

15.05.2023

Ct. no.654

Sl. No.104

SS

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

FMA 2179 of 2015

Bijoy Das

Vs.

The National Insurance Co. Ltd. & anr.

Ms. Sima Ghosh

...for the Appellant-claimant

Mr. Deb Narayan Roy

..for the respondent no.1-Insurance Co.

This appeal is preferred against the judgment and award dated 27th September, 2013 passed by the learned Additional District Judge-cum-Judge, Motor Accident Claims Tribunals, 4th Court, Murshidabad in MAC case no.310 of 2009 granting compensation of Rs.4,18,800/- in favour of the claimant under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 10th December, 2008 at about 5 p.m. while the victim as a *Khalasi* (Helper) was proceeding towards Lalgola-Ajimganj from Berhampore by vehicle bearing registration no.WB-57-7155 (mini truck) for loading vegetables through Lalgola State High Way and when he reached near Patiapara the driver lost control and dashed an electric pole as a result of which the victim who was a *Khalasi* (Helper) of the offending vehicle received severe multiple injuries on his person. The victim was immediately removed to the Sub-

Divisional Hospital, Lalgola and thereafter he was taken to Berhampore New General Hospital and N.G. Hospital, Kolkata and also to Jibandeeep Nursing Home, Berhampore for treatment and his right leg was amputated below knee. On account of such injuries and subsequent disablement, the claimant-injured filed application for compensation of Rs.4,00,000/- under Section 166 of the Motor Vehicles Act, 1988.

The claimant in order to establish his case examined himself and three other witnesses and produced documents, which have been marked as **Exhibits 1 to 4**, respectively.

The insurance Company did not adduce any evidence.

Upon considering the materials on record and evidence adduced on behalf of the claimant, the learned Tribunal granted compensation of Rs.4,18,800/- 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 of the learned Tribunal, the claimant-injured has preferred the present appeal.

Ms. Sima Ghosh, learned advocate for the claimant-injured submits that in the said accident the victim sustained severe injuries on his right leg which had to be subsequently amputated. However, the learned Tribunal

granted a meagre sum under non-pecuniary damages. She further submits that no such amount towards medical expenses was granted to the injured-claimant who underwent treatment for a prolonged period. Furthermore, she submits that the future prospect of 40% of the actual earnings has not been taken into consideration. She fairly submits that the multiplier should be 17 instead of 18 since at the time of accident the victim was 28 years old. Furthermore, she submits that the learned Tribunal did not grant any interest on the compensation amount. In view of the aforesaid submissions, she prays for enhancement of the compensation amount.

Mr. Deb Narayan Roy, learned Advocate for the respondent no.1-Insurance Company submits that the claimant-injured did not produce any medical documents in support of any expenses incurred by him for his treatment. He further submits that since at the time of accident the victim was aged about 28 years the multiplier should be 17 instead of 18 as adopted by the learned Tribunal.

Despite service of notice of appeal, none appears on behalf of the respondent no.2-owner of the offending vehicle.

Having heard the learned Advocates for the respective parties, it is found that the appellant has

raised the following issues. *Firstly*, whether sufficient compensation towards non-pecuniary damages has been granted; *secondly*, whether the injured-claimant is entitled to medical expenses; *thirdly*, whether the injured-claimant is entitled to future prospect; *fourthly*, whether the multiplier of 17 should be adopted instead of 18 and *lastly*, whether the claimant-injured is entitled to interest on the compensation amount.

With regard to first issue relating to non-pecuniary damages, it is found the learned Tribunal granted Rs.30,000/-. P.W.1 (victim) in his evidence stated that soon after the accident he was taken to Sub-Divisional Hospital, Lalgola wherefrom he was shifted to Berhampore New General Hospital and thereafter to N.G. Hospital, Kolkata and lastly to Jibandeeep Nursing Home, Berhampore for treatment and his right leg was amputated below the knee. The evidence of Dr. Bhaskar Mitra, P.W.3, Medical Officer, Berhampore District Hospital (Orthopaedic Surgeon) shows that he examined the victim and upon examination he found amputation of right leg below the knee. The percentage of disability as per disability certificate (**Exhibit 3**) shows that the victim sustained 60% disablement. P.W. 4, Tarun Kumar Sarkar who is a staff of Berhampore New General Hospital, produced the bed-head ticket of the victim. He further deposed that the victim was admitted to Berhampore New

General Hospital on 10th December, 2008 under Dr. B. Mitra and was referred to hospital at Calcutta. From the aforesaid materials, it is found that the victim had to be treated at several hospitals and ultimately due to injury sustained in the said accident, his right leg had to be amputated. Considering the aforesaid aspect, I am of the opinion that the amount of Rs.2,00,000/- towards non-pecuniary damages would be appropriate in the facts and circumstances of the present case.

With regard to medical expenses, it is found that the claimant did not produce any medical bills. Be that as it may, from the foregoing paragraphs it is found that the victim had to be treated at several hospitals including private hospital. This Court is not oblivious to the fact that for such treatment he had definitely incurred expenses. Bearing in mind the aforesaid fact, it would be just to allow an amount of Rs.1,00,000/- towards medical expenses.

So far as future prospect is concerned, following the observation of the Hon'ble Supreme Court in ***National Insurance Company Limited versus Pranay Sethi and Others*** reported in ***(2017) 16 SCC 680***, since at the time of accident it is undisputed that the victim was 28 years of age and was a *khalasi* (helper), an amount equalling to 40% of the actual earnings is to be taken into account.

So far as the multiplier is concerned, it is found that the learned Tribunal has adopted multiplier of 18. However, following the observation of the Hon’ble Supreme Court in the case of **Sarla Verma and Others versus Delhi Transport Corporation Ltd. & Another** reported in **2009 ACJ 1298**, multiplier should be 17 instead of 18, as has been rightly argued by both the learned advocates, since admittedly the victim was 28 years old at the time of accident.

With regard to last issue of entitlement of interest on compensation amount, it is found that the learned Tribunal did not grant interest on awarded sum. As per Section 171 of the Motor Vehicles Act, the Tribunal may direct for interest on the amount of compensation. Accordingly, the awarded sum shall carry interest @ 6% per annum.

Other factors have not been challenged in this appeal.

Bearing in mind the above, the calculation of compensation is assessed as follows:

Calculation of Compensation

Monthly Income	Rs.3,000/-
Annual Income (Rs.3,000X12)	Rs.36,000/-
Add: Future prospect @ 40% of income of victim	Rs.14,400/-

Total Income	Rs.50,400/-
Loss of earnings: 60% of Rs. 50,400/-	Rs.30,240/-
Multiplier 17 (Rs.30,240/- X17)	Rs.5,14,080/-
Add : Non-pecuniary damages	Rs.2,00,000/-
Add : Medical expenses	Rs.1,00,000/-
Total amount	Rs.8,14,080/-

Thus, the total compensation amount comes to Rs.8,14,080/- which shall carry interest of 6% per annum from the date of filing of the claim application till payment.

It is informed that the claimant has already received Rs.4,18,800/- as per order of the learned Tribunal.

Accordingly, the claimant is entitled to receive the balance amount of Rs.3,95,280/- (Rs.8,14,080 – Rs.4,18,800) together with interest @ 6% per annum from the date of filing of claim application till payment.

The claimant is also entitled to receive interest on the compensation of Rs.4,18,800/- granted by the learned Tribunal @ 6% per annum from the date of filing of the claim application till the deposit was made before the learned Tribunal.

The respondent no.1-Insurance Company is directed to deposit the balance compensation amount and

the 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, if not already paid.

Learned Registrar General, High Court, Calcutta, upon deposit of the amount and interest as indicated above, shall release the amount in favour of the claimant upon satisfaction of his identity and payment of *ad valorem* court fees on the balance amount of compensation, if not already paid.

With the above observations, the instant 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 connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

Let copy of this order along with lower court records be forwarded to the learned Tribunal for information.

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

(Bivas Pattanayak, J.)