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**FMA 1156 of 2013**
**IA No. CAN 1 of 2017 (Old No. CAN 5066 of 2017)**
**(Application not in file)**

**Md. Abdul Washid @ Md Abdul Wahid**
**Versus**
**Reliance General Insurance Co Ltd & Anr.**

Mr. Krishnu Banik, … For the appellant

Mr. Sanjoy Pal. … For the respondents

The appeal is directed against the judgment and award passed by learned Motor Accident Claims Tribunal, District Judge, Purba Medinipur in connection with MACT Case No. 371 of 2011, whereby learned Tribunal awarded a sum of Rs.9,34,919/- as compensation. Being aggrieved by and dissatisfied with the said quantum of compensation awarded by the Tribunal, this appeal has been preferred.

The specific case of the claimant is that on 13.08.2011 at about 07.00 p.m. claimant/ Md. Abdul Washid was standing at Ranichak bus stand on N. H. 41. At that time one motor cycle bearing no. WB-30D/4414 coming with high seed from Haldia side dashed him, as a result, he sustained serious injuries, specifically on his chest and hands. He was shifted to Haldia Sub-Divisional Hospital wherefrom he was referred to N.R. S. Medical College and Hospital and subsequently he was admitted at CMRI, Kolkata. He was admitted there from

13.08.2011 to 26.08.2011. He had to undergone operation even. At the time of accident he was a man of 28 years and used to earn Rs. 200645/- per annum from petroleum product business.

Owner of the vehicle did not contest the claim petition, but the Insurer Reliance General Insurance Company Limited contested the claim petition by filing written objection denying all materials averment of the claim petition, contending, *inter alia*, that claimant is not entitled to any compensation as prayed for.

To prove the case, claimant examined three witness, namely injured/claimant himself as PW-1, who corroborated the entire claim application, along with prayer for compensation of Rs. 10,00,000/-. PW-2, Pallab Chakraborty, came to depose in support of the bill to the tune of Rs. 5,78,824 and one Rathindra Nath Chakraborty as PW-3, who testified that he was a staff of CMRI and total bill amount of Rs. 1, 47,195.

In course of evidence, a good number of documents were admitted in evidence, including certified copy of FIR, Charge-sheet, Seizure list, Discharge Certificate, Medical Bills etc. as exhibits 1 to 12.

Learned Tribunal after considering the entire evidence on record including the documents came to his opinion that the claimant was entitled to compensation to the amount of Rs. 9,34,919, after considering the percentage of disability to the extent of 25% as well as income in terms of IT Return.

In course of argument Mr. Krishnu Banik, learned advocate appearing for the appellant has submitted that learned Tribunal did not assigned any reason in the judgment assailed in this appeal with regard to the deduction of percentage of disability from 40% to 25%. It is submitted that disability certificate was issued by the Medical Board of Haldia Sub-Division Hospital.

In support of his contention he relied on a case of ***D Sampath vs. United India Insurance Co. Ltd. & Anr***. Reported in ***2011 ACJ 2466 SC = AIR 2012 SC 544***, wherein Hon'ble Apex Court observed as follows:

> "5........*The Court has to discretion to accept either totally or partially or reject the Certificate so produced and marked in the trial but, that, can be done only by assigning cogent and acceptable reasons. In this view of the matter, we take the disability suffered by the claimant at 75% and calculate the loss of income of the claimant keeping in view the loss of earning capacity of the claimant assessed by the High Court. Accordingly we arrive at the loss of earning capacity of the claimant at 6, 12,000/-*"

Mr. Banik has further submitted that learned Tribunal did not consider the future prospect and only 10,000/- towards non-pecuniary damages.

Mr. Sanjoy Pal, learned advocate appearing for the Insurance Company has submitted that disability certificate has not been admitted in evidence properly so it cannot be considered for assessment of pecuniary loss.

So far as the accidental injuries sustained by victim is concerned, I record no argument advanced on behalf of either of the parties to this appeal. Rather, from the evidence adduced on behalf of the claimant together with the documents particularly FIR, Charge-sheet and Seizure list, I do not find any reason to disbelieve the accident due to rash driving of motor cycle and also serious injuries sustained by the claimant. Learned Tribunal assessed the compensation rightly on the basis of income of Rs. 1,60,000/- per annum and also medical expenses of Rs. 1,47,195, but so far as the application of multiplier is concerned, learned Tribunal used 18 multiplier in stead of 17 in terms of age of the claimant. That apart, learned Tribunal granted Rs.10,000/- towards non-pecuniary damages in the heads of pain and suffer and loss of amenities of life i.e. Rs.5000/- each, which is not correct in terms of pain and sufferance of the claimant for a considerable period of time in Hospital.

So far as the disability certificate is concerned, I find that disability certificate was admitted in evidence without objection and that was also acted upon by the learned Tribunal in course of delivering judgment. Therefore, I am unable to accept 25% in stead of 40% as per disability certificate issued by Medical Board of Haldia Sub-Divisional Hospital. Therefore, I am not inclined to enter to the issue of acceptance of disability.

Relying on the principle laid down in ***D. Sampath (supra)*** I am unable to agree with the learned Tribunal for deduction of percentage of disability from 40% to

25%.

In the aforesaid view of the matter, I propose to modify the award hereunder:-

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|---|---|
| 1. *Annual Income be assessed as Rs.* | *= Rs.1,60,000/-* |
| 2. *Future Prospect be assessed 40% i.e* | *= Rs. 64,000/-* |
| 3. *Total* | *Rs. 2,24,000/-* |
| 4. *Loss of Income 40%* | *Rs. 89,600/-* |
| 5. *Use Multiplier (Rs.89,600 x 17)* | *Rs. 15,23,200/-* |
| *Total* | *Rs. 17,28,219/-* |
| 6. *Add Non-Pecuniary* | *Rs. 1,50,000/-* |
| *Total* | *Rs. 18,78,219/-* |
| 7. *Less awarded amount i.e.* | *Rs. 9,34,919/-* |
| 8. *Total Enhanced amount* | ***Rs. 9,43,300**/-* |

Therefore, the claimant is entitled to compensation of Rs.18,78,219/-, subject to the payment of ad valorem court fees on the amount of Rs. 8,78,219/- along with interest at the rate 6% per annum from the date (i.e.09.12.2011) of filing of the application. It is reported that claimant has already received Rs.9,34,919/- from the Tribunal, and therefore, claimant is entitled to sum of Rs. 9,43,300/- along with interest 6% per annum.

Accordingly respondents/Insurance Company is directed to deposit a sum of Rs.9,43,300/- along with 6% from the date (i.e.09.12.2011) of filing of the application till the date of deposit thereof before the office of Registrar General.

Respondents/Insurance Company is also directed to deposit the interest at the rate of 6% per annum on the amount of Rs.9,34,919/- from the date of filing) till the deposit (i.e. 12.12.2012)of cheque of the amount before the Tribunal.

The respondent/insurance company is directed to deposit the amount within 6(six) weeks from the date.

Learned Registrar General is requested to disburse the amount to the claimant along with interest.

With the aforesaid observation, the **FMA 1156 of 2013** stands disposed of.

Pending applications, if there be any, stands also disposed of.

Let a copy of this order along with Tribunal records shall be transmitted back to the learned Tribunal immediately.

Urgent certified copy of this order, if applied for, be given to the appearing parties as expeditiously as possible upon compliance with the all necessary formalities.

***(Bibhas Ranjan De, J.)***