

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 827 of 2013

Mrs. Luanna Mary Elloy alias Luanna Elloy
Vs.
Ganesh Basak & Ors.

Mr. Jayanta Kumar Mandal
... For the appellant/claimant

Mr. Jayanta Kumar Mandal, learned advocate for the appellant/claimant files a receipt of the notice served upon the respondents, which is taken on record. In spite of service of notice, none appears on behalf of the respondents.

In such circumstances, the appeal is taken up for hearing due to long pendency.

This appeal is directed against the judgment and award dated 10th May, 2012 passed by the learned Judge, Motor Accident Claims Tribunal, 14th Additional District Judge, Alipore, South 24-Parganas, in connection with MAC Case No.41 of 2010 whereby the learned Judge awarded compensation to the tune of Rs.9,18,110/- towards pecuniary and non-pecuniary damages.

Mrs. Luanna Mary Elloy alias Luanna Elloy filed the claim petition under Section 166 of the Motor vehicles Act, 1988 on account of injury and permanent disability

due to motor accident by the involvement of one School Bus, bearing registration no.WB-29/0224, while she was riding on a motor cycle with her husband on 17th January, 2008 at about 14.20 hours. At the time the said School bus running with high speed and in rash and negligent manner through New Park Street from west to east side and ultimately dashed the motor cycle where the claimant/injured was travelling with her husband. As a result, she sustained severe injury on her person. She was taken to Calcutta National Medical College and Hospital with the help of local people wherefrom she was referred to Appollo Gleneagles Hospital, Kolkata, where she was admitted from 17th January, 2008 to 12th March, 2008. In course of her admission, she had to undergo surgery on six occasions. At the time of accident, she was aged about 49 years and having income of Rs.5,500/- per month as a teacher of St. Dominic's School. That is why she claimed a compensation to the tune of Rs.14,00,000/-.

Both the owner of the offending vehicle and the Oriental Insurance Company Limited contested the case by filing their respective written statements denying all material averments of the claim petition contending, inter alia, that there was no negligence on the part of the School bus and, therefore, the claimant is not entitled to any compensation.

To prove the case, the claimant/injured examined as many as four witnesses, namely, the claimant herself as

PW-1, one Subir Ghosh, an employee of Appollo Gleneagles Hospital, Kolkata, examined as PW-2, one Syed Arif Kalm, a teacher of St. Dominic's School, as PW-3 and one Fatayur Rahman, claiming himself to be an eyewitness to the accident was examined as PW-4. In course of their evidence, a good number of documents were admitted in evidence including copy of the charge sheet, First Information Report, seizure list, insurance policy, salary certificate, medical documents, disability certificate etc. as Exhibit 1 to 21.

After assessing the entire evidence on record, including the documents, learned Tribunal granted award to the tune of Rs.9,18,110/- towards loss of earnings, medical expenses, pain and suffering, mental agony and loss of amenities.

In course of the argument, Mr. Mandal, learned advocate, appearing on behalf of the appellant/claimant has submitted that the appeal has been preferred only on the ground that the learned Tribunal did not consider the future prospect in terms of age of the claimant as well as poor amount granted towards non-pecuniary damages, i.e., pain and suffering, mental agony and loss of amenities.

So far as the accident is concerned, I find that there is sufficient materials on record, particularly, in the evidence of PW-1 and PW-4 together with charge sheet, FIR and seizure list and I do not find any necessity to

proceed further on this issue. From the evidence of PW-1 and PW-4, it is found that the accident took place due to rash and negligent driving of the School bus, bearing registration no.WB-29/0224, which was duly insured with the Oriental Insurance Company Limited.

Learned Tribunal assessed the income which was proved by the PW-3 who testified that the claimant/injured was an English Teacher of St. Dominic's School and used to earn Rs.5,496/- as salary and to that effect he proved one salary certificate (Ext.-18) issued by the Secretary of the St. Dominic's School. He also proved the registration certificate of the School (Ext.-19) and further proved the salary register of the School for the month of January, 2008 to April, 2008 (Ext.-20). From his evidence, it appears that the claimant was discharged from the service after the accident.

In terms of the evidence of PW-3, the learned Tribunal assessed the monthly income of the claimant as Rs.5,496/- for assessing pecuniary loss after applying multiplier 13 in terms of her age. But the learned Tribunal did not consider the future prospect in view of the principle handed down by the Hon'ble Apex Court in **Sarala Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.** reported in **(2009) 6 SCC 121**. Therefore, I am of the humble opinion that the appellant/claimant is also entitled to future prospect to the extent of 25% of her income in terms of her age (49 years).

From the impugned judgment, it comes to my notice that the learned Tribunal granted the compensation of Rs.10,000/- towards non-pecuniary damages except medical expenses. From the documents filed on record on behalf of the appellant/claimant, I find that she had incurred expenditure of Rs.3,50,410/- towards medical expenses and accordingly the learned Tribunal added the amount in the award.

From the evidence of PW-2, I find that she was admitted in Appollo Gleneagles Hospital for about two months after the accident and not only that she had to undergo operation for six times for which she suffered permanent disability to the extent of 65%. More so, she had to lose her job as a School Teacher. From the evidence of PW-3, it comes to my notice that she was an English Teacher of St. Dominic's School but after the incident she lost her job.

Considering the aforesaid facts and circumstances, I find that she had to carry tremendous pain and sufferings during her hospitalisation as well as she had to bear with tremendous mental agony, let alone loss of amenities.

Considering all the facts and circumstances as discussed hereinabove, I am of the opinion that the appellant/claimant is entitled to compensation of Rs.5,00,000/- towards non-pecuniary damages.

Accordingly, I determine the award afresh after adding future prospect of 25% of income as well as the amount towards non-pecuniary damages as follows:-

Monthly Income	Rs. 5,496/-
Annual Income (Rs.5,496/- x 12)	Rs. 65,952/-
Add: Future prospect (@ 25%)	Rs. 16,488/-

	Rs. 82,440/-
Multiplier by 13 (as per age of the victim)	x 13
	Rs.10,71,720/-
Less: Deduction 35% (since the claimant was disabled to the extent of 65%)	Rs. 3,75,102/-

	Rs. 6,96,618/-
Add: Medical Expenses	Rs. 3,50,410/-

	Rs.10,47,028/-
Add: Non-pecuniary Damages (towards pain & sufferings, mental agony and loss of amenities)	Rs. 5,00,000/-

Total	Rs.15,47,028/-
Less – Awarded by learned Tribunal	Rs. 9,18,110/-

ENHANCEMENT	Rs. 6,28,918/-

For the reasons, it is seen that the appellant/claimant is entitled to the total compensation to the tune of Rs.15,47,028/-. It is reported that the appellant/claimant has already received Rs.9,18,110/- along with interest as awarded by the learned Tribunal.

Therefore, the appellant/claimant is entitled to the balance amount of Rs.6,28,918/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e., on 3rd March, 2008 till the deposit of the amount.

Accordingly, the respondent no.3/Oriental Insurance Company Limited is directed to deposit the enhanced amount of Rs.6,28,918/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e. on 3rd March, 2008 till the actual deposit of the amount before the office of the learned Registrar General of this Court, within six weeks from the date of this order.

The appellant/claimant is entitled to withdraw the balance award amount with interest, subject to payment of additional *ad valorem* court fees on the amount of Rs.1,47,028/- (Rs.15,47,028/- – Rs.14,00,000/-) before the learned Tribunal.

The learned Registrar General is requested to disburse the amount to the appellant/claimant on proper identification.

With the above observations, the appeal, being FMA 827 of 2013, is disposed of on merit.

All pending applications, if there be any, stand disposed of.

Records of the learned Tribunal along with a copy of this order be transmitted back immediately.

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

(Bibhas Ranjan De, J.)