

18.08.2023
Ct. no.654
Item no.7
KB/sn

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(Appellate Side)**

FMA 850 of 2018

**Ila Saha
Vs.
Oriental Insurance Co. Ltd. & Anr.**

Mr. Saidur Rahaman
...for the Appellant
Mr. Parimal Kumar Pahari
...for the respondent

This appeal is preferred against the judgment and award dated 15th February, 2017 passed by the learned Judge, Motor Accident Claims Tribunals, 7th Court, Barasat, North 24 Parganas in MAC case no.93 of 2014 granting compensation of Rs.1,85,000/- together with interest in favour of the claimant-injured under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 27th November, 2010 at about 7-20 hrs. the offending vehicle bearing registration no.WB-25B/1344 (Truck) in a rash and negligent manner dashed the victim in front of her house, as a result of which the victim sustained grievous injuries on her person. Immediately the victim was taken to Kalyani J.N.M. Hospital for treatment. The victim sustained permanent disablement. On account of injuries sustained in the said accident and the subsequent

disablement the victim through her mother filed an application for compensation of Rs.6,00,000/- together with interest under Section 166 of the Motor Vehicles Act, 1988.

The claimant-injured in order to establish her case examined three witnesses and produced documents which have been marked as **Exhibits 1-10** respectively.

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

Since the respondent no.2, owner of the offending vehicle did not contest the claim application, service of notice of appeal upon the said respondent stands dispensed with.

Upon considering the materials on record and evidence adduced on behalf of the claimant-injured, the learned Tribunal granted compensation of Rs. 1,85,000/- together with interest in favour of the claimant-injured under Section 166 of the Motor Vehicles Act.

Being aggrieved by and dissatisfied with the impugned judgment and award of the learned Tribunal, the claimant-injured has preferred the present appeal.

Mr. Saidur Rahaman, learned advocate for the claimant-appellant submits that the learned Tribunal erred in determining the annual income of the minor

victim at Rs.15,000/- per annum whereas it ought to have taken into account an amount of Rs.30,000/- per annum as the annual income of the minor victim. He further submits that the minor victim is also entitled to an amount equivalent to 40% of such annual income towards future prospect. Moreover, the claimant-injured is also entitled to non-pecuniary damages towards pain and suffering as well as loss of amenities and medical expenses since due to injuries sustained in the said accident her left leg was crushed. In the light of his aforesaid submissions, he prays for enhancement on the compensation amount.

In reply to his aforesaid submissions, Mr. Parimal Kumar Pahari, learned advocate for the respondent no.1-insurance company submits that the learned Tribunal has rightly considered the annual income of the minor victim at Rs.15,000/- per annum. He further indicates that no such document relating to medical expenses has been produced, hence the learned Tribunal rightly did not allow the medical expenses.

Having heard the learned advocates for the respective parties, following issues have fallen for consideration. *Firstly*, whether the learned Tribunal erred in determining the income of the minor victim. *Secondly*, whether the victim is entitled to an amount

equivalent to 40% of the annual income towards future prospect. *Thirdly*, whether the victim is entitled to enhancement of non-pecuniary damages and *Lastly*, whether the claimant is entitled to medical expenses.

With regard to the first issue relating to determination of the income, it is found that the learned Tribunal has considered the annual income of the minor victim at Rs.15,000/- per annum. Be that as it may, bearing in mind catena of decisions of Hon'ble Supreme Court, the income of the minor victim is accepted at Rs.30,000/- per annum.

With regard to the issue of future prospect, an amount equivalent to 40% of the annual income of the minor-victim should be taken into consideration towards future prospect.

With regard to the non-pecuniary damages, it is found that the learned Tribunal granted Rs.5,000/- towards pain and sufferings. Admittedly, the victim after the accident was hospitalized and dis-articulation of left leg at knee was done at the hospital, as is appearing from the discharge certificate **(Exhibit-7)**. Considering the nature of injuries sustained and the operative measures undertaken, I am of the opinion that an amount of Rs.80,000/- towards pain and sufferings and Rs. 50,000/- towards loss of amenities of life should be

reasonable and appropriate in the facts and circumstances of this case.

As regards medical expenses, it is true that no such document relating to medical expenses was proved. Be that as it may, it is not in dispute that the minor victim was admitted to the hospital and operated. Bearing in mind the aforesaid, I am of the opinion that during such period of treatment certain amount of medical expenses has incurred and as such, an amount Rs.10,000/- would be just and appropriate.

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: Future prospect @ 40% of annual income	Rs.12,000/-
	Rs.42,000/-
80% loss of income due to disablement of 80%	Rs.33,600/-
Multiplier 15 (Rs.33,600/- x 15)	Rs.5,04,000/-
Add: Non-pecuniary damages Pain & sufferings: Rs.80,000/- Loss of amenities of life: Rs.50,000/-	Rs. 1,30,000/-
Add: Medical Expenses	Rs.10,000/-
Total amount	Rs.6,44,000/-

Accordingly, the appellant-claimant is entitled to compensation amount of Rs. 6,44,000/-. It is informed that the claimant has already received an amount of Rs.1,85,000/- together with interest in

terms of the order of the learned Tribunal. Accordingly, appellant-claimant is entitled to balance amount of compensation of Rs.4,59,000/- together with interest @ 6% per annum from the date of filing of the claim application till payment.

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

The appellant-claimant is directed to deposit *ad valorem* court fees on the balance amount of compensation assessed, if not already paid.

Upon deposit of the aforesaid amount, the learned Registrar General, High Court, Calcutta shall release the amount in favour of the appellant-claimant, upon satisfaction of her identity and payment of *ad valorem* court fees on the enhanced amount, if not already paid.

Smt. Ila Saha, mother and natural guardian of the minor appellant shall receive the aforesaid amount on her behalf and keep the same in a fixed deposit scheme of any nationalised bank or post office until attainment of majority of the said minor child.

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

All the connected applications, if any, stands 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 Court below for information 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.)