferred against the judgment and award dated 15th May, 2017 passed by the learned Additional District Judge-cum-Judge, Motor Accident Claims Tribunal, 2nd Court, Raiganj, Uttar Dinajpur in MAC Case No. 178 of 2015 granting compensation of Rs. 2,40,000/- together with interest in favour of the claimant under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 7th October, 2015 at about 07.00 a.m. while the minor victim (injured) was going to his school (Dewkhanda Primary School) on foot and when he was crossing the road at that time the offending vehicle bearing registration No. WB-25/5614 (Tanker) coming from Malda side towards Raiganj in a rash and negligent manner dashed the victim-injured and his right leg was crushed, which was later amputated at Raiganj District Hospital. On account of serious injuries sustained and subsequent disablement, the injured-victim (minor) filed application for compensation of Rs. 8,50,000/- together with interest under Section 166 of the Motor Vehicles Act, 1988 through his father and natural guardian.

The claimant in order to establish his case examined three witnesses and produced documents, which have been marked as **Exhibits 1** to **9** respectively.

The respondent no. 1-insurance company did not adduce any evidence.

In spite of due service of notice of appeal, the respondent no. 2 owner of the offending vehicle is unrepresented.

Upon considering the materials on record and the evidence adduced on behalf of the claimant, the learned Tribunal granted compensation of Rs. 2,40,000/- together with interest in favour of the claimant under Section 166 of the Motor Vehicles Act, 1988.

Being aggrieved by and dissatisfied with the impugned judgment and award, the claimant has preferred the present appeal.

Mr. Saidur Rahaman, learned advocate for the appellant-claimant submits that the learned Tribunal erred in determining the annual income of the minor at Rs. 15,000/- per annum whereas it ought to have determined the annual income of the minor at Rs. 30,000/- per annum. He further submits that due to the injuries sustained by the victim in the said accident, his right leg had been amputated and as per the disablement certificate, the victim sustained 75% permanent disablement, however, the learned Tribunal erred in granting loss of future earnings of 60% only. He further submits that the non-pecuniary damages and the loss of amenities of life are required to be enhanced keeping in mind the amputation undergone by the minor child. To buttress his contentions, he relies on the decision of the Hon'ble Supreme Court in ***Divya versus National Insurance Co. Ltd and another*** reported in ***2022 ACJ 2533***. In the light of his aforesaid submissions, he prays for enhancement of the compensation amount.

In reply to the contentions raised on behalf of the appellant-claimant, Mr. Rajesh Singh, learned advocate for the respondent no. 1-insurance company submits that the learned Tribunal after considering the circumstances involved in the case as well as the nature of injuries sustained by the victim has granted non-pecuniary damages under the pain and sufferings and loss of amenities of life and loss of career at Rs.1,05,000/-, which is appropriate in the facts of the case and hence does not call for interference. He submits for dismissal of the appeal.

Having heard the learned advocates for the parties, following issues have fallen for consideration. *Firstly*, whether the learned Tribunal erred in determining the annual income of the victim; *secondly*, whether the learned Tribunal erred in determining percentage of loss of future earnings and *lastly*, whether the learned Tribunal erred in granting non-pecuniary damages of a meagre sum.

With regard to the first issue relating to determination of the annual income of the minor victim, it is found that the learned Tribunal determined the annual income of the victim at Rs. 15,000/- per annum. Be that as it may, bearing in mind the catena of decisions of the Hon'ble Supreme Court, I am of the view that it would be reasonable to accept the notional income of Rs. 30,000/- per annum as the annual income of the victim-injured.

With regard to second issue relating to loss of further earnings, it is found that the learned Tribunal has considered 60% of the annual income of the victim towards loss of future earnings. It is not in dispute that due to the injuries sustained by the victim in the said accident, his right leg below knee had to be amputated. The disability certificate (**Exhibit-1**) shows permanent disablement of 75%. It is trite law that extent of disablement may not always be the extent of loss of future earnings. Keeping in mind that the victim at a tender age has to undergo amputation of his right leg below knee, it would be appropriate to consider loss of future earnings at 80% of the annual income. Further, since the victim is minor, an amount equivalent to 40% of the annual income should also be taken into consideration towards future prospect.

So far as the non-pecuniary damages is concerned, Mr. Rahaman, learned advocate for the appellant-claimant has strenuously argued relying on *Divya (supra*) that the amount under the non-pecuniary damages is required to be enhanced in view of the injuries and disablement sustained by the victim-injured. In the report of the *Divya (supra)*, it is found that the injured sustained locomotor disability at 75% and neuro-physical disability at 40% and the Medical Board opined disability of 100%. That apart, the injured could not stretch her legs and stand without support. The facts involved in the cited decision are quite dissimilar to the case at hand. However, since the victim was hospitalized for a period of 10 days and had to undergo amputation, I am of the opinion that an amount of Rs. 80,000/- towards pain and sufferings and another sum of Rs. 80,000/- towards loss of amenities of life and also medical expenses of Rs. 10,000/- should be reasonable and appropriate in the facts and circumstances of the case.

The other factors have not been challenged in this appeal.

Bearing in mind the above factors, calculation is made hereunder:

Calculation of Compensation

Annual income	Rs. 30,000/-
Add: 40% of annual income towards future prospect	Rs. 12,000/-
Total income	Rs. 42,000/-
Loss of income: 80% of the total income due to disablement of 80%	Rs. 33,600/-
Multiplier 15 (Rs. 33,600/- x 15)	Rs. 5,04,000/-
Add: Pain and sufferings	Rs. 80,000/-
Add: Loss of amenities of life	Rs. 80,000/-
Add: Medical expenses	Rs. 10,000/-
Total compensation	Rs. 6,74,000/-

Thus, the appellant-claimant is entitled to compensation of Rs. 6,74,000/- together with interest @ 6% per annum from the date of filing of the claim application (08.12.2015) till payment. It is informed that the claimant has already received the awarded sum of Rs. 2,40,000/- together with interest in terms of the order of the learned Tribunal. Accordingly, the appellant-claimant is entitled to balance amount of compensation of Rs. 4,34,000/- together with interest @ 6% per annum from the date of filing of the claim application (08.12.2015) till payment.

The respondent no.1-insurance company is directed to deposit the balance amount of compensation and the interest indicated hereinabove by way of a cheque before the learned Registrar General, High Court, Calcutta within a period of six weeks from date.

Upon deposit of the balance amount of compensation and the interest indicated hereinabove, the learned Registrar General, High Court, Calcutta shall release the aforesaid amount in favour of the appellant-claimant, upon satisfaction of his identity.

Sri Jogeswar Bin, being the father and natural guardian of injured victim (minor) shall receive the aforesaid amount on behalf of the minor-appellant and shall keep the same in a Fixed Deposit Scheme of any Nationalized Bank or Post Office till attainment of majority by the said minor.

With the aforesaid observations, the appeal stands disposed of. The impugned judgment and award of the learned Tribunal stands modified to the above extent. No order as to costs.

All the connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

Let a copy of this order along with the lower court records be sent to the learned Tribunal in accordance with the rules.

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

(**Bivas Pattanayak, J**.)