17.08.2023
Ct. no.654
Item no.6
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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(Appellate Side)

FMA 929 of 2021
IA No.CAN/1/2019 (Old CAN 1815/2019)

Ranajit Samanta @ Ranjit Samanta
Vs.
The HDFC ERGO General Insurance Co.Ltd.

Mr. Amit Ranjan Roy
...for the appellant
Mr. Rajesh Singh
...for the respondent

This appeal is preferred against the judgement and award dated 5th January, 2019 passed by the learned Judge, Motor Accident Claims Tribunals, Fast Track, 1st Court, Tamluk, Purba Medinipur in MAC case no.186 of 2015 granting compensation of Rs.8,20,000/- together with interest in favour of the appellant-claimant under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 7th January, 2015 at about 7-15 a.m. while the victim was standing besides NH-41 at village Sridharpur (Haldia More) to proceed to his house at that time the offending vehicle bearing registration number WB-23C/4667 (Truck) which was going towards Haldia Side in a rash and negligent manner dashed the victim with great force, as a result of which the victim sustained grievous injuries precisely on his right leg and immediately the victim was taken to Khejurberia B.P.H.C. wherefrom he was taken to Purba Medinipur District Hospital at Tamluk, where his right leg was amputated above knee. The victim was also treated Saviour Clinic Pvt. Ltd. at Kolkata. On account of injuries sustained and consequent disablement, the victim filed an application for compensation of Rs.25,00,000/- under Section 166 of the Motor Vehicles Act, 1988.

The claimant-victim in order to establish his case examined four witnesses and produced documents which have been marked as **Exhibits 1-14 (series)** respectively.

The respondent no.1-insurance Company did not adduce any evidence.

By order dated 27th February, 2023, service of notice of appeal upon the respondent no.2, owner of the offending vehicle, has been dispensed with since he did not contest the claim application.

Upon considering the materials on record and evidence adduced on behalf of the claimant, the learned Tribunal granted compensation of Rs.8,20,000/- together with interest in favour of the claimant under Section 166 of the Motor Vehicles Act.

Being aggrieved by and dissatisfied with the impugned judgement and award of the learned

Tribunal, the claimant has preferred the present appeal.

Mr. Amit Ranjan Roy, learned advocate for the appellant-claimant submits that the learned Tribunal erred in determining the income of the victim inasmuch as it failed to consider the oral and documentary evidence produced in support of the income of the claimant to the tune of Rs.15,000/- per month. There is no contrary evidence challenging the income of the victim as claimed and as such the income of Rs.15,000/- per month should be taken into account for calculating just compensation. He further submits that the claimant is also entitled to an amount equivalent to 40% of the annual income towards future prospect. He also submits for enhancement of the compensation amount under the head of non-pecuniary damages since due to injuries sustained in the said accident the victim had to undergo prolonged treatment and amputation of his right leg. In the light of his aforesaid submissions, he prays for enhancement on the compensation amount.

In reply to the aforesaid submissions advanced on behalf of the appellant-claimant, Mr. Rajesh Singh, learned advocate for the respondent no.1-insurance company submits that though the claimant adduced evidence of the employer and produced income certificate but such certificate of income is not supported by any other documentary evidence to primarily come to the conclusion that prior to the accident the victim used to receive salary of Rs.15,000/- per month and as such income of Rs.15,000/- claimed by the claimant is exorbitant and cannot be accepted. He submits for dismissal of the appeal.

Having heard the learned advocates for the respective parties, following issues have fallen. *Firstly,* whether the learned Tribunal erred in determining the income of the victim. S*econdly*, whether the victim is entitled to an amount equivalent to 40% of the annual income towards future prospect and *lastly* whether the victim is entitled to enhancement of non-pecuniary damages.

With regard to the first issue relating to determination of the income, it is found that the learned Tribunal has determined the income of the victim at Rs.5,000/- per month. The claimant in order to establish his income has adduced the evidence, one Swapan Kumar Maity, as PW-3, who deposed that he is a contractor by profession and the victim used to work under him as a Spot Mixing Machine Operator and he used to pay the victim a salary of Rs.15,000/- per month. The witness also proved the certificate of income as **Exhibit-9**. Though the witness stated in his evidence-in-chief of the fact of payment of salary of Rs.15,000/- per month to the victim but in cross-examination he admitted that he has no document to show that he used to pay salary of Rs.15,000/- per month to the victim. He further admitted that he has no document to show that the victim used to work under him. Thus, salary certificate **(Exhibit-9)** is found to be not supported by any other cogent evidence. Accordingly, the evidence of PW-3 and the salary certificate issued by him in the absence of supportive documents cannot be accepted. However, resorting to certain guesswork and also bearing in mind the economic factors and the cost of essential commodities prevailing at the relevant point of time in the year 2015, I am of the opinion that an amount of Rs.6,000/- per month would be reasonable and appropriate for calculation of compensation.

With regard to the future prospect, it is found that at the time of accident, the victim was 38 years of age and was presumably self-employed. In view of the decision of the in Hon'ble Supreme Court passed in ***National Insurance Company Limited versus Pranay Sethi and Others*** reported in ***2017 ACJ 2700***, the claimant is entitled to an amount equivalent to 40% of his annual income towards future prospect.

So far as non-pecuniary damages is concerned, it is found that the learned Tribunal has granted Rs.1,00,000/- towards pain and suffering, which in my opinion, it is appropriate and does not call for interference.

The other factors have not been challenged in this appeal.

Bearing in mind the above factors, calculation is made hereunder:

Calculation of Compensation

Monthly income	Rs.6,000/-
Annual income (Rs.6,000/- x 12)	Rs.72,000/-
Add:40% of the annual income towards future prospect	Rs.28,800/-
	Rs.1,00,800/-
Loss of income: 80% of the total income due to disablement of 80%	Rs.80,640/-
Multiplier 15 (Rs.80,640/- x 15)	Rs.12,09,600/-
Add: Non-pecuniary damages	Rs.1,00,000/-
Total	Rs.13,09,600/-

Accordingly, the appellant-claimant is entitled to an amount of Rs.13,09,600/- together with interest @ 6% per annum from the date of filing of the application (i.e. 09.02.2015) till payment. It is informed that the claimant has already received Rs.8,20,000/- together with interest in terms of the order of the learned Tribunal. Accordingly, the appellant-claimant is entitled to balance amount of compensation of Rs. 4,89,600 together with interest @ 6% per annum on such amount from the date of filing of the claim application (i.e. 09.02.2015) till payment.

Respondent no.1-insurance company is directed to deposit the aforesaid balance amount of compensation and 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 assessed, if not already paid.

Upon deposit of the aforesaid balance amount of compensation and interest, the learned Registrar General, High Court, Calcutta shall release the said amount in favour of the appellant-claimant, upon satisfaction of his identity and payment of *ad valorem* court fees on the enhanced amount, if not already paid.

With the aforesaid observations, the 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 the connected applications, if any, stands disposed of.

Interim order, if any, stands vacated.

Let a copy of this order along with the Lower Court Records be sent to the learned Tribunal for information in accordance with the rules.

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

(Bivas Pattanayak, J.)