IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

24.11.2023
SL No.6
Court No. 551
Ali

FMA 439 of 2016

IA NO:CAN/1/2014 (Old No.:CAN/10957/2014),
CAN/3/2015 (Old No.:CAN/12118/2015),
CAN/4/2017 (Old No.:CAN/12124/2017).

Reliance General Insurance Co. Ltd.
Vs.
Soma Roy & Anr.

Ms. Gopa Das Mukherjee
....for the appellant.

Mr. Prosenjit Mukherjee,
Ms. Saptarshi Chakraborty,
Mr. Jahingir Hossain,
Mr. Arghya Kamal Das,
Ms. Tiyasa Ghosh
...for the claimants/respondents.

The instant appeal is preferred against the Judgment and Award dated 27th June, 2014 passed by learned Judge, Motor Accident Claims Tribunal, Katwa in M.A.C. Case no. 42 of 2008 under Section 166 of the Motor Vehicles Act.

The brief facts of the case is that the wife of the injured preferred an application before the learned tribunal for getting compensation on the ground that her husband was injured in a road traffic accident due to rash and negligent driving of the driver of the offending vehicle duly insured under the policy of the Insurance Company. It is the further ground that by such accident the husband of the claimant became permanently disabled.

The claim case was contested by the Insurance Company. After hearing the parties and after receiving the evidences the learned tribunal has awarded a sum of Rs. 10,88,627/- in favour of the claimant alongwith interest @ 7% per annum from the date of filing of the claim application.

Being aggrieved by and dissatisfied with the said award the instant appeal has been preferred by the Insurance Co.

Learned advocate for the appellant-Insurance Company submits that the impugned judgment passed by the learned tribunal is erroneous. The learned tribunal has not considered the medical papers and assessed disability in this case to be 80% in conformity with the disability certificate issued by the Government Medical Board. She submits that by virtue of the judgment of the Hon'ble Apex Court passed in ***Raj Kumar Vs. Ajay Kumar*** the disability of a person and compensation thereof has to be determined only upon the loss of earning capacity. In all cases the percentage of disability cannot be equated with the loss of income. She also submitted that the 80% disability in this case is not proper. According to the schedule-1 of the Employees Compensation Act, 1923. The 80% disability can only occur when there is an amputation of limbs; in this case there is no amputation, so the claimants are not entitled to get compensation considering the loss of income of to be 80%. She further submits that the learned tribunal has assessed the compensation fixing the multiplier to be 17. In this case the injured was within the age group of 30-35 years. So the correct multiplier would be 16. It is further argued that the learned tribunal has awarded 50% of admitted income towards the future prospects of injured by virtue of judgment of Hon'ble Supreme Court passed in ***Santosh Devi*** and ***Sayed Sadiq*** but the position of law has been very much clear by the judgment of the Hon'ble Supreme Court Constitution Bench in ***Pranay Sethi*** so the future prospects has to be assessed according to the said direction.

Learned advocate appearing on behalf of the respondents-claimants submits that the impugned judgment passed by the learned tribunal suffers no illegality. It has to been specifically pleaded by the claimants before the learned tribunal that the husband of the claimant was engaged in a business; after such accident the entire business has been closed, so the income of the claimant as well as the entire family has been suffered considerably. The fixing the income of the injured to be Rs. 3,000/- per month is not proper. He further argued that the disability of the injured was correctly assessed by the learned tribunal to be 80% so he prayed for rejection of the instant appeal.

Heard the learned advocate perused the materials on record and also perused the LCR. Initially, it appears to me that the wife of the deceased-injured preferred the claim case before the learned tribunal. During the trial the injured never appeared before the learned tribunal. Moreover, the wife of the injured i.e. the claimant has withdrew some amount of Rs. 2,00,000/- from the Court. Considering the entire aspects, this Court directed the injured to appear personally with claimant/respondent. By virtue of the direction of this Court the claimant alongwith the injured appeared before this Court. The injured sworn an affidavit. I have personally seen the injured in Court.

In going to the merits of this case it appears to me that the learned advocate for the Insurance Company has raised strong objection regarding the percentage of disability assessed by the learned tribunal. It appears to me that the Sub divisional Hospital, Bolpur, Birbhum has issued a disability certificate in favour of the injured. At the time of issuance of certificate, the percentage of permanent disability was assessed to be 80%. It is true, in this case the injured has sustained severe brain injury by such he became disable to walk freely. The disability certificate also mentioned that he cannot travel without assistance or escort. The injured when appeared before this Court, I have also seen that the injured could not walk without the assistance.

Considering the entire aspects, I think it necessary that the functioning disability of the injured was correctly assessed by the learned tribunal to be 80%.

However, it appears that the learned tribunal has erroneously assessed the compensation by fixing the multiplier to be 17. In this case the multiplier would be 16. Considering the age of the deceased within the age group of 30-35 years. The learned tribunal has also committed error in assessing the future prospects. In this case according to the direction of the Constitution Bench of Hon'ble Supreme Court passed in ***Pranay Sethi;*** in case of self employed person aged below 40 years; 40% of his establish income would be added as a future prospects. It further appears that the learned tribunal has assessed Rs. 5,000/- towards the general damages including pain and suffering. In this case the injured has suffered a severe accident resulting that he was admitted in a hospital and undergone a long treatment including operation. Considering the same, I think it necessary the injured/claimants are entitled to get Rs. 50,000/- towards the non pecuniary damages. Accordingly, I think it necessary to modify the award passed by the learned tribunal by virtue of the observation made above.

The just and proper compensation of this case assessed as hereunder:-

Monthly income Rs. 3,000/-, yearly income comes to Rs. 36,000/-. 40% is added towards the future prospects so after adding Rs.14,400/- so the yearly income comes to Rs. 50,400/-. 80% is the earning disability so the 80% the yearly income comes to Rs. 40,320/-. The applicable multiplier is 16 so after adopting the multiplier the compensation comes to Rs. 6,45,120/-. The claimant/injured is entitled to get further Rs.50,000/- towards the non pecuniary heads so it comes to Rs.6,95,120/-. The learned tribunal has awarded the cost of treatment and medicine to the tune of Rs. 3,49,227/-. Accordingly, the award comes to **Rs. 10,44,347/-.** The Insurance Company is directed to pay the compensation alongwith interest @ 6% per annum from the date of filing of the claim application i.e. from 02.07.2008.

The learned tribunal has awarded interest @ 7% per annum; to maintain the judicial discipline of this Court the interest is reduced to @ 6% per annum.

The Insurance Company has initially deposited the amount of Rs. 25,000/- on 12.11.2014 and thereafter Rs. 15,58,618/-on

09.01.2015 thus Insurance Company has deposited total Rs. 15,83,618; from which the claimant was allowed to withdraw an amount of Rs. 2,00,000/-. However, the deposited amount is must have carried some interest.

The office of the learned Registrar General, High Court, Calcutta is directed to assess the compensation as awarded by this Court as mentioned above and disburse the same to the claimants according to the prevalent Rules taking note of part withdrawal of the claimants and after ascertaining the payment of requisite Court fees. After such disbursal, residue if any, in the account be returned to the Insurance Company according to the prevalent Rules.

The instant FMA 439 of 2016 is disposed of.

All connected applications, if any, stand disposed of.

Interim orders, if any, stand vacated.

Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)