

11.12. 2023
item No.11
n.b.
ct. no. 551

FMA 522 of 2022

**Usha Samanta
Vs.
Reliance General Insurance Co. Ltd. & Anr.**

Mr. Jayanta Kumar Mandal
..... for the appellants.

Mr. Sanjay Paul
Ms. Jaita Ghosh
.....for the Insurance Company

This appeal is preferred against the judgment and award dated 24th November, 2021 passed by the learned Additional District Judge-cum-Judge, Motor Accident Claims Tribunal, Fast Track, 2nd Court, Tamluk, Purba Medinipur in MAC Case No.74 of 2013 under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that the present appellant being the wife of a injured has preferred an application before the learned Tribunal under Section 166 of the M. V. Act for getting compensation on the ground that her husband was sustained severe injury with an accident due to rash and negligent driving of the offending vehicle. By such accident her husband became permanently disabled and could not walk properly. Prior to such accident, her husband was working as a Khalasi, he used to earn Rs.6,000/- per month. Due to such accident, the claimant as well as family of the claimant suffered financial stringency. The claim case was

contested by the Insurance Company by filing written statement.

After hearing the parties and after receiving the evidences, learned Tribunal has awarded a sum of Rs.7,22,000/- in favour of the claimant.

Being aggrieved by and dissatisfied with the said award, the present claimant preferred this appeal on the ground of enhancement.

Learned advocate for the appellant submits that there are two grounds for enhancement, which was not considered by the learned Tribunal properly.

Firstly, the learned Tribunal has assessed the compensation. Considering the functional disability to be 80% by virtue of disability certificate, but in this case, after such accident, the deceased became permanent disabled and he is suffering from Dementia (RTA) for which he could not perform his personal work. One person was deputed for his daily activities with a salary of Rs.3,000/- per month. The learned Tribunal has failed to appreciate the facts assessed by the claimant and only allowed the compensation fixing functional disability to be 80%. In this case, he argued that the functional disability of the injured should be 100%.

In support of his contention, he cited some decision of Hon'ble Supreme Court in ***Rahul Ganpatrao Sable Vs. Laxman Maruit Jadhav (Dead) Through LRs. & Ors.*** reported in **2023 (3) T.A.C. 364 (S.C.)** and in the case of

Jithendran Vs. The New India Assurance Co. Ltd. & Anr. reported in ***2022 SAR (Civ.) 248 2021 SAR Online (SC) 613 and Rajan Vs. Soly Sebastian and Another*** reported in ***2016 (2) T.A.C. 58 (S.C.)***.

By citing those observations of the Hon'ble Supreme Court he argued that in all cases the Hon'ble Supreme Court has observed that though the medical disability of the injured to be 50% or 80% but considering the functional disability the compensation was assessed by the Hon'ble Supreme Court to be 100% loss of income. In this case, the injured was a Khalasi of a truck due to such accident, he could not perform his normal duties. Thus, it can be observed that the instant claim can be assessed by fixing the disability of the injured to be 100%.

He further argued only Rs.50,000/- was awarded to the claimant towards the pain suffering. After such accident, the injured was undergone as long treatment and operation. Thus, the non-pecuniary damages of Rs.50,000/- is not sufficient. In this case, the compensation should be assessed by fixing the non-pecuniary damages to be more than Rs.50,000/- including future medical expenses.

Learned advocate appearing on behalf of the insurance company submits that the claim application was filed stating the injured to be 80% disabled. One of the doctor of medical board appeared before the learned Tribunal as P.W.3 and stated that the injured was 80%

disability. The injury certificate itself shows that the injured is disabled of 80% and it was mentioned that he may be provided with walking aid. The P.W. 3 (Doctor) during his cross-examination has stated that he may be cured by proper treatment. The disability certificate also made a provision of review of disability after ten years. No such evidence were produced before the learned Tribunal to assess the disability more than 100%. In this case, the disability was correctly assessed by the learned Tribunal. The learned advocate for the insurance company placed reliance upon this Court regarding non-pecuniary damages.

Heard the learned advocates and perused the observation of the learned Tribunal. In considering the functional disability of this case, it appears that the injured was a Khalasi of a truck. However, the injured never appeared before the learned Tribunal for the purpose of observation of the learned Tribunal regarding his physical condition. Furthermore, Doctor appears and submitted that the person can be cured by treatment. The only pleadings regarding the 100 % disability of the person has not sufficiently proved by cogent evidences. More over, the disability certificate reflected that injured was suffered from Dementia (RTA).

Considering the facts of the case, it appears to be me that the learned Tribunal had nothing to observe more percentage of disability as observed by the Doctor.

Furthermore, in this case, injured never appeared before the learned Tribunal. However, no evidence has shown to justify his present physical condition. Thus, I find it was justified by the learned Tribunal to assess the functional disability of the injured to be 80%. The observation of Hon'ble Supreme Court in different cases as cited before me are actually different in factual aspect of this case, thus observations are not applicable.

In considering the non-pecuniary damages, it appears to me that learned Tribunal has awarded Rs.50,000/-towards the non-pecuniary damages but nothing has been awarded towards the future medical prospect. The injured was in a hospital for a long period of time and due to such accident, he suffered tremendous mental and physical pain and trauma.

Considering the entire aspect, I award further Rs.1,00,000/- towards the non-pecuniary including pain and suffering and future medical expenses. Considering the entire aspect, it appears to me that the award passed by the learned Tribunal need be modified.

It appears that the learned Tribunal has awarded compensation along with interest of 6% per annum from the date of evidence of P.W.1 on the ground that the appellant took several adjournments. However, the adjournments have been sought for by the appellant before the learned Tribunal and consequently, the Tribunal also allowed these adjournments. Considering

the same, I think it necessary that the award must carry interest from the date of filing of the claim application.

Just and proper compensation of this case. The award is as follows:-

Yearly Income Rs.48,000/-. 25% is added towards the future prospect. So, the yearly income comes to Rs.60,000/-. The injured was 80% permanent disablement. Accordingly, the 80% of the annual income comes to Rs.48,000/-. The applicable multiplier is 14, so the award comes to Rs.6,72,000/- (Rs.48,000/- X 14). The learned Tribunal has awarded Rs.50,000/-. This Court awarded more than Rs.1,00,000/- towards non-pecuniary heading, so after adding 50% + Rs.1,00,000/-, the award comes to Rs.8,22,000/-. The claimant has already received the compensation of Rs.7,22,000/-.

The insurance company is directed to pay the compensation along with interests 6% per annum from the date of filing of the claim application along with balance amount of Rs.1,00,000/-.

The Insurance Company is further directed to pay the award within six weeks from the date of passing of this order through the office of the learned Registrar General, High Court, Calcutta. On such deposit, the claimant is at liberty to receive the same according to the prevalent rules subject to ascertainment of payment of requisite court fees.

Accordingly, FMA 522 of 2022 is disposed of.

All connected applications, if any, are consequently disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Subhendu Samanta, J.)