IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

07.08.2023
SL No.31
Court No. 551
Ali

FMA 1835 of 2014
IA No: CAN/1/2023

Malay Santra @ Natu
Vs.
The New India Assurance Co. Ltd. & Anr.

Mr. Amit Ranjan Roy
...for the appellant-claimant.

Ms. Sayanti Santra
...for the respondent-Insurance Co.

The instant appeal has been preferred against the judgment and award dated 3rd day of December, 2013 passed by the learned Judge, Motor Accident Claim Tribunal, 2nd Court, Burdwan in M.A.C. Case No. 92/279 of 2008 under Section 166 of the M.V. Act.

The brief fact of the case is that the present appellant being a claimant filed an application before the learned tribunal under Section 166 of the M.V. Act for getting compensation from the insurance company on the ground that he became permanently disabled due to the injury suffered in a road traffic accident. The learned tribunal has considered the pleadings of both claimant and the insurance company and after perusing the evidences on record both oral and documentary, passed the impugned award of compensation amounting to Rs. 3,64,100/-in favour of the claimant appellant and directed the owner of the vehicle to pay the compensation. Now the claimant is before this appellate court for enhancement of the award on several grounds and also on the ground that the insurance company may be directed to pay the compensation instead of the owner.

Heard the learned advocate perused the impugned award. Learned advocate for the appellant submitted before this court that the learned tribunal has not correctly assessed the compensation of the instant case. He argued that the offending vehicle bearing No. WB-25A/6615 (truck) was well covered under the policy of the insurance company at the date of alleged accident. Learned tribunal has observed that the driver of the offending vehicle had no valid driving licence.

He argued by the observation of the Hon'ble Apex Court in several judgments has held that when the offending vehicle was well covered of the insurance company, the insurance company may be directed to pay the compensation to the third party and further the insurance company may have the opportunity to recover the same from the owner of the vehicle. So he argued that the same guidelines may be followed in this case.

Learned advocate for the insurance company submitted before this court that the responsible person of the concerned R.T.O. appeared before the learned tribunal as OP No. 1 who deposed and submitted a letter issued by the concerned R.T.O. containing the fact that the alleged D.L. bearing No.WB-25-082441 was not available with the record of the concerned R.T.O. He further argued that the owner is liable to pay the compensation as he has violated the terms of the policy. She again argued that by virtue of the impugned order the owner may have paid the compensation or any execution case may have filed.

On the score, learned advocate for the claimant appellant submitted that no farthing was paid by the owner, hence in the present appeal is preferred.

Heard the learned advocates. On perusal of LCR, it appears that no payment was made before the learned tribunal. After hearing both the parties it appears to me that the Hon'ble Apex Court set out a format in case of disobedience of the terms of the policy by the owner, the insurance company is at liability to pay the compensation as fixed by the tribunal and on that score they are at liberty to recover the same from the owner by virtue of the judgment of the Hon'ble Apex Court passed in ***Swaran Singh and Challa Bharathamma***. Thus by virtue of decision of the Hon'ble Apex Court as above, in my view the insurance company is directed to pay the compensation to the owner and the insurance company is further at liberty to recover the same from the owner according to the directions laid down by the Hon'ble Supreme Court in ***Challa Bharathamma***.

Learned advocate for the claimant also submitted before this court that the alleged accident was happened in the month of October, 2007 and the appellant was admitted to the hospital till January 2008; a huge amount of money of Rs.2,00,000/- was spent but learned tribunal has only awarded Rs. 25,000/- for medical expenses. It appears to me that no document was produced before the learned tribunal by the claimant to prove the cost incurred by him in the head of medical expenses and no oral evidence was adduced except by himself regarding the cost and the treatment.

Considering the same, I find no justification to enhance the award on the ground of medical expenses. However, in considering the long treatment of the present appellant in the hospital and also considering the disability certificate issued by the concerned Government Medical College, it appears to me that the appellant must have suffered huge pain and suffering and also lost the amenity of future life due to such accident. It appears that the right hand of the present appellant is appeared to me under discomfort till the disability certificate was issued i.e. after one year of such accident.

Considering the same, I think it necessary to award Rs. 50,000/- towards non pecuniary damages. The claimant is also entitled to get the amount towards the future prospect @ 40% of his establishment income according to the direction of Apex Court in ***Pranay Sethi***. Thus after considering all the heads, I think it necessary to recast the compensation in this case. Thus the impugned order passed by the learned tribunal is hereby modified.

The income of the deceased is taken to be Rs.3,000/- thus yearly income comes to Rs. 36,000/-. The future prospect is added to be 40% i.e. Rs. 14,400/- thus the loss of yearly income comes to Rs. 50,400, 55% of which is comes to Rs.27,720/-. Applicable multiplier is 18. Thus the award comes to Rs. 4,98,960/-.

The claimant is also entitled to get an amount of Rs. 25,000/- towards the medial expenses and Rs.2,500 for loss of earning during his treatment at the hospital and also Rs. 50,000/- towards non pecuniary damages i.e. pain and suffering and loss of future amenities after adding all the heads the award comes to Rs.5,76,460/-.

Thus, the just and proper compensation of this case is as follows:-

<u>Calculation of compensation</u>

1.Monthly Income Rs.3,000/-

2.Annual Income

...(Rs.3,000/- X 12)......... Rs.36,000/-
3. Add 40% future prospect..................Rs.14,400/-
Rs.50,400/-
4. 55% disabilities...................................X 55%
Rs. 27,720/-
5. Multiplier apply 18
(Rs.27,720/-X 18)......Total Rs..................Rs.4,98,960/-

6. Add: Medical Exp. Rs.25,000/-
Loss of earning.................................Rs.2,500/-
Non Pecuniary loss.................... Rs.50,000/-

Total awarded amount...............Rs. 5,76,460/-

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 03.09.2008.

The insurance company is directed to deposit the compensation amount within eight weeks from the date of passing of this order to the office of the learned Registrar General, High Court, Calcutta. On such deposit the claimant is at liberty to withdraw the same from the office of the learned Registrar General, High Court Calcutta subject to the ascertainment of payment of requisite court fees. The insurance company is at liberty to recover the same amount from the owner of the vehicle according to the provision laid down by the Hon'ble Supreme Court passed in ***Swaran Singh & Challa Bharathamma.***

The instant FMA is disposed of.

All connected applications, if any, stand disposed of.

Interim orders, if any, stand vacated.

Let the record send down to the department.

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

(Subhendu Samanta, J.)