

22.02.2023

Ct no. 654

Sl. 1

(sanjay)

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 3222 of 2015

Kajal Ghosh

Vs.

National Insurance Company Ltd. & Anr.

Mr. Jayanta Kumar Mondal ...for the appellant.

Mr. Afroz Alam

...for the respondent No. 1/insurance company.

This appeal is preferred against the judgment and award dated 27th March, 2014 passed by the learned Judge, Motor Accident Claims Tribunal, at Durgapur, District-Paschim Bardhaman in M.A.C Case no. 25 of 2010 granting compensation in favour of the claimant to the tune of Rs. 1,00,000/- together with interest under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 14th December, 2008 at about 10.30 PM while the victim was proceeding towards Muchipara from Gosaintala on the footpath through NH2 and when he reached near Muchipara, at that time the offending vehicle bearing registration no. WB-40E-8054 (Motor Cycle) coming from Asansol side with high speed in rash and negligent manner dashed the victim, as a result of which the victim sustained several bleeding injuries over the body along with his right leg. Soon after the accident the local people shifted the victim injured to Sub-Divisional Hospital at Durgapur. The right leg of the victim-injured was amputated and he was

referred to Burdwan Medical College and Hospital for better treatment and thereafter he was shifted to Dreamland Nursing Home where he was treated for a long time. On account of such injury, medical treatment and subsequent disablement, the victim filed application for compensation of Rs.6,00,000/-under Section 166 of the Motor Vehicles Act, 1988.

The claimant in order to establish his case examined two witnesses and produced documents which have been marked as **Exhibits 1 to 9** respectively.

Respondent no.1-insurance company did not adduce any evidence.

One witness was examined by owner of the offending vehicle.

Upon considering the materials on record and the evidence adduced on behalf of the respective parties, the learned tribunal granted compensation of Rs. 1,00,000/- together with interest under Section 166 of the Motor Vehicles Act, 1988 in favour of the claimant.

Being aggrieved by and dissatisfied with the impugned judgment and award the claimant has preferred the present appeal.

Mr Jayanta Kumar Mondal, learned advocate for appellant-claimant submits that since at the time of accident the victim sustained severe injuries and his right leg was amputated resulting in permanent disablement, multiplier method is to be adopted for computing the compensation amount. In support of his contention he

relies on a decision of the Hon'ble Supreme Court passed in ***Kajal versus Jagdish Chand & Ors.*** reported in ***2020 SAR (Civ) 530***. He further submits that since at the time of accident the victim was 36 years of age, hence the following principles laid down in ***Sarla Verma & Ors. versus Delhi Transport Corporation & Anr.*** reported in ***2009 ACJ 1298*** multiplier of 15 should be adopted. Moreover, he submits that the victim was a garage mechanic at the time of accident and as such income of Rs.5,000/- should be taken into account. Further he submits that as per the disablement certificate the victim sustained permanent disablement of 70% which should be considered as extent of loss of future earnings. Furthermore, he submits that the victim is also entitled to an amount of equaling to 40% of future prospect. The medical expenses of Rs.77,261/- has also been proved by the claimant which should be taken into account. So far as the non-pecuniary damages is concerned he leaves the matter to the discretion of the Court. He indicates that the meagre compensation amount granted by the learned Tribunal is based on conjecture that the claim case is doubtful. He further draws the attention of the Court to the evidence of son of opposite party no.2, registered owner of the offending vehicle, who also categorically deposed in cross-examination that the injured was dashed by the said vehicle and, therefore, the involvement and rashness has been proved by the claimant beyond doubt. Relying on

the decision of the Hon'ble Supreme Court in ***Sunita & Ors. versus Rajasthan State Road Transport Corporation & Anr.*** reported in ***2019 (1) T.A.C. 710 (SC)***, he submits that in claim cases the standard of proof is based on preponderance of probability and not strict proof beyond all reasonable doubts which is followed in a criminal case.

In view of the above submissions, he prays for modification of the impugned judgment and award and enhancement of compensation amount.

Opposing the prayer for enhancement, Mr Afroz Alam, learned advocate appearing for the respondent no.1-insurance company submits that since the involvement of the offending was not proved and there was also delay of two months in lodging the FIR hence holding the case of the claimant as doubtful the learned Tribunal granted Rs.1,00,000/- as compensation which does not call for interference and should be affirmed.

In spite of 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-claimant has thrown challenge to the award precisely on following grounds, *firstly*, that the learned Tribunal erred in doubting the case of the claimant of involvement of the offending vehicle and rash and negligent act of the driver without any cogent reason; *secondly*, since the victim

sustained permanent disablement in the said accident multiplier method should be adopted for computation of compensation; *thirdly*, the income of the victim should be considered at Rs.5,000/ per month, *fourthly*, the assessment of compensation should be made taking into account 70% of the disablement as the extent of future loss of earnings; *fifthly* the claimant is entitled to medical expenses of Rs.77,261/-; *sixthly* the claimant is entitled to non-pecuniary damages and *lastly*, the victim-claimant is entitled to 40% of his annual income towards future prospect.

With regard to the first issue pertaining to involvement of the offending vehicle and the rash and negligent act of the driver, it is found that the victim (PW1) in his evidence has categorically stated that on the relevant date of accident he was dashed from behind by the offending vehicle being registration no.WB-40E-8054 (Motor cycle) in high speed and in negligent manner. The involvement of the vehicle bearing registration no. WB-40E-8054 is further been stated by the victim in his cross-examination. Thus evidence of PW1 (victim) regarding involvement of the offending vehicle and the rash and negligent act of the driver of the said vehicle has remained unchallenged in cross-examination. In the proceedings before the learned tribunal, the victim produced copy of FIR (**Exhibit 1**) and charge-sheet (**Exhibit 2**) which shows seizure of the offending vehicle as well as its involvement and corroborates the evidence

of the victim (PW1). OPW1, Sujit Kumar Banerjee, son of the registered owner of the vehicle and driver of the vehicle also deposed in his evidence that the victim met with the accident while walking by the side of the road and was dashed by him. It is strenuously argued on behalf of the insurance company that delay in lodging FIR has made the claim case doubtful. Undisputedly, there is delay of two months in lodgment of the written complaint. Now it is to be seen whether such delay in lodging FIR makes the claim case doubtful. At this stage it would be profitable to refer to the decision of Hon'ble Supreme Court passed in **Ravi versus Badrinarayan & Others** reported in **2011 (1) T.A.C 867 (SC)** wherein the Hon'ble Court observed as follows.

"20. It is well settled that the delay in lodging FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect the common man to first rush to the Police Station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than rush to the Police Station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the Police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim. In cases of delay, the Courts are required to examine the evidence with a closer scrutiny and in doing so; the contents of the FIR should also be scrutinized more carefully. If Courts finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons then, even if there is a delay in lodging the FIR the claim case cannot be dismissed merely on that ground."

Bearing in mind the aforesaid observation of the

Hon'ble Supreme Court and as in the present case at hand there is no indication of fabrication or concoction or engineering of the FIR hence the delay in lodging the FIR *per se* cannot be a ground for disbelieving the case of the claimant. It is relevant to note that the FIR maker, wife of victim, has given explanation that due to treatment of her husband there has been delay in lodging the FIR. Thus, such delay in lodging FIR does not affect the claim case. I find substance in the submissions of Mr Mandal relying on *Sunita's Case (supra)* that in claim cases the standard of proof is based on preponderance of probability and not strict proof beyond all reasonable doubts which is followed in a criminal case. In view of the above discussion it manifest that the offending vehicle was involved in the accident and on the relevant date it was driven in rash and negligent manner resulting in injury to the victim.

With regard to the question as to whether multiplier method should be adopted in the facts and circumstances of the case, it is found that the claimant has produced the disability certificate (**Exhibit 5**) which has been objected to at the time of tendering. However, no such evidence has been led from side of the insurance company to thwart the findings of the disability certificate. As per the disability certificate the victim sustained 70% permanent disablement due to amputation of his right leg. The evidence of PW2, Manager of Dreamland Nursing Home also shows that the

victim sustained amputation of his right leg. Therefore, since the victim sustained permanent disability as a result of injury sustained in the accident, hence following the observation of the Hon'ble Supreme Court in *Kajal's case (supra)*, multiplier method should be adopted in the facts and circumstance of the case for assessment of compensation amount. Admittedly, the victim was 36 years of age at the time of accident and therefore, in view of *Sarla Verma's case (supra)* a multiplier of 15 should be adopted.

So far as the income of the victim is concerned, though the victim produced certificate of proficiency and training certificate but has failed to produce any document relating to his profession. Be that as it may, considering the price index prevalent at the relevant point of time of accident in the year 2008, I am of the opinion that income of Rs.3,000/- per month should be apposite in the facts and circumstances of the case.

With regard to as the extent of loss of future loss of earnings, since it is found that the victim sustained permanent disablement in the said accident, hence it is to be seen whether such disablement of 70% will extend to future loss of earnings or not. From the evidence adduced by the victim it manifest that right leg of the victim was amputated due to injury sustained in the said accident resulting in disablement of 70%. The discharge certificate of Dreamland Nursing Home also shows of amputation of right leg. Considering the nature of the injury, in my view,

the extent of future loss of earnings should be considered at 70%.

With regard to pecuniary damages, the claimant by adducing the evidence of PW2, Pravat Kumar Mukherjee, Manager Dreamland Nursing Home proved the discharge certificate and the medical expenses incurred at Dreamland Nursing Home amounting to Rs.77,261/- which has not been disputed by the insurance company and accordingly the claimant is entitled to such medical expenses.

So far as non-pecuniary damages are concerned since the victim had to undergo operative measures and amputation of leg, I am of the view that an amount of Rs.1,50,000/- should be given to the victim under such said head.

With regard to the last issue relating to future prospect, undisputedly the victim at the time of accident in the year 2008 was aged between 36 years and was self-employed, following the observation of Hon'ble Supreme Court in **National Insurance Company Limited versus Pranay Sethi & Others** reported in **2017 ACJ 2700** the claimant is entitled to an additional amount equaling to 40% of his annual income towards future prospect.

The compensation is calculated as hereunder.

Calculation of compensation

Income per monthRs. 3,000/-
Annual IncomeRs.3,000 x 12....Rs. 36,000/-

Add: Future Prospect of 40% of
annual income of the victim.....Rs. 14,400/-

	Rs. 50,400/-
Adopting multiplier 15(Rs.50,400/- x 15)	<u>Rs.7,56,000/-</u>
70% Loss of earnings	Rs.5,29,200/-
Add: Medical Expenses	<u>.....Rs. 77,261/-</u>
	Rs.6,06,461/-
Add: Non-pecuniary Damages.....	<u>Rs. 1,50,000/-</u>
Total Compensation.....	Rs. 7,56,461/-

It is found that the claimant-victim has already received Rs. 1,00,000/- together with interest as per order of the learned Tribunal. Accordingly, the claimant is entitled to the balance amount of compensation of Rs.6,56,461/- together with interest at the rate of 6 % per annum from the date of filing of the claim application (i.e. 11.02.2010) till deposit.

The respondent no.1-insurance company is directed to deposit the aforesaid balance amount of compensation of Rs.6,56,461/- together with interest at the rate of 6% per annum from the date of filing of the claim application (i.e. 11.02.2010) till deposit by way of cheque before the learned Registrar General, High Court, Calcutta within a period of six weeks from date.

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 balance amount of compensation together with interest as indicated above, learned Registrar General, High Court, Calcutta shall release the said amount in favour of appellant-claimant

on satisfaction of his identity and payment of *ad valorem* court fees on the balance amount of compensation assessed, if not already paid.

With the aforesaid observation, the appeal stands disposed of. The impugned judgment and award of the learned tribunal is modified to the above extent. No order as to cost.

All connected applications, if any, stands disposed of.

Interim orders if any, stands vacated.

Let a copy of this order along with Lower Court records be forwarded to the learned Tribunal for information.

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

(Bivas Pattanayak, J.)